

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 11917 of 2015

Applicant

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

AND

Respondent

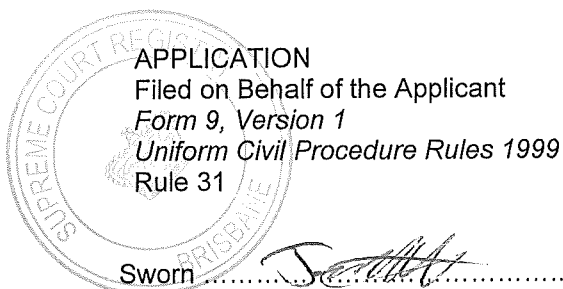
**THE MEMBERS OF THE LM MANAGED
PERFORMANCE FUND**

AFFIDAVIT OF JARROD VILLANI

SWORN ON: 4 DECEMBER 2020

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

1. I am a Partner and authorised officer of KordaMentha, the accounting firm under which name KordaMentha Pty Ltd trades.
2. As set out below, KordaMentha Pty Ltd (**the Trustee**) is the trustee of the LM Managed Performance Fund (the **MPF**).
3. I am duly authorised by Mr Korda and Mr Mentha, the directors of the Trustee, to swear this affidavit on behalf of the Trustee.
4. I have been involved in managing the affairs of the MPF since the Trustee was appointed on 12 April 2013 and have been the person principally responsible for conducting those affairs on behalf of the Trustee since around January 2015.



Banton Group
Level 12, 60 Martin Place
Sydney NSW 2000
Phone No: (02) 8076 8090

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5. Except where otherwise indicated, I depose to the matters set out in this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.
6. This affidavit is sworn in support of the Trustee's application dated 4 December 2020 (the **Application**) made under section 96 of the *Trusts Act 1973* (Qld) (the **Trusts Act**). A copy of the statement of facts in support of the Application is at page A of the Exhibit. The Application seeks various directions from the Court in relation to the winding up of the MPF. As set out in more detail below, the Trustee seeks directions regarding:
- 6.1. the identification of the register of unitholders which the Trustee ought to adopt for the purpose of winding up the affairs of the MPF;
 - 6.2. who should receive a refund of approximately \$6.5 million that the Trustee received from the Australian Tax Office (**ATO**), in respect of withholding tax paid from approximately 2008-2012;
 - 6.3. treatment of unitholders whose investments matured prior to the appointment of a Trustee or closure of the MPF; and
 - 6.4. the process that the Trustee should employ when making a final distribution to unitholders who invested in the MPF in foreign currencies. This issue arises due to the way that the former trustee LMIM managed the MPF, while the MPF was still open for investment. LMIM adopted the practice of offering different unit prices for investments made in different currencies. This resulted in certain foreign currency investors being allocated proportionally more units in the MPF than other foreign currency investors, per Australian dollar invested (as converted from foreign currency). The MPF Constitution stipulates that capital distributions are to be calculated based on the number of units held, which does not appropriately deal with the method of accounting for foreign currency investments. When foreign currency investments are converted into Australian dollars, certain foreign currency investors are allocated proportionally more units in the MPF than other foreign currency investors, when the investments are calculated in Australian dollar terms. When foreign currency investors' units were redeemed, or when distributions were made to these investors, LMIM paid such redemptions or distributions based on the unit price it had adopted for that particular currency.

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7. The Trustee also seeks orders for substituted service of the Application on the unitholders of the MPF (and any future such applications, in the unlikely event that any further directions are required in the course of the winding-up of the MPF).
8. At the time of swearing this affidavit, there is exhibited before me:
- 8.1. a paginated bundle of documents marked "Exhibit JV-19", comprising hard copies of documents that are referred to throughout this affidavit (the **Exhibit**); and
- 8.2. an electronic USB drive marked "Exhibit JV-20" containing electronic copies of documents which cannot be readily reproduced in hard copy format due to their size or format, which the Trustee seeks to keep confidential for the same reason identified in the preceding paragraph (the **Confidential USB Exhibit**).
9. This affidavit has been divided into a number of parts as follows:
- 9.1. In PART A, I provide background information relating to the MPF and the conduct of its winding up by the Trustee.
- 9.2. In PART B, I describe the various versions of the unitholder register in the Trustee's possession and detail the steps undertaken by the Trustee to identify the most up-to-date and accurate version.
- 9.3. In PART C, I detail the process proposed by the Trustee to update the unitholder register with current banking and other details of the unitholders.
- 9.4. In PART D, I explain the practical difficulties associated with communicating with the unitholders of the MPF, and outline the Trustee's proposed method of communication with unitholders for the purpose of finalising the winding up of the fund.
- 9.5. In PART E, I set out the proposed distributions that the Trustee intends to make to unitholders in priority over any general capital distribution.
- 9.6. In PART F, I describe the approach that the Trustee intends to adopt with respect to unit holdings in the MPF that are past maturity.
- 9.7. In PART G, I explain how the Trustee intends to treat 3 accounts with a unit balance of less than 40 units.

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- 9.8. In PART H, I explain how I propose to distribute withholding tax that the Trustee has received from the Australian Taxation Office to unitholders.
- 9.9. In PART I, I explain the distribution methodology that the Trustee proposes to adopt to address issues arising from investments made via foreign currencies.
- 9.10. In PART J, I outline the Trustee's proposed method of effecting substituted service of the Application, and any future such applications (if necessary), on the unitholders of the MPF.

PART A: BACKGROUND

The MPF

10. The MPF constitution was amended by a Deed Poll dated 25 November 2009 which consolidated all amendments previously made (**MPF Constitution**). The MPF constitution had previously been amended in 2007, but as the Deed Pool consolidated the amendments previously made this version contains all relevant material for this Application. A copy of the Deed Poll dated 25 November 2009 amending the Replacement MPF Constitution is at pages 1 to 39 of the Exhibit.
11. The MPF Constitution was further amended pursuant to a Supplemental Deed Poll dated 22 February 2011. A copy of the Supplemental Deed Poll dated 22 February 2011 is at page 40 to 44 of the Exhibit.
12. A Supplemental Deed Poll dated 23 October 2012 further amended the MPF Constitution. Based on my review of the books and records of the MPF, this is the most recent amendment to the MPF Constitution. A copy of the Supplemental Deed Poll dated 23 October 2012 is at pages 45 to 52 of the Exhibit.
13. To the best of my knowledge, the MPF has never been registered as a managed investment scheme under Part 5.9 of the *Corporations Act 2001* (Cth) (**Corporations Act**). On 13 November 2018, I caused my former solicitors, Squire Patton Boggs, to search the register maintained by the Australian Securities and Investments Commission (**ASIC**), which records that the MPF is, *inter alia*, "not registered". A copy of the result of the search is at page 53 of the Exhibit.
14. The Trustee's investigations indicate that LMIM was of the view that the MPF was not required to be registered as a managed investment scheme, as:

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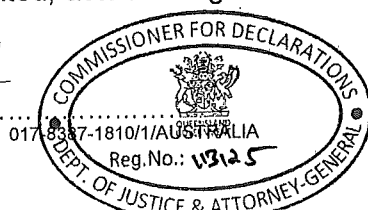


- 14.1. s.601ED(2) of the Act provides that a managed investment scheme is not required to be registered if all the issues of interests in the scheme that have been made would not have required the giving of a Product Disclosure Statement under Division 2 of Part 7.9 if the scheme had been registered when the issues were made;
- 14.2. the majority of investors in the MPF were located overseas. Pursuant to s.1012(D)(8) of the Corporations Act, as modified by reg.7.9.07FB of the *Corporations Regulations 2001*, in a recommendation situation, an issue situation or a sale situation a regulated person does not have to give the client a PDS if the client is not in this jurisdiction;
- 14.3. the remaining investors in the MPF were non-retail clients or sophisticated investors. Sections 1012A(3) and 1012B(3) of the Corporations Act (contained in Div. 2 of Part 7.9) provide that a regulated person must give a PDS to a "retail client." Section 761G(7) and the regulations provide that certain clients are not "retail clients" – for instance, if the client invests more than \$500,000.00 (s.761G(7)(a) and reg.7.1.22(A)(2)); the client has net assets of at least \$2.5 million or has a gross income of at least \$250,000.00 (s.761G(7)(b) and (c) and reg.7.1.28); or the client is a professional investor (s.761G(d)). A further exception exists where the client is a "sophisticated investor" (s.761GA).
15. LMIM acted as the trustee of the MPF from around December 2001 until 12 April 2013.
16. LMIM was also the responsible entity of a number of other registered managed investment schemes, including the LM First Mortgage Income Fund (ARSN 89343288) (**FMIF**) and the LM Australian Income Fund (ARSN 133497917) (**AIF**). On 17 January 2019, I caused my former solicitors, Squire Patton Boggs to search the ASIC register with respect to those funds. Copies of the results of those searches are at pages 54 to 63 and 64 to 67 of the Exhibit.
17. LM Administration Pty Ltd (in liquidation) (**LMA**) was established in around 1997. Pursuant to a Service Agreement dated 1 July 2010, LMIM as trustee for the MPF engaged LMA to provide it with administration and funds management services. A copy of the Service Agreement is at pages 68 to 85 of the Exhibit.
18. The Trustee's investigations indicate that LMA undertook a significant portion of the work involved in administering the MPF. Except where otherwise indicated, acts relating to

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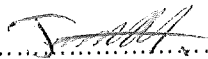


the management of the MPF are described in this affidavit as having been undertaken by LMIM regardless of whether they were in fact undertaken by LMIM or LMA.

19. The primary assets of the fund were "commercial loans" which were generally secured by way of a second or third ranking mortgage. Those loans were generally provided to borrowers for the purpose of undertaking property developments. A number of the MPF's commercial loans were provided to related entities of LMIM.
20. In accordance with the MPF Constitution, LMIM was responsible for making periodic distributions of the income earned by the MPF. Depending on the class of units held, investors could generally acquire:
 - 20.1. "accumulative units", through which distributions were effectively re-invested in the MPF until the investment matured or was withdrawn (**Accumulative Units**); or
 - 20.2. "income units", through which the investor would receive regular payments reflecting income distributions from the MPF (**Income Units**).

I provide further detail in relation to LMIM's management of units in the MPF in PART B of this affidavit.

21. On or around 30 March 2012, LMIM published the MPF's audited financial report for the year ended 30 June 2011 (the **2011 Annual Report**). A copy of the 2011 Annual Report is at pages 86 to 124 of the Exhibit.
22. On or around 7 December 2012, LMIM published the MPF's audited financial report for the year ended 30 June 2012 (the **2012 Annual Report**). A copy of the 2012 Annual Report is at pages 125 to 165 of the Exhibit.
23. The 2012 Annual Report disclosed that, *inter alia*:
 - 23.1. in the 12 months prior to 30 June 2012, the MPF had net profit of \$21,361,292 before distributions to unitholders;
 - 23.2. the MPF had total assets of \$376,745,650 as at 30 June 2012, of which \$299,570,308 related to loans and receivables;
 - 23.3. the MPF held net liabilities totalling \$23,589,297 as at 30 June 2012;

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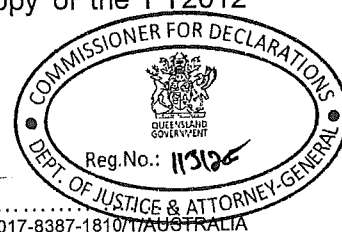
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- 23.4. the MPF held net assets of \$353,156,353 as at 30 June 2012, including \$17,287,984 in cash and cash equivalents;
- 23.5. as indicated in Note 12, some \$201,187,254 was recorded as being an amount receivable from Maddison Estate Pty Ltd as at 30 June 2012 (representing approximately 67% of the MPF's recorded loans and receivables); and
- 23.6. as indicated in Note 8, a provision for impairment in the sum of \$23,376,847 was made with respect to the MPF's loans and receivables.
24. As a result of the investigations it has conducted following its appointment, the Trustee is of the view that the 2011 Annual Report and the 2012 Annual Report did not present a true and fair view of the MPF's financial position at the time those reports were issued. By way of example:
- 24.1. Of the \$299,570,308 in loans and receivables recorded in the 2012 Annual Report, the Trustee has made net recoveries of only \$8.4 million (i.e. 1.8%) to date and is unlikely to make further significant recoveries in respect of those loans and receivables. The Trustee is of the view that a number of MPF's loans and receivables were significantly impaired and ought to have had a considerably lower carrying value than that which was recorded in the MPF's accounts at the time of the Trustee's appointment.
- 24.2. In the time following its appointment, the Trustee (and its external consultants) has undertaken significant work to review the financial affairs of the MPF. Based on this work, the Trustee considers that many of the mortgage loans made by the MPF (including the loan to Maddison Estate Pty Ltd) should have been impaired in its books by at least 30 June 2012 and that it was inappropriate to record any of the interest accruing on these impaired loans as revenue by that date at least. The Trustee has restated the financial statements for the 2012 financial year and those restated financial statements show that the MPF generated no profit for the 2012 financial year (the **FY2012 Restated Accounts**). The Trustee has not restated the financial statements for earlier financial years, but the Trustee considers it likely that impairments to mortgage loans would have been appropriate in previous financial years and that it is likely that no profit was generated by the fund in the years preceding 2012. A copy of the FY2012 Restated Accounts is at pages 166 to 168 of the Exhibit.

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24.3. The Trustee prepared financial statements for the 2013 financial years, which record, as was the case, that the MPF generated a very significant loss during the 2013 financial year (**FY2013 Accounts**). Similarly to FY2012, the FY2013 Accounts record that a significant number of loans that LMIM as trustee of the MPF had made had to be written off, on the basis that they were not recoverable. Further, the MPF had been entitled to receive a significant amount of income by way of interest payable on these loans, which was not paid. Ultimately the Trustee concluded that this interest was non-recoverable and, on preparing the FY2013 Accounts, made adjustments to reflect appropriate levels of interest income and loan impairments. A copy of the FY2013 Accounts prepared by the Trustee is at page 169 to 175 of the Exhibit.

Units in the MPF

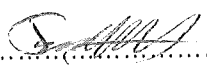
25. From time to time, LMIM would issue an "Information Memorandum" to provide potential investors with information in relation to investments in the MPF. The memorandum generally contained information in relation to the nature and operation of the MPF and the terms of any investment made in the fund. Copies of memoranda dated 22 February 2011, 1 November 2011 and 14 December 2012, which the Trustee has obtained from the books and records of the MPF, are at pages 176 to 216, 217 to 281 and 282 to 343 of the Exhibit respectively.

26. As an unregistered management investment scheme, and unlike most of the other registered schemes operated by LMIM, the MPF was not open for investment by retail investors within Australia. On the basis of the information contained in the Information Memorandum dated 14 December 2012, I understand that there were three primary categories of investors permitted in the MPF, being:

26.1. individual investors who invested directly in the MPF (**Personal Investors**);

26.2. operators of global investment platforms, global portfolio bonds, investment trusts and other institutions, who invested the funds of their clients or members in the MPF (**Institutional Investors**); and

26.3. wholesale investors invited by LMIM to invest in the MPF (**Invited Wholesale Investors**). Despite its investigations, the Trustee has not been able to identify whether any of the investors in the MPF were Invited Wholesale Investors.

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27. As I detail further in PART B below, the investigations undertaken by the Trustee indicate that:

27.1. as at 12 April 2013, the date of the Trustee's appointment, based on the information contained within Register 1 (as referred to at paragraph 65), LMIM had on issue approximately 557 million units in the MPF with an AUD value of approximately \$404 million;

27.2. of those units:

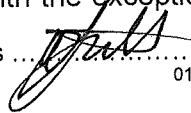
- (a) approximately \$202 million worth of the units (or 50%) were held by Personal Investors;
- (b) approximately \$202 million worth of the units (or 50%) were held by Institutional Investors; and
- (c) the overwhelming majority of units in the MPF (approximately 96%) were held by investors who resided outside of Australia.

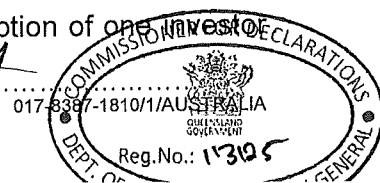
28. Under the terms of the original MPF Constitution, LMIM was permitted to issue units in the MPF which were described as "Class A" units and "Class B" units. Class A units were historically issued to Personal Investors and Class B units were historically issued to Institutional Investors. In addition to the type of unitholder able to acquire the units, the primary difference between Class A and B units was that the unit price of Class B units was said to reflect accrued but unpaid distributions, whereas the unit price for Class A units did not. A copy of an Information Memorandum prepared by LMIM on or around 22 February 2011, which provides details in relation to Class A and B units, is at pages 176 to 216 of the Exhibit.

29. In around 2011, changes were proposed to the structure of the MPF whereby LMIM would not issue Class A units after 1 November 2011 and would instead issue various sub-classes of Class B units to Personal Investors. LMIM also proposed that where Personal Investors continued to hold Class A units after 1 February 2012, those units would be replaced with Class B units which had the same investment term, distribution rate and withdrawal conditions as the Class A units they were replacing. The changes proposed to be made by the MPF were summarised in an Information Memorandum dated 1 November 2011, a copy of which is at pages 217 to 281 of the Exhibit.

30. On or around 1 August 2012, the unit holdings of all Personal Investors appear to have been swapped from Class A units to Class B units, with the exception of one investor.

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which I discuss further at paragraph 161 below. A series of extracts from the Unitholder Transaction Ledger (as defined at paragraph 66 below), which provide a sample of the ledger entries relating to the conversion of Class A units to Class B units, are at pages 344 to 361 of the Exhibit.

31. The amendments to the MPF Constitution made by the Supplemental Deed Poll dated 23 October 2012 expanded the classes of units in the MPF to include "Class C" units, "Class D" units, "Class E" units and "Class F" units. I understand that existing Class A and B units were not impacted by the amendments to the MPF Constitution in October 2012. Class C, D, E and F units were like Class B units insofar as the unit price of those units would reflect accrued but unpaid distributions. I understand that the primary differences between Class B, C, D, E and F units were:

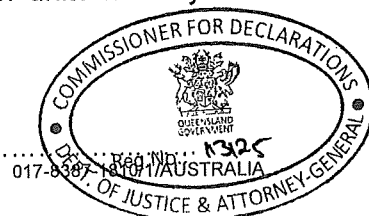
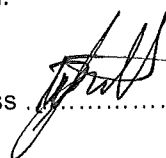
- 31.1. which types of investors could acquire the units;
- 31.2. how interest distributions were paid or re-invested; and
- 31.3. the terms on which the units were offered to investors (for example, different investment terms or distribution rates).

32. On around 14 December 2012, LMIM issued an Information Memorandum which, *inter alia*, provided details in relation to the various classes of units in the MPF. A copy of the Information Memorandum dated 14 December 2012 is at pages 282 to 343 of the Exhibit. The Information Memorandum stated that:

- 32.1. Various sub-classes of Class A units had been issued to Personal Investors; however Class A units were not offered to investors who invested after 1 November 2011. The unit price for Class A units would not reflect accrued but unpaid distributions.
- 32.2. Various sub-classes of Class B units would be issued to Personal Investors and Institutional Investors. The unit price for Class B units would reflect accrued but unpaid distributions payable to the investors holding Class B units.
- 32.3. With the exception of the account identified in paragraph 161, all personal investor accounts in the period after August 2012 were switched from Class A to Class B units and distributions of income were processed as redemptions. When the distributions of income were redeemed, the number of units held by that particular investor decreased upon distribution.

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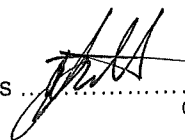
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- 32.4. Various sub-classes of Class C units would be issued to Institutional Investors. The unit price for Class C units would reflect accrued but unpaid distributions payable to the investors holding Class C units, however any distributions payable to unitholders in that class would be paid at the end of each quarter. Upon that payment being made at the end of each quarter, any income distributions payable to the unitholders in that sub-class will be paid to those unitholders, and the issue price for that sub-class would be expected to decrease at the end of each quarter.
- 32.5. Various sub-classes of Class D units would be issued to Invited Wholesale Investors. The unit price for Class D units would reflect accrued but unpaid distributions payable to the investors holding Class D units. Upon that payment being made.
- 32.6. Various sub-classes of Class E units would be issued to Invited Wholesale Investors. The unit price for Class E units would reflect accrued but unpaid distributions payable to the investors holding Class E units, however any distributions payable to unitholders in that class would be paid at the end of each quarter. Upon that payment being made at the end of each quarter, any income distributions payable to the unitholders in that sub-class will be paid to those unitholders, and the issue price for that sub-class would be expected to decrease at the end of each quarter.
- 32.7. Various sub-classes of Class F units might be issued to Personal Investors. The unit price for Class F units would reflect accrued but unpaid distributions payable to the investors holding Class F units. Upon that payment being made, the unit price would decrease as the accrued distribution would reduce the price to the extent they were paid.
- 32.8. The Trustee does not have information to identify the class of each unitholder account as set out in paragraph 203 below. Register 1 does not contain the relevant class for each unitholder account. However, the Information Memorandum states that the unit price for Class C and Class E units would be expected to decrease. For the majority of accounts reviewed by the Trustee, distribution of income was accounted for by a reduction in the number of units rather than a reduction in unit price.

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33. The amendments made to the MPF Constitution in October 2012 set out the method by which LMIM was to calculate the unit price of Class A, B, C, D, E and F units. The method for calculating the value of Class B, C, D, E and F units involved largely the same formula:

$$\frac{(A / B \times D) + E}{D} = F$$

Where:

F = Price per unit for the relevant class of units.

A = Net Fund Value (as defined in the MPF Constitution).

B = Total number of units issued in the MPF.

D = Total number of units in the relevant class.

E = Distributions accrued but not paid to unitholders with respect to units in the relevant class.

34. The prices for units in the MPF fluctuated daily and varied depending on the class, term and currency of the units. A schedule prepared by members of my team which summarises the various unit prices recorded in the unitholder register as at 19 March 2013 (discussed further below) is at page 362 of the Exhibit. The unit prices reflected in the unitholder register are in the holding currency and not in AUD. Following the investigations undertaken by the Trustee, it is not clear precisely how LMIM calculated the different unit prices, but it appears that the main reason for this discrepancy is the unit values that LMIM attributed to foreign currency investments (as set out in more detail below).
35. The unitholder register for the MPF (which I discuss in greater detail in PART B of this affidavit) does not record whether units held by a unitholder were Class A, B, C, D, E or F units. Rather, the unitholder register categorises unit holdings into the following categories:

35.1. Global Portfolio Bond;

35.2. Personal Investor;

35.3. Personal Investor Guarantee;

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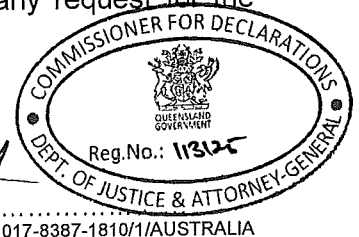
35.4. Savings Plan; and

35.5. Special Purpose Offer.

36. No version of the unitholder register contains details with the class of units held by unitholders.
37. The amendments to the MPF constitution noted in paragraph 30-31 above also include provisions to ensure that investors who previously held "A" class units will have their withdrawal prices paid in the same order of priority that would have occurred while they held "A" class units.
38. Based on the matters set out above, the Trustee is of the view that the unit price was intended to be calculated based on the class of each unit. However, as stated in paragraph 36 above, the various versions of the unitholder register do not identify the classes of the various unitholdings, rendering this calculation impossible now.
39. During the period of its appointment, the Trustee has not located any documents which clearly record whether each of the units held by unitholders were Class A, B, C, D, E or F units.
40. As I have noted at paragraph 20 above, investors in the MPF could generally acquire units in respect of which distributions were to be reinvested in the fund (i.e. Accumulative Units) or units in respect of which distributions were to be paid as cash payments (i.e. Income Units). In the case of Accumulative Units (other than Class A units), distributions would be reflected by an increase in the unit price for the relevant unit and ordinarily there would be no adjustment to the unitholder register. In the case of Income Units (other than Class A units), the distribution would be affected by withdrawing a number of units with a value equivalent to the amount of the distribution (which would be reflected in a reduced unitholding in the unitholder register).
41. Investments in the MPF were generally for fixed terms ranging from one to five years, at the conclusion of which the investor could elect to reinvest in the MPF or seek to withdraw their units. Investors could also request the withdrawal of units within the investment term, however fees for early withdrawals generally applied.
42. Under the MPF Constitution, LMIM was not obliged to agree to any request for the withdrawal of units in the MPF:

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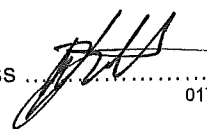
- 42.1. where the MPF's cash reserves fell below 5% of the value of the MPF's issued units;
- 42.2. in any calendar month where LMIM received net withdrawal requests equal to 10% or more of the value of the MPF's issued units; or
- 42.3. where LMIM considered in its absolute discretion that an event or circumstances had arisen which might be detrimental to the interests of the unitholders of the MPF.
43. LMIM's ability to delay the withdrawal of units from the MPF applied both during the investment term and after the investment term had expired.
44. I understand from my review of the books and records of the MPF and the investigations undertaken by the Trustee that due to the MPF's financial position, and in particular the cash flow of the fund, LMIM delayed redemption payments for the withdrawal of units commencing some time prior to 12 May 2011. A document entitled "Trust Update and Progress Report" dated 12 May 2011 provided to investors refers to delays in the payment of redemptions which occurred at the time of the "financial crisis". It is not clear to me what "financial crisis" is being referred to in the report or when it took place. The investigations undertaken by the Trustee have identified other documents which refer to the delayed payment of redemptions for withdrawals from the MPF. A copy of the Trust Update and Progress Report is at pages 363 to 365 of the Exhibit.
45. As a result of LMIM's decision to delay withdrawals from the MPF, the Trustee is aware that there are a number of unitholders in the MPF who requested a withdrawal from the fund but that request was not actioned by the time of the MPF's closure (which is discussed further at paragraphs 167 to 179 below).

Appointment of the Trustee

46. On 19 March 2013, Ginette Dawn Muller and John Richard Park were appointed as voluntary administrators of LMIM (the **Administrators**). An ASIC Current and Historical Organisation Extract with respect to LMIM, which was obtained from InfoTrack on 17 January 2019, is at pages 366 to 415 of the Exhibit.
47. Upon the appointment of Ms Muller and Mr Park as administrators of LMIM, the MPF was closed for investment. A copy of a circular to investors dated 24 March 2013 confirming that the MPF was closed effective as at 19 March 2013 is at pages 416 to 420 of the Exhibit.

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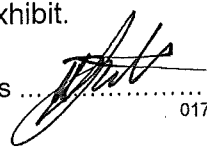


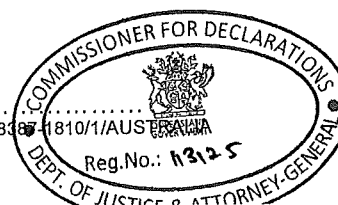

48. On 12 April 2013, the Supreme Court of Queensland made orders removing LMIM as trustee of the MPF and appointing the Trustee and Calibre Capital Ltd (**Calibre**) as joint and several trustees of the MPF. A copy of the orders made on 12 April 2013 is at pages 421 to 422 of the Exhibit.
49. On 1 August 2013, Ms Muller and Mr Park were appointed liquidators of LMIM (the **Liquidators**)
50. On 10 February 2014, the Supreme Court of Queensland ordered that the MPF be wound up by the Trustee and Calibre pursuant to the MPF Constitution. A copy of the orders made by the Court on 10 February 2014 (as amended on 18 March 2014) is at pages 423 to 424 of the Exhibit.
51. On 1 October 2014, Calibre gave written notice to the members of the MPF of its intention to retire as trustee of the MPF, effective on 5 January 2015. A copy of that notice is at page 425 of the Exhibit. On 5 January 2015, Calibre retired as trustee of the MPF.
52. The Trustee is currently the sole trustee of the MPF.

Books and Records of the MPF

53. Upon its appointment, the Trustee did not possess or have access to the books and records of the MPF.
54. On 15 April 2013, the Trustee wrote to Ms Muller and Mr Park and requested that they provide the Trustee with the books and records of the MPF. A copy of the Trustee's letter is at pages 426 to 427 of the Exhibit.
55. In the months following the Trustee's letter, the Administrators provided the Trustee with approximately 38,000 documents via a file transfer protocol (**FTP**) data room administered by their firm, FTI Consulting. I have not exhibited a listing of the documents provided because of its very large size, however the documents primarily related to (i) investor correspondence and investment records; (ii) the commercial loans provided by MPF; and (iii) the developments being undertaken using funds provided by the MPF.
56. At around the same time, the Administrators provided the Trustee with 156 file storage boxes containing hard copies of various documents relating to the MPF. A summary of the contents of those storage boxes, which was prepared by employees of KordaMentha under my supervision, is at pages 428 to 432 of the Exhibit.

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57. The documents referred to in paragraphs 55 and 56 above were only a subset of the documents in the possession of the Administrators which might relate to the MPF. However the Administrators informed the Trustee that due to concerns in relation to the intermingling of records relating to the MPF and other funds which LMIM had previously managed, they did not consider that they were in a position to provide the Trustee with access to all documents in their possession. Further, during 2013, it became apparent that a significant volume of documents relating to the MPF had been in the possession of LMA rather than LMIM.

58. Between around November 2013 and January 2015, the Trustee engaged in extensive negotiations with the Liquidators and the liquidator appointed to LMA, Mr David Clout, in relation to obtaining access to the books and records. Ultimately:

58.1. On 18 December 2014, Daubney J made orders appointing Mr Clout as receiver of the books and records held by LMA insofar as those books and records related to LMIM in its own capacity or in its capacity as responsible entity of a number of managed investment schemes (including the MPF) (the **LM Books and Records**). The orders also made interim provision for Mr Clout to disclose the contents of the LM Books and Records to the Trustee and the receiver appointed to the FMIF, Mr David Whyte. A copy of the orders made by Daubney J on 18 December 2014 is at pages 433 to 440 of the Exhibit.

58.2. On 29 January 2015, Daubney J made orders which, *inter alia*, required that Mr Clout:

- (a) by 26 February 2015, provide the Trustee (amongst others) with an image of the server (including an extract of the email and drive data) which stored and hosted the soft copy LM Books and Records; and
- (b) by 12 March 2015, provide the hard copy LM Books and Records to LMA to store and permit access to those documents by the Trustee (amongst others).

A copy of the orders made by Daubney J on 29 January 2015 is at pages 441 to 447 of the Exhibit.

59. On or around 26 February 2015, the Trustee was provided with a copy of the data on the server referred to in order 2(a) of the orders made by Daubney J on 29 January 2015. The data provided to the Trustee included:

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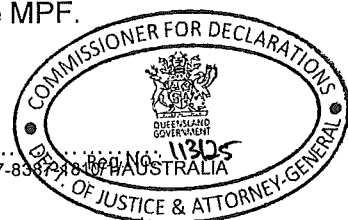


- 59.1. Documents relating to the MPF which were stored on a file server. The documents stored on the file server were copied and access was given to members of my team to enable them to undertake a review. The documents stored on the file server included (1) investor application forms and other correspondence, (2) legal documentation and internal approval and working documents regarding mortgage loans, (3) financial records for the various funds controlled by LMIM, and (4) marketing material for the various funds controlled by LMIM.
- 59.2. Emails stored in the Microsoft Exchange Email Server environment. The email inboxes and outboxes for key individuals for the period between 2010 and 30 April 2013 were extracted from the email server and were uploaded to a document review platform for review by members of my team. The document review platform enables documents to be searched by "key words" and other metadata fields.
- 59.3. Financial information stored in a database maintained using "Microsoft Dynamix AX", which I understand is specialised enterprise resource planning software (**Dynamix AX**). The content of the Dynamix AX database was extracted into a separate database hosted by KordaMentha for the purpose of allowing the financial data to be reviewed. A separate spreadsheet was then created by KordaMentha which was based on an existing spreadsheet prepared by LMIM and which allowed access to the data stored in the copy of the database hosted by the Trustee. In this way, the Trustee avoided the need to access the database directly through Dynamix AX.
- 59.4. Data stored in a Dynamix AX database which I understand comprises unitholder information. As I detail further at paragraph 84 below, the Trustee has not accessed this data through the Dynamix AX database.
60. Given the volume of documentation in the Trustee's possession, it has not been practicable for me or a member of my team to individually review each document relating to the MPF. However, during the Trustee's appointment, it has been necessary for me to review a significant number of documents which I, or a member of my team, have considered relevant to an issue under consideration by the Trustee. Where I refer in this affidavit to my review of records, I am referring to those documents which I have reviewed during the Trustee's investigations and the winding up of the MPF.

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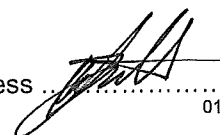
Conduct of the Winding Up

61. Following its appointment, the Trustee has:

- 61.1. taken possession of books and records of the MPF, including books and records previously held and maintained by LMIM;
- 61.2. reviewed the books and records to the extent considered relevant and conducted investigations in relation to the financial affairs of the MPF;
- 61.3. maintained the properties held by the MPF pending their sale or realisation;
- 61.4. realised certain assets of the MPF;
- 61.5. entered into revised mortgage security arrangements with respect to certain assets;
- 61.6. investigated and commenced various legal actions, including:
 - (a) Supreme Court of Queensland proceeding BS8792/13 against LMIM;
 - (b) Supreme Court of Queensland proceeding BS8032/14 brought by the Trustee against LMIM and the receiver appointed to the FMIF;
 - (c) Supreme Court of Queensland proceeding BS8034/14 brought by the Trustee against LMIM and the receiver appointed to the FMIF;
 - (d) Supreme Court of Queensland proceeding 12716/15 brought by the Trustee against LMIM and the receiver appointed to the FMIF;
- 61.7. defended proceedings brought against the Trustee (in its capacity as trustee of the MPF), including Supreme Court of Queensland proceeding BS12317/2014 brought by LMIM in its capacity as responsible entity for the FMIF;
- 61.8. investigated various other potential legal actions, including actions against the MPF's former auditors; and
- 61.9. engaged in extensive negotiation with the Australian Taxation Office (ATO) in relation to the return of withholding tax paid on behalf of the MPF's members.

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62. Following the order made by the Supreme Court of Queensland on 10 February 2014 that the MPF be wound up, the Trustee has continued to realise the assets of the MPF and has continued to prosecute and defend legal proceedings to which it is a party.
63. Where in this affidavit I refer to investigations undertaken by the Trustee, I am referring to investigations that the Trustee has conducted in the course of undertaking the work outlined above.

PART B: IDENTIFYING THE UNITHOLDER REGISTER

Introduction

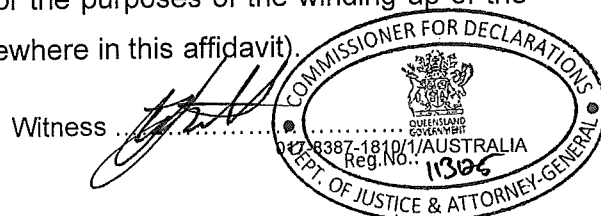
64. Following my review of the MPF's books and records and the investigations undertaken by the Trustee, it is my understanding that each investor's unitholding in the MPF at any given point of time was recorded in a unitholder register.
65. Over a period of approximately 6 months following its appointment, the Trustee was provided with five documents which purport to constitute the unitholder register for the MPF. A summary of the registers which the Trustee has been provided is as follows:

Title	Effective Date	No. Unitholders	No. Accounts	No. Units	Filename in Confidential USB Exhibit
"Register 1"	19/03/2013	4,525	5,881	557,936,046.42	Register 1.xlsx
"Register 2"	19/03/2013	4,526	5,890	557,833,252.58	Register 2.xlsx
"Register 3"	12/04/2013	4,523	5,877	556,326,486.21	Register 3.xls
"Register 4"	19/03/2013	4,526	5,890	557,856,510.51	Register 4.xlsx
"Register 5"	19/03/2013	4,525	5,881	557,936,046.42	Register 5.xlsx

66. I consider that it is important that the most accurate and complete version of the unitholder register is identified and adopted by the Trustee because the contents of the unitholder register will have a direct impact upon (i) who are treated as unitholders of the MPF for the purposes of making distributions; and (ii) the quantum of those distributions.
67. For the reasons set out below, the Trustee considers that the most accurate and complete version of the MPF's unitholder register is Register 1. Subject to receiving the directions sought in the Application from the Court, the Trustee proposes to adopt that register as the applicable unitholder register for the purposes of the winding up of the MPF (subject to the adjustments proposed elsewhere in this affidavit).

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The Unitholder Register and Unitholder Transaction Ledger

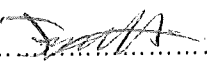
68. From my review of the MPF's books and records and from the investigations undertaken by the Trustee, I understand that:

68.1. Each investor in the MPF would be allocated an "Investor ID", which was a unique identifier for that investor. The Trustee has identified instances in which an investor was allocated multiple investor IDs. From the Trustee's review, it appears that where this has occurred, each Investor ID contains a different member name in the reference number. It seems that LMIM may have allocated multiple investor IDs in circumstances where one investor (for example, an investment firm) held the legal title to various accounts, but the investor held those accounts for different individuals beneficially.

68.2. Each investor would also be allocated an "Account ID" for each account held by the investor. One investor might have multiple accounts with different Account IDs. It appears that different investment accounts were allocated where an investor made investments in multiple currencies or on different terms. Multiple Account IDs might also be allocated where the investor was an Institutional Investor who made investments on behalf of different investors.

68.3. At all material times, LMIM maintained a unitholder register which recorded for each investment account:

- (a) the Investor ID of the relevant investor;
- (b) the Account ID of the relevant investment account;
- (c) the name and contact details of the investor;
- (d) the type of the relevant investor (for example, Personal Investor or Institutional Investor);
- (e) the term of the investment;
- (f) the currency in which the investment was held;
- (g) the number of units comprising the investment;
- (h) the current unit price for the units held;

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- (i) the current value of the investment;
- (j) the bank account details of the unitholder;
- (k) the distribution rule for the account (i.e. monthly, quarterly or annual reinvestment or payout); and
- (l) the identity and contact information of the financial advisor or broker who arranged the investment.

68.4. LMIM's unitholder register was maintained in a database operated through Dynamix AX.

68.5. From time to time, LMIM would export the unitholder register from the Dynamix AX database into other (more accessible) formats, including Microsoft Excel spreadsheets.

69. In addition to the unitholder register, I understand that LMIM also maintained a unitholder transaction ledger which recorded unitholder transactions, including changes to investors' unit holdings (**Unitholder Transaction Ledger**). A copy of the Unitholder Transaction Ledger was amongst the books and records obtained by the Trustee after its appointment. As the ledger comprises approximately 125,000 rows of data and comprises more than 1,800 pages, it has not been reproduced in the Exhibit. However:

69.1. a complete copy of the Unitholder Transaction Ledger is included in the Confidential USB Exhibit (with the file name "MPFRegisterTransactionsAll.xlsx"); and

69.2. the Exhibit contains various excerpts from the Unitholder Transaction Ledger. I note that where extracts have been taken from the Unitholder Transaction Ledger, the final 2 columns of data in the ledger have been added by the Trustee to assist in its analysis.

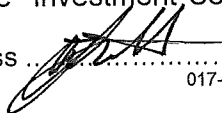
Competing Versions of the Unitholder Register

70. Between around April and October 2013, the Trustee was provided with the versions of the unitholder register listed at paragraph 65 above. To the best of my knowledge and belief, those registers were obtained by the Trustee in the following circumstances:

70.1. Register 1 was provided to the Trustee by Mr Steven Hannan, who I understand was formerly employed by LMIM with the title "Investment Services Manager"

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and was the person primarily responsible for maintaining the unitholder register with respect to the MPF. I am aware that following the appointment of the Administrators, Mr Hannan was retained by the Administrators to assist with various matters regarding the funds in respect of which LMIM had been the trustee or responsible entity, including the MPF. Register 1 was provided to the Trustee by way of an email sent from Mr Hannan to Ms Amanda Smith, an Associate Director of KordaMentha who, *inter alia*, had been tasked with obtaining and verifying the unitholder register for the MPF. A copy of Mr Hannan's email dated 4 October 2013 (without its attachment) is at page 448 of the Exhibit. The file attached to Mr Hannan's email was named "MPFMemberRegister.xlsx" and has a filename of "Register 1.xlsx" on the Confidential USB Exhibit for ease of reference.

70.2. Registers 2 and 3 are contained on Confidential USB Exhibit and were obtained from the books and records provided to the Trustee by the Administrators by way of the FTP data room referred to in paragraph 52 above. Register 2 was provided in the FTP data room on or before 26 April 2013 with the filename "MPF Investor Information – Term KO PO.xlsx". Register 3 was provided in the FTP data room on or before 27 May 2013 with the filename "MPF.MemberRegister.12042013.xls".

70.3. Registers 4 and 5 are contained on Confidential USB Exhibit and were provided to the Trustee by Mr Hannan. I am not aware how Registers 4 and 5 were provided to the Trustee.

71. Separately, members of my team have conducted searches of the documents in the Trustee's possession for copies of a unitholder register for the MPF. Those searches have not located any additional unitholder registers beyond the Dynamix AX database and the unitholder registers referred to above.

72. The Trustee has undertaken significant work to review the five versions of the unitholder register in its possession and reconcile the differences between them. I instructed Stacey Clisby, a Director of KordaMentha, to undertake a comparison of the unitholder registers to determine which contained the most accurate and complete record of unit holdings in the MPF.

73. I am informed by Ms Clisby and believe that she adopted the following process to reconcile the five unitholder registers in the Trustee's possession:

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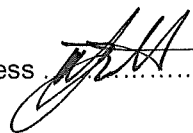


- 73.1. A single document was created in Microsoft Excel which contained each of the versions of the unitholder registers as separate worksheets.
- 73.2. A master spreadsheet which included every unique Account ID across the five registers was then created. The master spreadsheet was also populated with the corresponding Investor ID for each Account ID. There was a total of 5,893 unique Account IDs across the five registers.
- 73.3. Once a complete listing of Account IDs and Investor IDs had been prepared, the master spreadsheet was populated with the currency, unit price and unit quantity data from each of the five registers using "lookup" functions within Microsoft Excel.
- 73.4. A comparison of the currency, unit price and unit quantity columns were then undertaken to identify:
- (a) any accounts which were omitted from one or more of the registers; and
 - (b) any discrepancies in currency, unit price and unit quantity values across the five registers.
- 73.5. Separately, the transaction data for each account in the Unitholder Transaction Ledger was consolidated to arrive at a final unit quantity balance for each Account ID. Those balances were then compared with the unit quantity values in the unitholder registers to determine whether the values were consistent between the registers and the ledger.
74. The Trustee is of the view that Register 1 is the most accurate and complete unitholder register for the MPF for the following reasons:
- 74.1. There are 5,893 unique Account IDs across all five registers. 5,874 Account IDs appeared on each of the registers, leaving only 19 accounts which differed across two or more of the registers.
- 74.2. Of those 19 accounts:
- Seven Account IDs appear on every register except for Register 3. Those are accounts 100323815, 100342336, 100348804, 100348994, 100349026, 100349018 and 100352160. The Trustee has not sighted any evidence to suggest that those unit holdings should not be recorded in the unitholder register, and the unit balances stated

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in Registers 1, 2, 4 and 5 are consistent with the balances recorded in the Unitholder Transaction Ledger. An extract the Unitholder Transaction Ledger is at page 449 to 455 of the Exhibit.

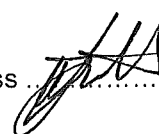
74.3. Three accounts only appear in Register 3: 100280957, 100318591 and 100318609. Account 100280957 is recorded in Register 3 with a negative unitholding of 0.01 units, which appears to be a rounding issue. Accounts 100318591 and 100318609 have negative balances of 4,642.82 units and 14,806.98 units respectively. Whilst it appears from a review of the Unitholder Transaction Ledger that the negative balances relate to transactions where units were "switched out" to other accounts, the Trustee does not possess enough information to determine conclusively how the negative unit holdings for accounts 100318591 and 100318609 arose. Accordingly, the Trustee does not propose to take any action. To make any adjustment in that respect would likely involve *reducing* the number of units held in a separate unitholder account and my understanding is that changes cannot be made to the unitholder register. An extract of the Unitholder Transaction Ledger is at page 456 to 458 of the Exhibit.

74.4. The remaining nine accounts appear on Register 2 and Register 4 but not on Registers 1, 3 or 5. The Trustee considers that those accounts should each have a nil balance because the Unitholder Transaction Ledger indicates the relevant unit holdings were consolidated with other accounts. Those transactions are summarised below:

Account No.	Currency	No. Units	Unit Price	Comment
10010161	USD	5,948.78	1.3305	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 6 February 2013 to account number 100308535. An extract of the Unitholder Transaction Ledger for the relevant accounts is at pages 459 to 463 of the Exhibit.
100266899	USD	12,071.71	1.314	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 2 February 2013 to account number 100308535. An extract of the Unitholder Transaction Ledger for the relevant accounts is at pages 464 to 465 of the Exhibit.

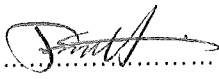
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Account No.	Currency	No. Units	Unit Price	Comment
100273879	AUD	553.67	1.4595	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 2 November 2012 to account number 100263441. An extract of the Unitholder Transaction Ledger for the relevant accounts is at pages 466 to 468 of the Exhibit.
100292218	GBP	212.84	1.4305	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 12 December 2012 to account number 100362854. An extract of the Unitholder Transaction Ledger for the relevant accounts is at page 469 of the Exhibit.
100301746	AUD	515.66	1.4595	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 17 December 2012 to account number 100321835. An extract of the Unitholder Transaction Ledger for the relevant accounts is at pages 470 to 471 of the Exhibit.
100321819	AUD	124.01	1.4595	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 3 November 2012 to account number 100321835. An extract of the Unitholder Transaction Ledger for the relevant accounts is at page 472 of the Exhibit.
100324433	NZD	189.49	1.4196	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 3 November 2012 to account number 100321843. An extract of the Unitholder Transaction Ledger for the relevant accounts is at page 473 of the Exhibit.
100331040	AUD	199.95	1.5116	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 22 November 2012 to account number 100338359. An extract of the Unitholder Transaction Ledger for the relevant accounts is at page 474 of the Exhibit.

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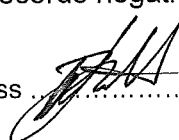
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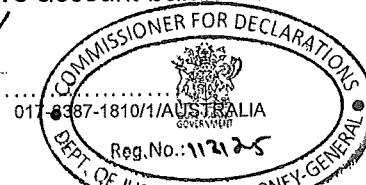
Account No.	Currency	No. Units	Unit Price	Comment
100335645	GBP	147.47	1.4305	The Unitholder Transaction Ledger indicates that the units were switched out in full by an 'account consolidation' transaction on 27 November 2012 to account number 100361658. An extract of the Unitholder Transaction Ledger for the relevant accounts is at pages 475 of the Exhibit.

75. Separately to the account discrepancies noted in the preceding paragraph, there are 106 instances where the unit quantities recorded in Register 1 with respect to specific accounts differ from those recorded in one or more of the other versions of the unitholder register in the Trustee's possession. A schedule identifying those instances, which was prepared by Ms Clisby following her review of the various registers, is at pages 476 to 477 of the Exhibit.
76. As demonstrated by the schedule, Register 1 and Register 5 contain identical unit balances.
77. Where differences in unit quantities were identified between registers during Ms Clisby's review, the Unitholder Transaction Ledger was reviewed to ascertain the reason for the difference. In each case, it was determined that the difference in unit balances between Register 1 and the other registers arose as a result of transactions prior to the closure of the MPF which were accounted for in Register 1 but not in one or more of the other versions of the register. The Trustee therefore considers that the unit balances in Register 1 are the most accurate and complete. Excerpts of the Unitholder Transaction Ledger with respect to 10 affected unitholder accounts are at pages 478 to 492 of the Exhibit. Those excerpts demonstrate that the Unitholder Transaction Ledger contains transactions which are not reflected in some of the unit balances recorded in Registers 2, 3 or 4. I am informed by Ms Clisby and verily believe that where transactions are recorded in the Unitholder Transaction Ledger which are not recorded in Registers 2, 3 or 4, she has conducted spot checks to ensure that there is a matching entry in the general ledger for the MPF confirming that the relevant transaction took place (for example, in some instances where a deposit is recorded in the Unitholder Transaction Ledger but not in Registers 2, 3 or 4, Ms Clisby reviewed the general ledger to ensure that the deposit is recorded).
78. The unit balances in Registers 1 and 5 are also identical to those recorded in the Unitholder Transaction Ledger, save that the ledger records negative account balances

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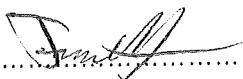
for accounts 100280957, 100318591 and 100318609 (which I have addressed at subparagraph 74.3 above).

79. The trustee has identified an immaterial discrepancy in unit prices between Register 1 and the other four registers. The Trustee is unsure of the cause of the discrepancy, however, as the prices reflected in Register 1 are slightly higher than the others, it is likely that the prices in Register 1 were more current as at 19 March 2013. The Trustee has undertaken an impact analysis which indicates that on the assumption of a \$4 million distribution to unitholders, and assuming unit price is taken into account for the purposes of calculating distributions to creditors, this discrepancy will not affect the return to any unitholder by more than \$60 or 0.31% (i.e. less than 1%), by using the prices recorded in Register 1.

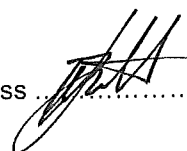
Conclusion

80. The Trustee has undertaken analysis of the various unitholder registers in its possession and has determined that Register 1 is the most accurate and complete. To date, the Trustee has treated Register 1 as the applicable register for the MPF. In this regard, the Trustee has updated the document referred to in paragraph 70.1 and titled "Register 1.xlsx" on the Confidential USB Exhibit to the extent that unitholders have provided the Trustee with additional email addresses or an advisors email address. On the last email communication to group members on 8 October 2019, any unitholder whose email address was undeliverable was removed from the register.
81. Subject to receiving the directions sought in the Application from the Court, the Trustee proposes to adopt that register as the applicable unitholder register for the purposes of making a distribution to unitholders and finalising the winding up of the MPF. The Trustee has created an updated version of Register 1 (referred to in paragraph 70.1) which includes any additional email addresses provided by unitholders or advisor email addresses, which were previously not included in Register 1. In addition, on the last email communication to unitholders on 8 October 2019, any unitholders whose email address was undeliverable was removed from the register. A copy of the updated version of Register 1 titled "Register 1 – Updated at 13 November 2020" is contained on the Confidential USB Exhibit.

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PART C: UPDATES TO THE UNITHOLDER REGISTER

Introduction

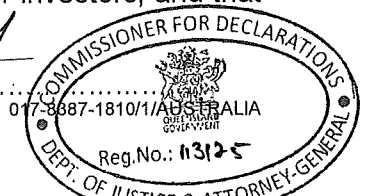
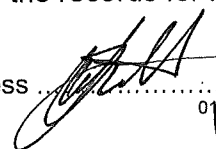
82. In order to finalise the winding up, it will be necessary for details in the unitholder register to be updated or supplemented in order to enable the Trustee to make a distribution to the unitholders of the MPF.
83. The Trustee intends to:
- 83.1. send a formal notice to the unitholders which advises of the Trustee's intention to make a distribution to unitholders, and requests that unitholders make any adjustments to their contact and banking details for that purpose (the **Distribution Notice**); and
- 83.2. require unitholders to update or confirm their contact and banking details within 90 days of the notice being delivered. The Trustee intends to provide unitholders with a further 30-day period to update their details if a distribution is to be made more than 90 days after the initial update period.

Maintaining the Unitholder Register

84. Clause 20 of the MPF Constitution provides that the trustee of the MPF must establish and keep a register of unitholders in the MPF. Clause 20.3 relates specifically to changes in name or address of any unitholders; and requires that the trustee of the MPF must alter the unitholder register upon being notified of those changes.
85. As I have noted at paragraph 68.4 above, I understand that the unitholder register of the MPF was historically maintained in a Dynamix AX database.
86. Upon the appointment of the Trustee, consideration was given to whether it would be feasible or appropriate for the Trustee to continue to maintain the unitholder register within Dynamix AX. The Trustee formed the view that it was not in the best interests of the unitholders of the MPF to seek to maintain the unitholder register using Dynamix AX for the following reasons:
- 86.1. I am informed by a forensic IT specialist employed by KordaMentha, Brendan Read, and verily believe that the information technology system used by LMIM was made up of a number of virtual computers and servers that interacted with each other to be able to access and maintain the records for investors, and that

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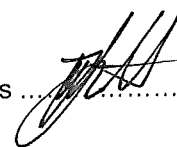


the web of virtual computers was a critical component to the operation of the Dynamix AX database. Mr Read informed me that to reconstruct and replicate the existing environment would be extremely costly due to the outlay for infrastructure hardware, data storage and software licencing costs (with no guarantee that it would ultimately be possible to replicate the system). At page 493 to 500 of the Exhibit is a copy of the sixteenth update to unitholders which contains details regarding the cost of maintaining the Dynamix AX database.

- 86.2. The option of continuing the licencing on the current environment was not practicable as the Dynamix AX database hosted data for other funds in respect of which LMIM was trustee or the Responsible Entity and which the Trustee was restricted access from. Due to the co-mingling of data, a process would need to be undertaken to isolate the data relating solely to the MPF. This would likely be an extremely difficult and costly exercise to work through, and it would also be necessary for the Trustee to incur the expenditure of re-hosting that data into a new environment.
- 86.3. Further, licenses are commonly provided on an annual basis, and as it was anticipated that the winding up of the MPF would likely take many years, additional expenses would be incurred each year.
- 86.4. It was not clear whether any distribution would ultimately be made to unitholders, and if no distribution was to be made, much of the time and cost associated with maintaining the unitholder register would have been unnecessary.
87. As I have detailed at paragraph 56 above, in around February 2015 the Trustee was provided with access to a range of documents, including what I understand was a copy of data stored in a Dynamix AX database containing unitholder information. The Trustee has not sought to extract the investor data from that database for reasons, including the following:
- 87.1. Unlike in the case of the financial data stored in a Dynamix AX database (which I have referred to at paragraph 59.3 above), the Trustee did not possess an existing model or spreadsheet prepared by LMIM which contained the queries and scripts necessary to extract data from the database and display it in an accurate manner. As such, there was not an existing document which could be consulted to understand how the unitholder data in the Dynamix AX database was to be accessed.

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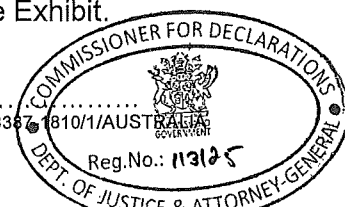
- 87.2. I am informed by Brendan Read and believe that the process of extracting the data from the Dynamix AX database might deliver unreliable results as the process would likely require knowledge as to how the system was set-up by LMIM. The Trustee is not aware of that information.
- 87.3. Furthermore, any extracted investor data would be based on the Trustee's working knowledge of the Dynamix AX system and the Trustee would not be able to rely on the data without further review by someone with knowledge of the system. That process is likely to involve considerable cost.
88. Without access to the Dynamix AX database, the Trustee has had limited ability to undertake updates to the unitholder register. As I detail in PART D below, the Trustee has maintained a separate register of unitholder email addresses, and has updated that register where it has become aware of changes to those addresses.

Distribution Notice

89. As I have noted above, the unitholder registers possessed by the Trustee (and in particular Register 1) contain various details with respect to each investment account of the MPF, including contact details of the investor and details of the investor's unitholding, and in some cases, banking information and details of the investor's financial advisor. The Trustee intends to ask unitholders to confirm, update and/or supplement certain details on the unitholder register, before any distribution is made to unitholders. Further, in some instances, the register does not contain banking details for investors, which will also be sought.
90. The Trustee has also received requests from certain unitholders to register transfers of units. Such transfers will also be processed as part of this process.
91. The Trustee intends to engage Link Market Services (**Link**) to assist with the process of updating the unitholder register. Link is a corporate advisory business with expertise in contact centre and form processing services. KordaMentha regularly engages Link to assist with, *inter alia*, communicating with large volumes of creditors or unitholders on its engagements.
92. In order to ensure that unitholders are provided with an opportunity to update or supplement the details recorded in the unitholder register, the Trustee intends to instruct Link to send the Distribution Notice to all unitholders in the MPF as recorded in Register 1. A draft copy of the Distribution Notice is at page 500A to 500C of the Exhibit.

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93. In essence, the Distribution Notice:

- 93.1. informs unitholders of the Trustee's intention to make a distribution to unitholders;
- 93.2. invites unitholders to verify their unitholding information and confirm, and if necessary, request an amendment to, their recorded contact and banking details to enable the Trustee to make one or more distributions;
- 93.3. provides an overview of the process the Trustee proposes to follow for the updating of the unitholder register; and
- 93.4. provides unitholders with instructions on how to access a secure website which the Trustee proposes to establish to enable unitholders to electronically review and request amendments to the contact and banking details held in the unitholder register for the MPF (the **Secure Unitholder Website**).

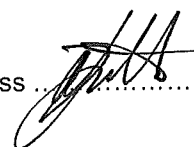
94. The Trustee intends that the process for unitholders to review, and if necessary, request an amendment to, their account and banking details will be as follows:

- 94.1. Unitholders will receive a copy of the Distribution Notice advising of the Trustee's intention to make a distribution to unitholders and inviting unitholders to verify their unitholding and account information. Unitholders will be provided with instructions to access the Secure Unitholder Website.
- 94.2. In order to login to the Secure Unitholder Website and retrieve unitholding and account details, unitholders will be required to enter both the Investor ID and Account ID associated with their account. In the event a unitholder is unable to recall or locate their Investor ID and Account ID, they will be advised to contact the Trustee who will verify their identity to enable the Trustee to determine (in its discretion) whether it is appropriate that the person seeking access be given details to access the Secure Unitholder Website.
- 94.3. Upon logging into the Secure Unitholder Website, the unitholder will be able to review the following details recorded in Register 1:

- (a) Unitholder Name;
- (b) Number of Units Held;
- (c) Holding Currency;

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- (d) AUD value at 19 March 2013;
- (e) Unitholder Postal Address;
- (f) Unitholder Email Address; and
- (g) Unitholder Bank Account Details.

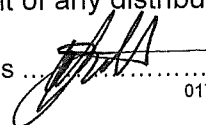
94.4. Unitholders will have the option of requesting amendments to the details recorded in Register 1 either through the Secure Unitholder Website or by completing a manual form and returning it to Link by email or post. Unitholders will be given the option to transfer unitholding in particular circumstances. A manual form will be provided to unitholders on request. Regardless of whether changes to details are requested through the Secure Unitholder Website or by returning a manual form, appropriate supporting documentation must be provided before adjustments to the register are processed. When a unitholder submits a request to amend a record in the register, the unitholder must submit supporting documentation. The Trustee will provide Link with directions on what constitutes appropriate supporting documentation for any changes the Unitholder wishes to make to the details recorded in the register. It will be within the Trustee's sole discretion to determine what is considered appropriate supporting material in the circumstances.

94.5. In the first instance, Link will review requests for adjustments and any accompanying supporting documentation. If the supporting documentation accompanying a request is complete and properly verifies the proposed amendment, Link will process the changes to the register. If the supporting documentation is incomplete or does not adequately support the requested amendment, the request will be referred to the Trustee for its consideration. The Trustee will determine whether it is satisfied that the requested amendment is appropriate having regard to, *inter alia*, the nature of the proposed amendment and the extent of supporting documentation provided. If the Trustee is satisfied that the proposed adjustment is appropriate, it will instruct Link to make the adjustment to the unitholder register.

95. In addition, there are unitholder accounts in respect of which Register 1 does not contain any bank account details. In those instances, the Trustee proposes to send additional correspondence, together with the Distribution Notice, advising that bank account details are required in order to facilitate an electronic payment of any distribution.

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96. As set out in the draft Distribution Notice, the Trustee intends to provide unitholders with a period of 90 days from the date of the notice in which to lodge any request for amendment to their details (the **Initial Update Period**). I am of the view that a deadline for the amendment of unitholder details is appropriate because it is necessary to ensure that there is a date from which the Trustee can make a distribution to unitholders. I consider that the Initial Update Period of 90 days is a reasonable period of time for unitholders to confirm or update their details, noting that the relevant investments were made in 2013 at the latest, and sufficient time will need to be provided to enable investors to review their records if necessary.
97. In the event that a distribution is not made within 90 days after the end of the Initial Update Period, the Trustee intends to send a further notice to unitholders of the MPF providing them with a further 30-day period in which to confirm or update their details (the **Further Update Period**). I consider that the Further Update Period of 30 days is reasonable in circumstances where the unitholders will already have been in receipt of the Distribution Notice and will have had the Initial Update Period in which to confirm or update their details.
98. In the event that the Trustee intends to make more than one distribution to unitholders, the Trustee intends to send a fresh notice to unitholders of the MPF giving notice of the Trustee's intention to make an additional distribution and providing them with a further 30-day period in which to confirm or update their details. That process would be repeated for any subsequent distributions that are made.

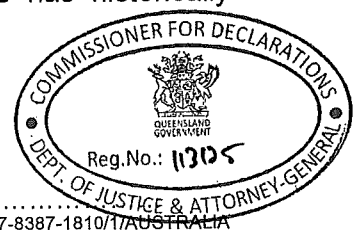
PART D: COMMUNICATIONS WITH UNITHOLDERS

Introduction

99. Before the Trustee can finalise the winding up of the MPF, it will need to communicate with the unitholders of the MPF to:
- 99.1. deliver the Distribution Notice to unitholders; and
- 99.2. provide further updates in relation to the status of the winding up.
100. There are practical difficulties associated with communicating with the unitholders of the MPF because of the age of the unitholder register. The Trustee has historically communicated with the unitholders by:

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100.1. uploading copies of relevant notices or documents to a creditor webpage on KordaMentha's website (at <https://www.kordamentha.com/creditors/lm-managed-performance-fund>) which can be accessed by the unitholders (the **MPF Creditor Website**); and

100.2. informing the unitholders by way of email, or where a valid email is not known by the Trustee, by way of post, that the notice or document can be accessed from that website.

Contact with the MPF Unitholders

101. As I have noted above, the unitholder register for the MPF indicates that there were approximately 4,500 unique unitholders in the MPF at the time of the Trustee's appointment.

102. Register 1 contains, *inter alia*, data regarding the residency of each unitholder in the MPF. According to that data, the unitholders of the MPF reside in approximately 77 different countries. The residency data contained in Register 1 can be summarised as follows:

Country	No. of Unique Investors	Percentage of Total	AUD Value of Units Held as at 19 March 2013	Percentage of Total AUD Value of MPF
Isle of Man	1,543	34.10%	\$118,257,239.59	29.21%
Great Britain	589	13.02%	\$58,547,630.52	14.46%
Japan	370	8.18%	\$34,689,491.46	8.57%
Thailand	193	4.27%	\$24,541,689.32	6.06%
Singapore	24	0.53%	\$19,399,409.94	4.79%
Malta	545	12.04%	\$14,663,532.58	3.62%
Malaysia	103	2.28%	\$13,333,832.70	3.29%
United Arab Emirates	134	2.96%	\$12,769,868.84	3.15%
Hong Kong	54	1.19%	\$12,459,372.08	3.08%
Turkey	94	2.08%	\$10,587,774.63	2.62%
Ireland	223	4.93%	\$10,542,514.08	2.60%
Australia	54	1.19%	\$9,415,884.67	2.33%
Subtotal	3,926	86.77%	\$339,208,240.41	83.78%
65 other countries	599	13.23%	\$65,675,051	16.22%
TOTAL	4,525	100.00%	\$404,883,291.28	100%

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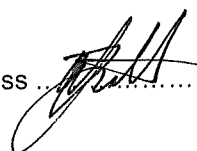




103. Only 54 unitholders by count, representing 2.33% of the AUD value of the units issued in the MPF as at 19 March 2013, were recorded as residing within Australia at the time of the Trustee's appointment.
104. Given the wide geographic spread of the unitholders in the MPF, the Trustee formed the view shortly after its appointment that the most practical and economical course would be for the Trustee to interact with the unitholders of the MPF electronically. That was particularly so where it was apparent that:
- 104.1. it would likely be necessary for the Trustee to send a number of communications to unitholders over the course of its appointment;
- 104.2. the unitholders resided in multiple time zones and it was unlikely to be possible to arrange a teleconference at a time mutually convenient to all the unitholders (assuming it would otherwise be practical to conduct a teleconference with up to 4,500 participants);
- 104.3. the cost and manual effort that would be involved in posting communications to 4,500 unitholders would be very significant; On 25 December 2015, I swore an affidavit in these proceedings, paragraphs 15 to 21 of that affidavit contains details regarding the impracticality of serving the application personally or by post on all unitholders. A copy of my affidavit sworn 25 December 2015 is at page 501 to 507 of the Exhibit
- 104.4. there would likely be considerable delays in receipt of information if communications were sent by post; and
- 104.5. it was not possible for the Trustee to verify the postal addresses recorded in the unitholder register and there was a real possibility that some of the addresses were, or would become, obsolete.
105. Accordingly, the Trustee determined that the most practicable and economical method of communicating with the unitholders of the MPF was to:
- 105.1. establish the MPF Creditor Website and cause relevant documents to be uploaded there periodically;
- 105.2. communicate with unitholders using their last known email address; and
- 105.3. only communicate by post where it was not possible to communicate via email.

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106. Shortly after the Trustee's appointment, the Administrators provided the Trustee with various spreadsheets containing investor contact details. Using the data contained in those spreadsheets, the Trustee compiled a listing of last-known email addresses for the unitholders of the MPF (the **Email Listing**).
107. In the case of Institutional Investors, the Investor ID and contact information for an investment was generally that of the institution. In some instances, the individual on whose behalf the investment was made has contacted the Trustee and requested that they be included in the Email Listing (which the Trustee has done).
108. In some instances, the Email Listing contains an email address without a corresponding Account ID or Investor ID. I understand those email addresses appear in the Email Listing primarily because the Trustee has received a request that the email address be added to the mailing list without receiving information as to which account(s) the email is linked to.
109. The Email Listing has been used by the Trustee as the primary form of contact with unitholders. At the time of its creation, the Trustee understood that the Email Listing contained at least one contact email address for every unitholder in the MPF (whether for the investor personally or its advisor). However:
- 109.1. In around May 2015, the Trustee became aware that the Email Listing omitted contact email addresses for 10 unitholders. The Trustee located email addresses for those 10 unitholders, and they have been sent email communications from the Trustee since around May 2015.
- 109.2. In around May 2018, the Trustee became aware that the Email Listing omitted contact email addresses for 295 unitholders. Following further investigations, the Trustee ascertained that 12 email addresses were associated with those 295 unitholders. The number of email addresses was lower than the number of unitholders because a significant portion of those unitholders had nominated the same email address. The omitted email addresses were added to the Email Listing in May 2018 and will be included in any future communications sent from the Trustee.
110. To facilitate communications with the unitholders, the Trustee has established an email account with the address "lminvestors@kordamentha.com" from which the Trustee's communications to unitholders are sent (the **LM Email Account**). Members of my team

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are responsible for monitoring the LM Email Account and for responding to any communications or enquiries from unitholders.

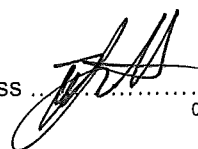
111. Where the Trustee has become aware of a change to a unitholder's email address, it has added the new email address to the Email Listing (whilst retaining the existing email address for abundance of caution).
112. As stated in paragraph 80 above, the Trustee has also updated the document referred to in paragraph 70.1 and titled "Register 1.xlsx" on the Confidential USB Exhibit with these email addresses comprising the Email Listing where appropriate.
113. I am aware that when emails have been sent to email addresses contained in the Email Listing from time to time, a number of automatic messages have been returned to the effect that the Trustee's email could not be delivered to the intended recipients. Where that has occurred, the Trustee has recorded on the Emailing List and Register 1 that the email address no longer appears to be active and has sent the unitholder a hard copy of the notice together with a letter requesting that the unitholder provide an updated email address. It is possible that although undeliverable responses have not been received, additional email addresses might no longer be valid or might not be used by the relevant unitholder.
114. The table below summarises the current coverage of the Email Listing, based on undeliverable responses analysed by the Trustee:

Number of valid email addresses	Number of accounts (unitholder email only)	Number of accounts (including advisor email)
0	630	171
1	4,901	2,504
2	344	2,991
3	6	212
4	-	3
Total	5,881	5,881

115. Accordingly, there are currently 171 unitholder accounts that do not have a valid email address for either the unitholder or advisor. However, it is still possible that email communications are being brought to the attention of some of those unitholders because:

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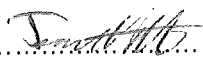
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- 115.1. the table I have extracted above does not take into account the email addresses contained in the Email Listing which have not been formally linked to a specific investment account (which I have referred to at paragraph 105 above);
- 115.2. the unitholder might hold another investment account which is linked to a valid email address; and
- 115.3. the unitholder might use the same financial advisor as another investor and may be informed of matters relating to the MPF by that adviser.
116. Where the Trustee does not hold an email address with respect to a unitholder, it has historically sent a copy of the relevant communication to the postal address recorded in Register 1. Of the 171 investor accounts that are not linked to a valid email address, the Trustee has been able to identify a postal address for 170 unitholders. There is one unitholder where the Trustee does not hold a valid email address or postal address. However, it is noted that this unitholder is an Institutional Investor who holds other accounts, all with the same valid email address.

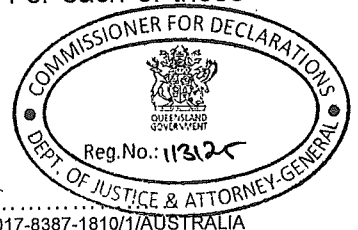
Updates to Investors

117. From the date of its appointment, the Trustee has periodically provided unitholders with written updates in relation to the affairs of the MPF. The Trustee's written updates generally detail the work that the Trustee has carried out in the management and winding up of the MPF and provide information in relation to the realisation of the fund's assets.
118. Some of the Trustee's updates previously contained commercially sensitive and confidential information relating to the realisation of the MPF's assets and both actual and foreshadowed litigation and have been treated confidentially by the Trustee. The updates are available to be provided to unitholders upon request.
119. The non-confidential updates to members unitholders were sent by email (at the email address contained in the Email Listing at the time the update was sent) and also made available for download on the MPF Creditor Website. Given their nature, the confidential updates were sent directly to unitholders via email and were not uploaded to the MPF Creditor Website.
120. To date, the Trustee has issued 22 formal updates to unitholders. For each of those updates, the table below sets out:

120.1. the date the update was sent; and

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120.2. whether the update was confidential or non-confidential.

Update No.	Date	Confidentiality
1	15 April 2013	Non-confidential
2	30 April 2013	Non-confidential
3	1 May 2013	Non-confidential
4	2 May 2013	Non-confidential
5	7 May 2013	Confidential
6	13 May 2013	Confidential
7	17 May 2013	Confidential
8	5 June 2013	Confidential
9	5 July 2013	Confidential
10	16 September 2013	Confidential
11	10 January 2014	Confidential
12	9 April 2014	Confidential
13	4 August 2014	Confidential
14	20 January 2015	Confidential
15	3 December 2015	Confidential
16	23 May 2016	Confidential
17	20 December 2016	Confidential
18	30 November 2017	Confidential
19	28 June 2018	Confidential
20	17 December 2018	Confidential
21	28 June 2019	Confidential
22	28 July 2020	Confidential

Substituted Service of Applications

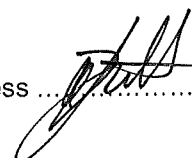
121. During the course of the Trustee's appointment, it has made a number of applications to the Court for, *inter alia*, directions pursuant to section 96 of the Trusts Act and approval of its remuneration pursuant to section 101 of the Trusts Act.

122. Where the Trustee has made an application to the Court, it has generally sought and obtained orders to the effect that service of the application documents be deemed to have been affected approximately five days after the Trustee:

122.1. made the application materials available online on the MPF Creditor Website;
and

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- 122.2. either sent an email to all unitholders of the MPF at the address(es) noted in the Email Listing notifying them of the application documents and their availability on the MPF Creditor Website, or where an undeliverable message was received and a postal address is held for that unitholder, sent a copy of the notice to that postal address by prepaid post.
123. A bundle containing copies of substituted service orders made by the Supreme Court of Queensland on 14 November 2013, 18 February 2015, 29 May 2015, 5 November 2015, 27 November 2015, 9 May 2018, 16 July 2018 and 20 November 2018 is at pages 508 to 530 of the Exhibit.

Proposed Method of Ongoing Communication with Unitholders

124. Consistent with the approach the Trustee has adopted to date, the Trustee proposes to deliver the Distribution Notice to the unitholders of the MPF by:
- 124.1. uploading the Distribution Notice to the MPF Creditor Website;
- 124.2. sending an email notification with a link to the MPF Creditor Website (**Email Notification**) to unitholders using the email addresses contained in the Email Listing; and
- 124.3. where the Trustee:
- (a) receives an automatic response indicating that the email will not come to the attention of the intended recipient (as opposed to being temporarily unavailable or delayed) in respect of all email addresses recorded on the Emailing List associated with the relevant unitholder; or
 - (b) does not hold an email address for the relevant unitholder in the Email Listing,
- posting a copy of the Distribution Notice to the postal address for the unitholder recorded in the unitholder register, or where no postal address is recorded for the unitholder, to the address of the unitholder's financial advisor (where applicable).
125. Where one postal address is associated with multiple Investor IDs or Account IDs, the Trustee proposes to send only one copy of the Distribution Notice to that address in

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order to reduce costs. In those instances, the Distribution Notice will be accompanied by a letter providing a listing of the accounts to which the notice relates.

126. As detailed in PART C above, the Distribution Notice requests that unitholders confirm or update their contact and banking details. Upon receipt of updated contact details from unitholders, the Trustee will update the Email Listing with a view to minimising the extent to which it is necessary to send further communications by post.
127. On 18 August 2020, I caused my solicitors, Banton Group, to conduct a Google search for "LMIM" and the search results included a link to a website at "https://www.lminvestmentadministration.com/" entitled "LM Investment Management Limited (In liquidation) (Receivers & Managers Appointed)". The website appears to be maintained by FTI Consulting, the insolvency firm of the Liquidators. At the bottom of the website is a statement which reads:

Should your enquiry be related to the Managed Performance Fund, please contact KordaMentha using the below details:

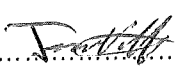
Phone: +61 7 3338 0286

Email: lminvestors@kordamentha.com

Website: www.kordamentha.com go to Creditor Information section and click the link for LM Managed Performance Fund.

A copy of a printout of the website is at pages 531 to 533 of the Exhibit.

128. I believe that if the Trustee uploads the Distribution Notice onto the MPF Creditor Website and then notifies the unitholders by way of the Email Notification that they can view the Distribution Notice on the MPF Website, this will or should bring the material to the attention of the vast majority of the unitholders of the MPF.
129. I am confident that the proposed method of delivery will bring the Distribution Notice to the attention of most of the unitholders because:
- 129.1. the Trustee has previously sent periodic updates on affairs of the MPF and the progress of the winding up via email;
- 129.2. it is the same method as has commonly been used by the Trustee to give notice of Court applications and other important developments in the winding up of the MPF;
- 129.3. some unitholders have previously responded to communications sent by the Trustee; and

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129.4. a Google search returns a website with a link to the MPF Creditor Website.

PART E: PROPOSED PAYMENTS TO UNITHOLDER CREDITORS

Introduction

130. Upon its appointment, the Trustee was provided with a trial balance of the MPF as at 12 April 2013 via the FTP data room maintained by FTI Consulting (the **MPF Trial Balance**). The MPF Trial Balance presents accounts with a debit nature as positive numbers (being asset account numbers 10701 to 17002 and expense account numbers 61195 to 69700), whilst accounts with a credit nature are presented as negative numbers (being liability account numbers 20000 to 20740, equity account numbers 30000 to 39000 and income account numbers 41002 to 43010). A copy of the MPF Trial Balance is at pages 534 to 535 of the Exhibit.

131. The MPF Trial Balance discloses five liability accounts with respect to unitholders, being:

Account No.	Name	Balance as at 12 April 2013
20003	Returned Investment Payments	(\$10,874.16)
20200	Funds Awaiting Investment	\$1,327,937.43
20400	Distributions Payable	\$179,512.39
20401	Investor Funds Payable (Redemptions)	\$851,375.73
20402	Accrued Interest (Distributions)	\$1,578,257.96

132. Having reviewed the nature of those accounts and surrounding documents obtained from the books and records of the MPF, I am of the view that it is appropriate for the accounts to be treated as creditor accounts and for the accounts to be analysed to determine whether unitholders should receive a priority payment from any distribution.

General Overview of Accounting for Unitholder Transactions

133. I have been informed by Ms Clisby that despite members of my team undertaking searches amongst the MPF's books and records, it has not been possible to locate a process map or similar document specifically recording the process by which LMIM historically accounted for unitholder transactions with respect to the MPF.

134. However, from my review of the books and records of the MPF, and from the Trustee's investigations, I understand that from around 1 August 2012:

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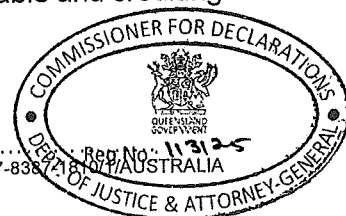


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- 134.1. Cash would be deposited by investors (or their intermediaries) to one or more bank accounts operated by LMIM. Where an investment was made in a currency other than Australian dollars, LMIM would ordinarily hedge the investment before converting the cash to Australian dollars. The initial investment would be recorded in account 20200 – Funds Awaiting Investment in its source currency.
- 134.2. Once the funds were matched to an application for units and the issue of units was finalised, the investment was cleared from account 20200 – Funds Awaiting Investment and was recorded in account 30000 – Investor Funds. Units would be issued to the relevant investor and the unitholder register would be updated to record the number of units issued.
- 134.3. Income distributions were first recorded in liability account 20402 – Accrued Interest and equity account 35000 – Distributions. At this stage the distribution did not appear in the Unitholder Transaction Ledger. I understand that the transaction was commonly identified as an 'interest accrual' and generally occurred monthly, regardless of the distribution rule of the individual investment.
- 134.4. Where a unitholder had elected to receive periodic payments of distributions, the timing for those payments was dependent on the distribution rule timing of the particular investment or as selected by the investor at the time of investment (i.e. monthly, quarterly or annually). On the relevant date, a distribution would be recorded by clearing the relevant balance in liability account 20402 – Accrued Interest and recording the liability in account 20400 – Distributions Payable.
- 134.5. For all unitholding classes except for Class A units, the distribution payable was then cleared from account 20400 – Distributions Payable to account 30000 – Investor Funds to reflect an increased value of investor funds. The unitholder register would not be impacted by this transaction; however, the unit price would gradually increase to reflect increased value.
- 134.6. For all unitholding classes except for Class A units, where the unitholder had elected for distributions to be paid in cash, those distribution payments were accounted for as redemptions through account 20401 – Investor Funds Payable. The transaction would initially be recorded by crediting account 20401 – Investor Funds Payable and debiting account 30000 – Investor Funds. The payment was then recorded by debiting account 20401 – Investor Funds Payable and crediting

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a cash account. The unitholder register would be updated to record the withdrawal of units.

134.7. For Class A unitholders who had elected for distributions to be reinvested, the distribution payable would similarly be cleared from account 20400 – Distributions Payable and entered in account 30000 – Investor Funds to reflect an increased value of investor funds. The unitholder register would reflect a distribution reinvestment and the unitholder register would be updated to reflect the issue of additional units commensurate with the value of the distribution.

134.8. For Class A unitholders who had elected for distributions to be paid, the distribution payable would be cleared from account 20400 – Distributions Payable to a cash account and the payment would be made to the unitholder. The Unitholder Transaction Ledger would record the distribution payment; however unit holdings were not impacted by the transaction.

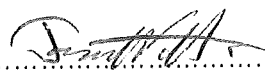
134.9. Where an investor sought to redeem some or all their units in the MPF, the transaction would initially be recorded by debiting account 30000 – Investor Funds and crediting account 20401 – Investor Funds Payable. Once payment was made to the investor, a debit would be recorded in account 20401 – Investor Funds Payable and a credit would be recorded in the cash account.

20003 - Returned Investor Payments

135. I understand from my review of the books and records of the MPF and the investigations undertaken by the Trustee that account 20003 - Returned Investor Payments (**Account 20003**) was used historically by LMIM to record instances where funds which had been paid to unitholders had been returned to the MPF (presumably due to banking errors or the like).

136. In order to ascertain whether any action is required to be taken in respect of any transactions in Account 20003, I instructed Ms Clisby to review the transactions recorded in the ledger of the account. I am informed by Ms Clisby and believe that all transactions dated on and from 1 July 2012 were cleared from the account (i.e. all funds which entered the account on and after 1 July 2012 were subsequently paid out to investors). I therefore believe that the balance of -\$10,874.16 in Account 20003 relates to transactions prior to 1 July 2012.

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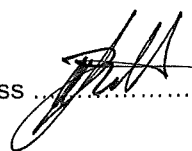
137. The Trustee has not undertaken a detailed analysis of transactions in Account 20003 prior to 1 July 2012 given the cost that would be associated with undertaking that analysis, and the negative value held in the account. Accordingly, the Trustee does not propose to take any steps with Account 20003.

20200 - Funds Awaiting Investment

138. As I have noted at paragraph 134.1 above, I understand that account 20200 - Funds Awaiting Investment (**Account 20200**) was used by LMIM to record the receipt of investor funds prior to units being issued in the MPF.
139. Account 20200 had a balance of \$1,327,937.43 as at 12 April 2013.
140. The Trustee has undertaken a detailed review of the transactions in Account 20200 on and after 1 July 2012. Following that review, the Trustee has identified 26 credit transactions after 1 July 2012 in Account 20200 that were not reversed by the issue of units or by other means (for example, the issue of units in another fund managed by LMIM or the return of the funds to the relevant investor). The 26 transactions total \$1,356,467, which exceeds the balance of Account 20200 as at 12 April 2013. I understand that is because Account 20200 was not reconciled for the period prior to 1 July 2012. An extract of the ledger for Account 20200 which contains the 26 transactions is at page 536 of the Exhibit.
141. Of the 26 credit transactions identified by the Trustee, 18 are identified as "quarantined funds" which the Trustee identified shortly after its appointment (the **Quarantined Funds**). As I have noted at paragraph 44 above, the MPF was closed to investors on 19 March 2013. The Quarantined Funds are those funds which relate to applications received from investors after the MPF was closed for investment (i.e. on or after 19 March 2013) or applications in respect of which it was not possible for units to be issued. In each case, it was not possible for units in the MPF to be issued as the fund had closed. A summary of the Quarantined Funds is at page 537 of the Exhibit.
142. The Trustee has returned the Quarantined Funds to 12 of the 18 affected investors. It is in the process of communicating with the six remaining investors to arrange for the return of the funds. If those arrangements cannot be made, the Trustee will pay the balance to ASIC for payment into the Commonwealth of Australia Consolidated Revenue Fund.

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143. Of the remaining eight transactions referred to in paragraph 137 above, the Trustee does not propose to take any action in respect of five of the transactions. Those transactions are summarised below:

Date	Voucher	Currency	Amount	AUD Amount as at date of transaction	Comment
16/07/2012	IFD0006222	GBP	900	1,370.07	Transaction was not cash deposit to fund, but rather, reflects the reversal of agent commission. An extract of the general ledger with respect to the transaction shows that the transaction was also recorded in account 61290 (see page 538 of the Exhibit). The MPF Trial Balance records that account 61290 is entitled "Adviser – Rebate of Commissions". This, coupled with the transaction description, causes the Trustee to consider that the transaction relates to the reversal of agent commission.
16/07/2012	IFD0006223	GBP	900	1,370.07	Transaction was not cash deposit to fund, but rather, reflects the reversal of agent commission. As above, the transaction was also recorded in account 61290 – Advisor – Rebate of Commissions. This, coupled with the transaction description, causes the Trustee to consider that the transaction relates to the reversal of agent commission.
7/01/2013	IFD007921	GBP	5	7.66	The transaction amount is not material. Transaction was not cash deposit to fund, but rather, reflects the reversal of agent commission. As above, the transaction was also recorded in account 61290 – Advisor – Rebate of Commissions. This, coupled with the transaction description, causes the Trustee to consider that the transaction relates to the

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Date	Voucher	Currency	Amount	AUD Amount as at date of transaction	Comment
					reversal of agent commission.
16/01/2013	IFD007956	USD	1	0.95	As the transaction amount is not material, the Trustee has not undertaken detailed analysis in relation to this transaction.
12/03/2013	IFD008551	TRY	10,000	5,409.21	Transaction records receipt of funds to a HSBC Turkish Lira account operated by the MPF, however the payment appears to have been reversed. A different account was used to record the reversal (i.e. not Account 20200). It is not clear to the Trustee why the transaction was recorded in account 20200. An extract of the bank account statement is at page 539 of the Exhibit. Transaction not included in Quarantined Funds as no funds were ultimately paid by the investor.

144. The Trustee proposes to address two of the transactions recorded in Account 20200 as set out below:

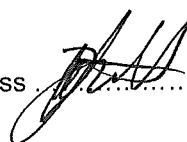
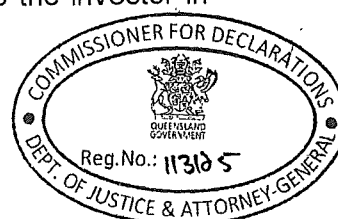
144.1. Account 100254986: On or around 4 October 2012, a redemption payment of TRY 45,380.67 was returned to LMIM. Although the redemption payment was returned to LMIM, the unitholder register records the redemption of all 26,801.72 units previously held by the account. An extract of the Unitholder Transaction Ledger with respect to account 100254986 is at page 540 of the Exhibit.

144.2. In circumstances where the investor in question has not received the redemption payment but is not currently listed in the unitholder register, the Trustee considers it appropriate to proceed on the basis that the unitholding was redeemed, and that the unitholder register reflects this. Consequently, the Trustee considers it fair to make payment of the redemption to the investor in priority to other unitholders.

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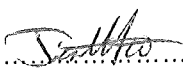



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- 144.3. Account ID 100340835: On around 2 November 2012, LMIM received a payment of GBP 1,513.68 from an investor and a credit was recorded in Account 20200. An extract of the general ledger which records the payment of GBP 1,513.68 on 2 November 2012 is at page 541 of the Exhibit. On the basis of the ledger entry with respect to the deposit, which contains repeated references to 100340835, the Trustee believes that the transaction relates to account 100340835.
- 144.4. Although the currency was converted from GBP to CAD on or around 2 November 2012, LMIM failed to update the unitholder register to reflect the issue of new units. A copy of an extract from the Unitholder Transaction Ledger with respect to Account ID 100340835 is at page 542 of the Exhibit.
- 144.5. As the investor made payment with respect to the investment but no units were issued, the Trustee considers it appropriate to return the full amount of the investment in preference over other investors.
145. Following the investigations outlined above, the Trustee has identified that the final credit transaction referred to in paragraph 137 above is a transaction which, in its view, should be treated as a receipt of Quarantined Funds. On or around 9 April 2013, an investor made payment of GBP 440.00 to acquire units in the MPF, but no units were issued to the investor. It is not clear to the Trustee why this transaction was not initially included with the other transactions forming part of the Quarantined Funds. The relevant investor involved in the transaction was involved in other attempted investments after closure of the MPF and is one of the six investors whom the Trustee is attempting to contact to return the Quarantined Funds. The Trustee intends to add the amount of GBP 550 to the Quarantined Funds to be returned to the investor.

20400 - Distributions Payable

146. As I have outlined at paragraph 131 above, I understand that account 20400 - Distributions Payable (**Account 20400**) was used by LMIM to record distributions that were payable to unitholders.
147. In order to ascertain whether any action is required to be taken by the Trustee as a result of any transactions in Account 20400, I instructed Ms Clisby to review the transactions recorded in the ledger of the account. I am informed by Ms Clisby and believe that all transactions recorded in Account 20400 after 1 July 2012 have a corresponding reinvestment or payment transaction (reflecting that the transactions were completed)

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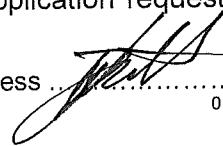


I therefore believe that the balance of \$179,512.39 in Account 20400 relates to unreconciled transactions prior to 1 July 2012.

148. The Trustee has not undertaken a detailed analysis of transactions in Account 20400 prior to 1 July 2012. For the reasons set out in the following paragraphs, I estimate that it would take in excess of 20 hours' work to manually reconcile the transactions recorded in respect of each financial year, in addition to the work that has already been undertaken to reconcile Account 20400 for the 2012 financial year, as set out below. If the Trustee undertook an analysis of Account 20400 and was not able to reconcile the balance in the FY2012 financial year, the Trustee would be required to undertake a similar exercise for the period to 1 July 2011.
149. I instructed Aida Vucic, senior executive analyst of KordaMentha, to conduct an analysis of the transactions in the period 1 July 2011 to 31 June 2012 in Account 20400 using the Microsoft Excel lookup function to determine whether the transactions could be reconciled. The lookup function matches identical Account IDs and the amount of the transaction. If the transaction is out by even a cent, the lookup function does not work. In addition, I am aware from my review of the records of the MPF that some accounts changed currency for the payment transaction or reinvestment, resulting in multiple currencies being recorded against the same Account ID. As a result of these limitations any transaction that is not captured by the lookup function requires manual review.
150. I am informed by Ms Vucic and believe that of the 33,688 transactions for the FY2012 financial year which were characterised as distribution transactions, approximately 3,905 transactions could not be linked to a corresponding payment or reinvestment transaction. Ms Vucic conducted a review of a sample of 17 of these transactions and identified two transactions where a distribution had not been made (Account ID 100258367 and 100146059). On closer review, it appeared that the two accounts had duplicate distribution transactions recorded for the same period and the same account on the same date, which suggests that a distribution was made to these investors in the relevant period. A table setting out the results of the sample review and whether there was a corresponding payment transaction or reinvestment is at page 543 of the Exhibit.
151. Given the time and cost associated with the analysis of manually reviewing each financial period to determine which transactions, if any, do not have a corresponding reinvestment or payment transaction the Trustee proposes to not take any steps with Account 20400. The Trustee proposes to include notice in the materials to be provided to unitholders as part of the Substituted Service application requesting any unitholder

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who believes they have not received a distribution for a period prior to 1 July 2012, to come forward and provide the relevant supporting documentation. The Trustee will assess the entitlement of any unitholder who claims they have not being paid a distribution and if validated, the Trustee will pay the distribution to the unitholder. If no unitholders come forward the Trustee will write off the liability in account 20400.

20401 - Investor Funds Payable (Redemptions)

152. As I have stated at paragraph 134.9 above, I understand that account 20401 – Investor Funds Payable (**Account 20401**) was used by LMIM as a clearing account to process redemptions prior to payment.

153. Account 20401 had a balance of \$851,375.73 as at 12 April 2013.

154. In order to ascertain whether Account 20401 required any action to be taken, I instructed Ms Clisby to review the transactions recorded in the ledger for the account. I am informed by Ms Clisby and believe that she adopted the following process for her review:

154.1. The general ledger of the MPF for the period 1 July 2012 to 12 April 2013 was filtered by account to identify such entries on Account 20401. A total of 11,432 ledger entries on Account 20401 were copied to a new Microsoft Excel workbook.

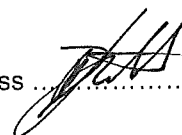
154.2. Ms Clisby used formulas within Microsoft Excel to identify transactions which did not have a corresponding payment transaction in Account 20401. For instance, if a credit was recorded in Account 20401 with respect to a redemption in the amount of \$11,532.45, a search was conducted to ascertain whether a debit in that same amount was also recorded to reflect the payment of the redemption.

154.3. Once a listing of all transactions without corresponding payments had been prepared, Ms Clisby reviewed the Unitholder Transaction Ledger to ascertain whether the redemption had been processed in the unitholder register; that is, whether the unit balance had been reduced to account for the redemption to the same unitholder.

154.4. Additional manual spot checks of accounts other than Account 20401 were conducted to ensure that no payment to the unitholder could be identified which may relate to the redemption. Those checks were intended to capture any redemption payments which were made to the unitholder, but which were mistakenly omitted from Account 20401.

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155. I am informed by Ms Clisby and believe that following the process detailed in the preceding paragraph, she has identified that there are 435 redemption transactions recorded on Account 20401 in respect of which unit holdings were reduced but no payment was made by LMIM. A listing of the 435 redemption transactions identified by Ms Clisby (the **Trustee Redemption Schedule**) is at pages 544 to 553 of the Exhibit.

156. I make the following observations in relation to the Trustee Redemption Schedule:

156.1. All columns other than the last column headed "Number of units" have been extracted directly from the general ledger. The final column has been populated by Ms Clisby by matching the value in the "IMSTransRef" column with the corresponding entry in the Unitholder Transaction Ledger which records the number of units redeemed in the transaction. There are five instances where transactions in Trustee Redemption Schedule do not have a "IMSTransRef" (which appear to relate to returned redemption payments). In those instances, I am informed by Ms Clisby that she manually reviewed the Unitholder Transaction Ledger with respect to the relevant accounts to ascertain the number of units redeemed in the transaction.

156.2. The vast majority of the transactions (around 96%) occurred on or after 16 February 2013, which was approximately one month prior to closure of the MPF and the appointment of the Administrators.

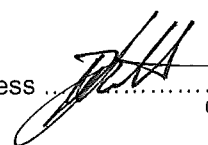
156.3. The 435 transactions identified by the Trustee have a combined AUD value at the time of transaction of \$566,620.

157. Separately to the review undertaken by Ms Clisby, the Trustee has been provided with two Microsoft Excel spreadsheets which purport to record the unpaid redemptions to unitholders in the MPF. The circumstances in which the Trustee was provided with those spreadsheets are summarised below:

157.1. On 1 July 2013, the Administrators provided the Trustee with documents in relation to, *inter alia*, LMIM's asserted indemnity claim against the assets of the MPF. The documents provided by the Administrators included a Microsoft Excel spreadsheet with the file name "8975_MPF Indemnity Claim_1 July 2013.xlsx" (the **FTI Redemption Schedule**). The FTI Redemption Schedule lists 435 transactions. A copy of the FTI Redemption Schedule is contained in the Confidential USB Exhibit.

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157.2. On 16 September 2013, Mr Hannan sent an email to Ms Smith attaching a Microsoft Excel spreadsheet with the file name "MPF Pending Payments to reverse.xlsx" (the **Hannan Redemption Schedule**). The Hannan Redemption Schedule lists 432 transactions. In his email, Mr Hannan noted that there were "430 odd pending payments" and stated that "all of these trans [sic] should be reversed/reinvested if the funds are not going to be paid so that the unit position can be corrected prior to any Capital Distribution of balance statements issued." A copy of Mr Hannan's email (excluding its attachment) is at page 554 of the Exhibit. A copy of the Hannan Redemption Schedule is contained in the Confidential USB Exhibit.

158. The Trustee has undertaken a comparison of the transactions identified in the Trustee Redemption Schedule, the FTI Redemption Schedule and the Hannan Redemption Schedule using a process similar to that described in paragraph 70 above. That comparison has revealed that:

158.1. The transactions identified in the FTI Redemption Schedule and the Hannan Redemption Schedule are identical, save that the FTI Redemption Schedule includes three transactions with no value which are omitted from the Hannan Redemption Schedule.

158.2. There are nine transactions which appear in the Trustee Redemption Schedule but not the FTI Redemption Schedule or the Hannan Redemption Schedule. Those transactions are set out in the table below. In the interests of brevity, I have populated the "Comment" column with "Category 1" or "Category 2". The comments which apply to those categories are as follows:

(a) **Category 1:** It is not clear to me why this transaction does not appear in the FTI Redemption Schedule or the Hannan Redemption Schedule. The review undertaken by Ms Clisby indicates that the investor's unitholding was reduced but the redemption payment was not made. The Trustee proposes to proceed on the basis that the units were redeemed, and make the redemption payment.

(b) **Category 2:** This transaction is recorded in the FTI Redemption Schedule and the Hannan Redemption Schedule as "payment returned" and is a positive figure when all other categories in the spreadsheet involve negative figures (i.e. they were represented as negative

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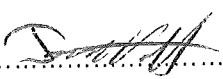


redemptions payable). I understand that a redemption payment was made to the investor, however it was returned to the MPF and was not received. The same amounts are included in the Trustee Redemption Schedule; however they are recorded as positive redemptions payable. It is not clear why the amount has been presented differently, however the Trustee nevertheless proposes to proceed on the basis that the units were redeemed, and make the redemption payment after receiving an updated account from the unitholder:

Account No.	Date	Currency	Amount	\$AUD Value as at Transaction Date	Comment
100355163	31/10/2012	GBP	370.23	574.89	Category 1
100326867	31/10/2012	GBP	360.00	560.75	Category 1
100334713	31/10/2012	GBP	300.00	467.29	Category 1
100326834	31/10/2012	GBP	390.00	607.48	Category 1
100312115	20/12/2012	GBP	87.50	135.03	Category 2
100223452	9/01/2013	AUD	416.49	416.49	Category 2
100317122	14/01/2013	AUD	10,635.28	10,635.28	Category 2
100327238	6/02/2013	AUD	1,592.31	1,592.31	Category 2
100223452	14/02/2013	AUD	419.80	419.80	Category 2

158.3. Excluding the three transactions referred to in sub-paragraph 158.1 above, the FTI Redemption Schedule and the Hannan Redemption Schedule contain six transactions which do not appear in the Trustee Redemption Schedule. Five of those transactions are the above 'Category 2' transactions where the transactions were represented as negative redemptions payable in the FTI Redemption Schedule and the Hannan Redemption Schedule, but as positive redemptions payable in the Trustee Redemption Schedule. The remaining transaction is a positive amount (reflecting a negative redemption payable). The transaction appears on the transaction listing for the unitholder account, but the units of the account were not impacted by the transaction. Accordingly, the Trustee does not propose to take any action.

159. The Trustee intends to make payment of these redemptions to unitholders based on their foreign currency redemption amount at the date of the transaction, in priority to any distribution to unitholders.

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20402 - Accrued Interest (Distributions)

160. I understand that account 20402 - Accrued Interest (Distributions) (**Account 20402**) was used by LMIM to record accrued distribution entitlements prior to the distribution being formally processed. As I have outlined at paragraph 134.4 above, once a distribution was made, it would be recorded by clearing the relevant balance in liability Account 20402 and recording the liability in Account 20400.
161. Account 20402 had a balance of \$1,578,257.96 as at 12 April 2013.
162. In order to ascertain the appropriate steps to take in respect of Account 20402, I instructed Ms Clisby to review the transactions recorded in the ledger for the account.
163. I am informed by Ms Clisby and verily believe that following her review of the transactions recorded in the ledger for Account 20402, she has identified that whilst most accrual transactions have a corresponding clearing transaction in which the accrued amount was subsequently transferred to Account 20400, there appear to be some accrual transactions which were due to be processed prior to 19 March 2013 and were not.
164. It therefore appears that some unitholders had accrued distributions which had not been processed by LMIM as at the date of the Trustee's appointment.
165. However, except in the case of one unitholder (which I discuss further below), the Trustee does not consider it necessary for the unitholder register to be adjusted to account for the uncleared transactions in Account 20402. That is because, for the reasons set out in detail at paragraphs 28 to 33 above, the Trustee understands that except in the case of Class A units, the price of units reflected accrued but unpaid distributions. In that regard, I note:
- 165.1. The Information Memorandum dated 14 December 2012 states (at page 14) that the unit price for Class B, C, D, E and F units will reflect accrued but unpaid distributions. A copy of the Information Memorandum is at pages 284 to 345 of the Exhibit.
- 165.2. Each account of the same class, sub class and currency has the same unit price regardless of the distribution rule selected.
- 165.3. Where a unitholder elected to have distributions reinvested, the Unitholder Transaction Ledger indicates that no new units were issued upon the making of

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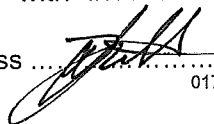
a distribution. Rather, the 'reinvested' distribution was reflected in an increased unit price for units of that class and sub class.

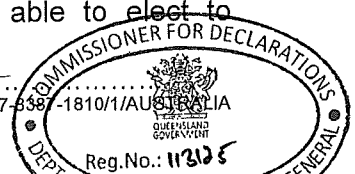
166. Accordingly, given any accrued but unpaid distributions are reflected in the unit price for all units other than Class A units, the Trustee does not propose take any step with respect to those unit classes.
167. The one exception I have referred to above relates to a single unitholder account (numbered 100312354) which is recorded in the unitholder register as being of the "Savings Plan" class. An extract of the Unitholder Transaction Ledger with respect to account 100312354 is at page 555 of the Exhibit. The ledger indicates that up until 1 August 2012, the unit price was consistently 1.00 GBP across several years and based on the Trustee's Investigations this appears to be a Class A unit. On 1 August 2012, the Fund switched all Class A units to Class B units (as part of a bulk switch of unitholders). This is represented through a change in the balance of the unitholder account, which occurred following a change in the unit price. The ledger for account 100312354 shows that unlike other Class A units, the account was not switched to Class B units on around 1 August 2012 as the unit price for the units remains at 1.00 GBP per unit.
168. The unitholder register records that the unitholder selected a distribution rule of 'reinvest yearly' and the last reinvestment transaction occurred on 7 May 2012. In circumstances where accrued but unpaid distributions are not reflected in the unit price for Class A units, and the unitholder has otherwise been deprived of the distribution which accrued between 8 May 2012 and the closure of the MPF on 19 March 2013, the Trustee proposes to pay the unpaid distribution to the relevant unitholder in priority over any distribution to unitholders.
169. I have reviewed the interest accrual transactions for account 100312354 (exhibited at paragraph 161 above) for the period 8 May 2012 to 19 March 2013 and I have identified 13 transactions totalling GBP 2,795.12, which were not reinvested or paid to the unitholder. An extract of the general ledger which records the interest accrual transactions for account 100312354 for the period 8 May 2012 to 19 March 2013 is at page 556 of the Exhibit. The Trustee proposes to return GBP 2,795.12 to this unitholder in priority to any general capital distribution.

PART F: UNITHOLDINGS PAST MATURITY

170. As I have noted at paragraph 38 above, investments in the MPF were ordinarily made for a fixed term of between one and five years, with investors able to elect to

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automatically roll over their investment to a new term upon maturity or otherwise redeem their investment. Investors were also able to submit withdrawal requests at any time for consideration by LMIM.

171. The Trustee has received communication from an investor in the MPF with an account numbered 100292564 in relation to an investment which the investor contends was due to mature on 20 August 2012 (the **Matured Investor**). The Matured Investor was an Institutional Investor, however much of the correspondence the Trustee has exchanged has been with the underlying individual investor. In this affidavit both the Matured Investor and the underlying individual investor are referred to as the Matured Investor for convenience.

172. Relevantly:

172.1. On or about 27 July 2010 the Matured Investor submitted an application form which provided instructions for a two year investment to be paid out on maturity. A copy of the completed application form, which has been provided to the Trustee by the Matured Investor, is at pages 557 to 568 of the Exhibit.

172.2. Units were issued to the Matured Investor on 20 August 2010 and were therefore due to mature on 19 August 2012. An extract of the Unitholder Transaction Ledger with respect of the Matured Investor's account is at page 569 of the Exhibit.

172.3. The Unitholder Transaction Ledger records that on 1 August 2012, the Matured Investor's unitholding was "switched out" from Class A units to Class B units. As part of that transaction, the Matured Investor's 5,153.08 units priced at 1 euro per unit were replaced with 3,913.34 units priced at 1.3168 euro per unit.

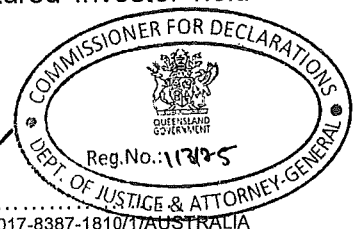
172.4. The Unitholder Transaction Ledger records that on 20 August 2012, a total of 129.92 units were redeemed by the Matured Investor. (total of \$171.68 redeemed at a unit price of \$1.3215)

172.5. The Unitholder Transaction Ledger records that on 20 February 2013, a further 110.62 units were redeemed by the Matured Investor.

172.6. As at the closure of the MPF on 19 March 2013, the Matured Investor held 3,672.96 units in the MPF.

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173. In the time since the Trustee's appointment, members of my team have exchanged extensive correspondence with the Matured Investor in relation to their investment. Due to the volume of correspondence exchanged with the Matured Investor, the material has not been reproduced in hard copy in this affidavit. On 4 December 2020, I swore an affidavit in these proceedings which contained a bundle of recent correspondence exchanged between the Trustee and the Matured Investor, together with an electronic USB. As set out in the correspondence, the Matured Investor has from time to time demanded that they be paid the full amount that would have been payable to them in the event that the entirety of their investment had been redeemed on 19 August 2012 (in priority to other unitholders in the MPF).
174. The Trustee has informed the Matured Investor of its intention to seek directions from the Court as to the appropriate treatment of investments which may have matured prior to the closure of the MPF but which were not redeemed.
175. It is not clear to me precisely why the entirety of the Matured Investor's investment was not redeemed on 19 August 2012 in accordance with the instructions provided in the investor's application form. In a letter to the Matured Investor dated 12 February 2013, LMIM acknowledged that the redemption of the Matured Investor's account had been delayed. A copy of LMIM's letter is at pages 570 to 571 of the Exhibit.
176. In light of the issues raised by the Matured Investor, I instructed Ms Clisby to undertake a review of the unitholder register and the Unitholder Transaction Ledger to ascertain whether there might be additional investors with unit holdings that were due to mature prior to closure of the MPF but which were not redeemed. I am informed by Ms Clisby and believe that she adopted the following process to conduct her review of the accounts:
- 176.1. Register 1 was reviewed to identify those accounts which, based on their initial investment term and the date units were issued, were due to mature prior to 19 March 2013.
- 176.2. Where it was identified that the initial term of an investment would have expired before 19 March 2013, the Unitholder Transaction Ledger was reviewed in relation to that account to determine whether any rollover transaction description recorded in the ledger indicated that the investment had been rolled to a date after 19 March 2013. An extract of the Unitholder Transaction Ledger providing an example of one such transaction is at page 572 of the Exhibit.

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176.3. Ms Clisby identified 885 accounts which had an initial investment term which would have matured prior to 19 March 2013 (based on initial investment date and term) and where there was no rollover transaction in the Unitholder Transaction Ledger which indicated that the investment had been rolled over to a date after 19 March 2013.

176.4. It is apparent that some of the rollover dates recorded in the Unitholder Transaction Ledger are incorrect i.e. where the new maturity date is equal to or prior to the date of the transaction. An extract of the Unitholder Transaction Ledger providing an example of one such transaction is at page 573 of the Exhibit. When the new maturity date is amended based on the rollover transaction date and the term recorded in the Unitholder Transaction Ledger, the number of accounts which could have matured prior to closure of the fund is reduced to 600 accounts with an AUD value as at 19 March 2013 of \$42,746,793.51. A listing of those accounts is at pages 574 to 585 of the Exhibit.

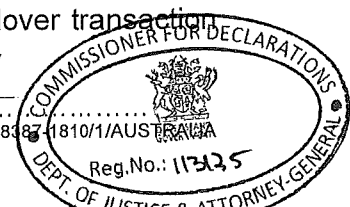
176.5. The information contained in the spreadsheet at page 574 of the Exhibit is as follows:

- (a) The first 6 columns of the spreadsheet are extracted from Register 1.
- (b) The 7th column titled "End date based on initial investment term" is calculated based on the entry date (initial investment date) and the subclass (initial term).
- (c) The 8th and 9th columns are extracted from the Unitholder Transaction Ledger, using a "look up" function to return the most recent rollover transaction.
- (d) The 10th column titled "Rollover Maturity" is taken from the 9th column (Last Rollover Transaction Description) which includes the new maturity date following the rollover transaction.
- (e) Upon review of the information contained in column 8 and 9, it is apparent that the new maturity date contained in the last rollover transaction description is incorrect for a number of unit holder accounts. For example, account no 100147859 (page 574 of the Exhibit), the last rollover transaction occurred on 19 January 2012 and was for a period of 12 months, however the date contained in the last rollover transaction

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description is 19 January 2012 (the same date as the rollover transaction).

- (f) Column 11 of the table "Rollover date possibly incorrect" identifies those accounts where the rollover maturity date is possibly incorrect, based on the information contained in column 8 and 9 as a result of the incorrect information identified in paragraph 176.4 above.
- (g) Column 12 titled "Amended rollover maturity" contains either the rollover maturity date contained in column 10 or the amended date for those accounts flagged in column 11.

176.6. The spreadsheet contains only those accounts which may have expired prior to 19 March 2013 based on the "amended rollover maturity date" (column 12), or where no rollover transaction has been identified for that account, the "End date based on initial investment term" (Column 7) is used.

176.7. I instructed Ms Clisby to review of a sample of 20 of the 600 accounts. From the review I understand that there are some accounts where:

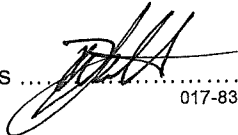
- (a) redemption documentation is held on file, however no redemption was ever processed or paid;
- (b) no redemption documentation has been located; and
- (c) rollover instructions appear to have been provided but are not reflected in the unitholder register.

A document containing a summary of Ms Clisby review and the corresponding account information is at page 586 of the Exhibit.

177. A full review of the documentation held for the 600 accounts has not been conducted and it is expected that undertaking such a review would incur costs of approximately \$40,000 to \$60,000.

178. As it appears that redemption or rollover instructions were provided by some unitholders but not others, it is not possible for the Trustee to conclusively determine how many unitholder accounts might have matured prior to 19 March 2013, but were not redeemed and paid to the investor. However, the investigations detailed above indicate that there are fewer than 600 unitholder accounts that might be affected.

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179. The Trustee proposes to not take any action or make any adjustment to the Register for the Matured Investors as the units were not redeemed before the scheme was closed so they were and remain an existing unitholder as at the date of the Trustee's appointment.

PART G: NOMINAL UNITHOLDINGS

180. There are three accounts with a unit balance of less than 40 units (the **Nominal Unitholding Accounts**).
181. Adopting unit prices as at 19 March 2013, none of the Nominal Unitholding Accounts have an \$AUD value of more than \$50 and any distribution with respect to those accounts would be nominal.
182. In light of the costs associated with contacting unitholders, administering the process of updating the unitholder register and making distributions, the Trustee seeks a direction that it would be justified in removing the Nominal Unitholding Accounts from the unitholder register and otherwise excluding those accounts from the distribution process.

PART H: ATO WITHHOLDING TAX

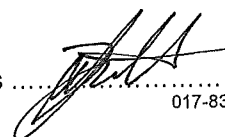
Returned Withholding Tax

183. During the period 2008 to 2013 the financial statements of the MPF recorded a profit, and LMIM paid distributions to unitholders on this basis. The Trustee paid withholding tax on behalf of the unitholders on the profit recorded in the financial statements. In the period from 2008 to 2013 (**Relevant Period**) and prior to the Trustee's appointment, LMIM remitted \$7.9 million of withholding tax to the ATO in respect of the MPF.
184. Between 2017 to 2018, the Trustee was successful in recovering approximately \$7.9 million of withholding tax remitted to the ATO in respect of the period 2008 to 2012. The repayments made by ATO were as follows:
- 184.1. \$0.41 million for the financial year ending 30 June 2008;
- 184.2. \$0.72 million for the financial year ending 30 June 2009;
- 184.3. \$1.04 million for the financial year ending 30 June 2010;
- 184.4. \$1.11 million for the financial year ending 30 June 2011;

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- 184.5. \$2.98 million for the financial year ending 30 June 2012; and
- 184.6. \$1.63 million for the financial year ending 30 June 2013.
185. The net proceeds from the recovery total approximately \$6.5 million after fees and disbursements in respect of the recovery (**Returned Withholding Tax**) A summary of the fees and disbursements incurred is at page 587 of the Exhibit.
186. I am informed by Ms Clisby, and believe, that she has conducted an analysis of the records of the MPF in respect of the 2008 to 2013 financial years. I am informed by Ms Clisby, and believe, that her analysis shows that a significant number of persons who were unitholders in the MPF during the 2008 to 2013 financial years remain unitholders in the MPF. I am informed by Ms Clisby and believe that:
- 186.1. 39% of the persons who were members in 2008 remain members;
- 186.2. 47% of the persons who were members in 2009 remain members;
- 186.3. 63% of the persons who were members in 2010 remain members;
- 186.4. 79% of the persons who were members in 2011 remain members;
- 186.5. 92% of the persons who were members in 2012 remain members; and
- 186.6. 100% of the persons who were members in 2013 remain members.
187. The Trustee (including via its tax agent PriceWaterhouseCoopers (**PWC**)) exchanged the following correspondence with the ATO in relation to the recovery of the Returned Withholding Tax:
- 187.1. Letter from PwC to the ATO dated 13 April 2017;
- 187.2. Email from the ATO to PWC dated 12 May 2017;
- 187.3. Email from the Trustee to the ATO dated 17 May 2017; and
- 187.4. Email from PWC to the ATO dated 25 May 2017.
188. As set out in this correspondence, the Trustee sought, and obtained from the ATO, the recovery of the Returned Withholding Tax on the basis that when correctly calculated, during the 2008 to 2013 financial years the MPF did not receive income sufficient to permit or enable distributions to be paid to unitholders. When correctly calculated, the

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MPF made a loss during the 2009 to 2013 financial years, and a lower profit during the 2008 financial year. Consequently no liability to pay withholding tax should have arisen, as no distributions should have been paid to unitholders during the 2008 to 2013 financial years.

189. The Trustee and its advisors have investigated whether similar withholding tax issues might exist in relation to financial years prior to the Relevant Period, and we have determined that there are no further claims of this nature.

Distribution of the Returned Withholding Tax

190. Subject to obtaining a direction to that effect from the Court, the Trustee proposes to include the Returned Withholding Tax in the funds available for distribution to the current unitholders of the MPF, instead of attempting to pay the Returned Withholding Tax to those current and former unitholders on whose account LMIM withheld withholding tax from distributions, and paid it to the ATO. I consider this to be a reasonable approach for the following reasons:

- (a) as set out above the ATO refunded the Returned Withholding Tax on the basis that during the 2008 to 2013 financial years the MPF did not receive income sufficient to permit distributions to be paid, and consequently no liability to pay withholding tax arose as no distributions should have been paid to those unitholders who received distributions;
- (b) if the Returned Withholding Tax was returned to unitholders who had already received such distributions, they would receive a windfall benefit, in that those persons (who had already been paid distributions that should not have been paid) would be paid Returned Withholding Tax that was refunded for the very reason that the distribution payments should not have been paid to them;
- (c) members of the MPF were not entitled to receive distribution payments, and also amounts of withholding tax payable in respect of such payments. If the distribution payments had been properly paid, members who received these distributions would have had no entitlement to be paid the amounts that were ultimately paid to the ATO as withholding tax, and later refunded.

191. Accordingly, the Trustee seeks a direction from the Court that it is justified in including the Returned Withholding Tax in the funds available for distribution to the current unitholders of the MPF.

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192. The Trustee issued a notice to unitholders setting out its views on the treatment of the Returned Withholding Tax. A copy of the Notice issued to unitholders on 28 July 2020 is at pages 588 to 600 of the Exhibit.

PART I: DISTRIBUTION METHODOLOGY FOR FOREIGN CURRENCY INVESTORS

193. The Court's orders dated 10 February 2014 (as amended on 18 March 2014) direct that the MPF be wound up pursuant to clause 15.2(c) of the MPF Constitution, and that the Trustee be authorised to exercise the powers contained in clause 12 and 15.6 of the MPF Constitution, until such time as all winding up procedures have been completed. A copy of the orders made by the Court on 10 February 2014 (as amended on 18 March 2014) is at pages 423 to 424 of the Exhibit.
194. Clause 15.6(c) of the MPF Constitution states that the manager must, subject to any special rights or restrictions attached to any Unit, distribute the net proceeds of realisation among the members in the same proportion specified in clause 11.4. However, it appears that the reference to clause 11.4 may be a mistake, as clause 11.4 relates to a present entitlement to distributable income and does not specify any proportion for distribution of capital. It appears likely that clause 15.6(c) should refer to clause 11.5, which specifies the proportion for distribution of capital to members:

'The Manager may distribute capital of the Scheme to the Members subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Member on a date determined by the Manager divided by the number of Units on the Register on that date.' (the **Distribution Methodology**).

195. Accordingly, the MPF Constitution Distribution Methodology provides for capital to be distributed to Members in accordance with the number of units held by each Member.
196. The Trustee undertook a review of the information available to it as to how the fund historically dealt with foreign currency investors. As set out below, information regarding how the fund dealt with foreign currency investors was predominantly obtained from the Trustee's review of the general ledger of the Fund, Register 1 and the Unitholder Transaction Ledger. This has been supplemented by review of other documentation, notably the Information Memorandum.

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197. As a result of its review, of the general ledger, Register1 and Unitholder Transaction Ledger the Trustee has come to the conclusion that notwithstanding the Distribution Methodology set out in the MPF Constitution, the former Trustee had a practice of dealing with foreign currency investors as follows:

197.1. LMIM accepted investments in foreign currencies, as well as in Australian dollars ("**AUD**").

197.2. LMIM set different unit prices for investments made in each of these foreign currencies, which differed from the unit price for investments in AUD. For example, LMIM set specific unit prices for investments made in British pounds, Japanese yen, etc.

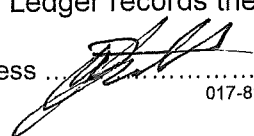
197.3. Consequently, when prospective unitholders made investments using these foreign currencies, LMIM calculated the units they were allotted using the applicable unit price for each currency.

197.4. This had the practical effect that depending on the foreign currency used, foreign currency investors received more, or less, units than they would have done if they had invested using the equivalent amount of AUD. This resulted in, for example, persons who had invested using Japanese yen being issued significantly more units than persons who had invested an equivalent amount of money, but using another currency such as British pounds.

197.5. But when these foreign currency investments were redeemed, LMIM calculated the redemption amount using the unit price it had set for each currency. On a practical level, this seems to have been intended to avoid unfairness. Again taking the Japanese yen/British pounds example, although LMIM credited JPY unitholders with more units when they invested than GBP unitholders who had invested the same amount of money, the lower unit price LMIM set for JPY units meant that JPY unitholders received less per unit than the GBP investors did when these investments were redeemed, which seems to have been intended to even out the differences between them.

198. As an example, at page 601 of the Exhibit is the general ledger and extract of the Unitholder Transaction Ledger for Account ID 100331701 and a sample of Account ID 100331701, in respect of an investment of JPY 2,000,000 in the MPF. The AUD value of this investment was recorded in the General Ledger for that investor in the column titled "GLAmountMST". The Unitholder Transaction Ledger records the AUD unit price

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and corresponding number of units issued, based on the investment amount of JPY 2,000,000.

199. If the Trustee was to distribute funds to unitholders in accordance with the Distribution Methodology set out in the Constitution, only considering the number of units held by investors, no consideration would be given to:

199.1. the different unit prices for different classes of units; and

199.2. the different numbers of units issued to foreign currency investments, as set out above.

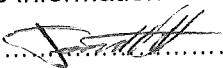
200. As set out above LMIM created and maintained Register 1, which records the AUD value of the unit holdings in the MPF (including foreign currency unit holdings) as at 19 March 2013. The AUD value of the unit holdings is calculated by reference to the number of units held, the relevant unit price and the exchange rate between the holding currency and AUD as at 19 March 2013. The Trustee considers the AUD value contained in Register 1 to be the most appropriate value to be used to calculate the capital distribution for each unitholder who invested in the MPF in a foreign currency. A summary of the unitholders by currency is at page 602 of the Exhibit.

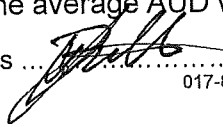
201. If the Trustee was to follow the Distribution Methodology set out in the Constitution, in the Trustee's view it would not result in a fair distribution being made, because LMIM's practice of issuing investments based upon different foreign currency unit prices did not take account of the Distribution Methodology in the Constitution.

202. To illustrate the position, the Trustee has prepared a summary of a Japanese yen, a British pounds and a Singapore dollars unitholder account (together with the underlying account information). The Summary sets out a theoretical distribution to each of these unitholders based on the units held, as compared to the AUD value, as at 19 March 2013. That Summary appears at page 603 to 606 of the Exhibit.

203. As recorded in the summary, if the distribution was to be made simply based on the number of units held by these investors, without taking into account LMIM's practice of issuing these investments based upon different foreign currency unit prices, it would result in a distribution that benefited the investment made via Japanese yen and Singapore dollars, and disadvantaged the investment made via British pounds.

204. By way of illustration, at page 607 of the Exhibit is a graph prepared by Ms Clisby, using the information contained in Register 1 which shows the average AUD value per unit for

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each currency in which there was a unitholding as at 19 March 2013. The graph provides that the AUD value per unit fluctuates substantially from approximately \$0.01 per unit for units held in Japanese yen (JPY), to \$2.64 per unit for units held in British pounds (GBP).

205. If the Trustee was to calculate final distributions based on the numbers of units currently recorded in the unit register, unitholders with holdings in Japanese yen, Thai baht or Hong Kong dollars, for example, would receive a substantially higher return (based on the value of their investment, when calculated in Australian dollar terms) than equivalent investments that unitholders had made via AUD, Euros or British pounds.
206. For these reasons, the Trustee considers it fair to adopt the former trustee LMIM's practice calculating the distribution using the unit price that LMIM set for each currency.
207. Accordingly, the Trustee proposes, and seeks the Court's direction, that it would be justified in calculating distributions to be made to members of the MPF who invested via currencies other than AUD as follows:

207.1. taking the value of each member's unit holdings, based on the AUD value recorded in Register 1, for each investor as at 19 March 2013, being the date that the fund was closed (**AUD Value of Investment**);

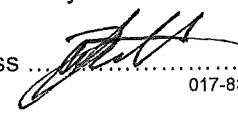
207.2. dividing the amount available for distribution, by calculating the proportion of each member's AUD Value of Investment against the AUD value of all accounts recorded in Register 1, as at 19 March 2013. For example, if a unitholder's AUD Value of Investment is 5% of the total issued units (when calculated in AUD terms), that unitholder would receive 5% of the amount for distribution.

208. The Trustee has also considered whether any distribution made by the Trustee would constitute a capital distribution, or a distribution of income. As the Trustee does not consider that the MPF made a profit in FY2012 (as set out in paragraph 28) and FY2013 and that there is no 'Distributable Income', the Trustee is of the opinion that distribution by the Trustee should be considered a capital distribution.

PART J: SUBSTITUTED SERVICE

209. As I have noted throughout this affidavit, there are approximately 4,500 unitholders of the MPF dispersed across more than 70 countries.
210. For the reasons stated at paragraphs 98 above, the Trustee does not consider it practical or economical to effect service of the Application personally on each of the unitholders.

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211. The Trustee proposes to serve this affidavit and any other material relating to the Application (the **Application Materials**) on the unitholders of the MPF using the same process as outlined at paragraph 122 above, namely:

211.1. uploading the Application Materials to the MPF Creditor Website;

211.2. sending an email notification with a link to the MPF Creditor Website (**Application Notification**) to unitholders using the email addresses contained in the Email Listing; and

211.3. where the Trustee:

(a) receives an automatic response from all email addresses associated with a unitholder, including any alternative email address and advisor email address recorded on the Emailing List associated with the relevant unitholder, indicating that the Application Notification will not come to the attention of the intended recipient (as opposed to being temporarily unavailable or delayed); or

(b) does not hold an email address for the relevant unitholder in the Email Listing,

posting a copy of the Application Notification to the postal address for the unitholder recorded in the unitholder register, or where no postal address is recorded for the unitholder, to the address of the unitholder's financial advisor (where applicable).

212. At the same time as a copy of the Application Notification is delivered to the unitholders, and to ensure that the unitholders have an opportunity to consider the effect of the directions sought by the Trustee in this application, the Trustee proposed to provide each unitholder with a summary of (Unitholding Summary) the unit balance recorded in each Register with respect to the relevant unitholder; with details of the total holdings in each Register and a notification that the Trustee intends to use the unit balance in Register 1 for the distribution.

212.1. Each Unitholding Summary will be unique and will relate to the specific unitholder it is being delivered to. Where a unitholder has more than one account, the Unitholding Summary will provide separate figures for each account held.

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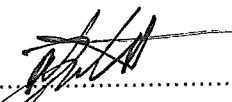
213. A copy of a pro forma Unitholding Summary is at page 608 of the Exhibit, as an example of the type of document that the Trustee intends to send to each unitholder.
214. As noted at paragraph 115 above, the Trustee is aware that there are some unitholders in respect of which it does not hold a current email address or mailing address. In those instances, the Trustee proposes to include a general notification with the Application Materials that unitholders who have not received the Application Notification can contact the Trustee to request information in relation to their unitholding (which the Trustee will provide subject to receiving satisfactory evidence that the request is being made by, or on behalf of, the unitholder in question).
215. I am confident that the proposed method of service will bring the Application Materials to the attention of the majority of the unitholders for the reasons stated at paragraph 122 above.

Sworn by JARROD VILLANI

On 4 December 2020

at Brisbane, Queensland, in the presence of:


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Signed


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Witness



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