

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

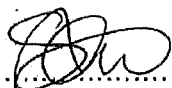
Respondent

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

CERTIFICATE OF EXHIBIT

Exhibit SC-17 to the affidavit of Stacey Clisby affirmed 10 December 2021.

This certificate of exhibit was made, signed and witnessed in accordance with the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020.



Deponent



Australian legal practitioner

CERTIFICATE OF EXHIBIT
Filed on Behalf of the Applicant

Form 47, Version 2
Uniform Civil Procedure Rules 1999
Rule 435

Name: Banton Group
Address: Level 12, 60 Martin
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SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 11917/15

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**

STATEMENT PURSUANT TO s.96 OF THE TRUSTS ACT 1973 (QLD)

1. The applicant is KordaMentha Pty Ltd (ACN 100 169 391) (**Trustee**) as Trustee for the LM Managed Performance Fund (**MPF**).

The Trust

2. LM Investment Management Ltd (**LMIM**) established the MPF in approximately 2001. The Trust was constituted as a unit trust.
3. LMIM was the trustee of the MPF, although styled as Manager.¹
4. The Trust has approximately 4,500 unitholders, the vast majority of whom (approximately 96% by unitholding) are located overseas.²
5. The Trust was never registered as a managed investment scheme under Part 5.9 of the *Corporations Act 2001* (Cth) (**Act**). The Trust was designed to be offered to investors outside Australia, to global platform and portfolio investors and to institutional/wholesale investors, which was the basis upon which LMIM was not

¹ Recital A and definition of "Manager" in clause 1.1 of the Constitution is in Exhibit JV-19 to the 2020 Villani Affidavit at pp. 6 and 41.

² Affidavit of Jarrod Villani filed 8 December 2020 (**2020 Villani Affidavit**), [27.2(c)], [101], [209].

required to register the investment scheme as a managed investment scheme under the Act.³

6. The Trust's business was to pool the capital contributed by the unitholders of the MPF to make investments, principally in the form of loans secured by mortgages over real property.⁴
7. At the date of the Trustee's appointment, the MPF's accounts recorded total receivables exceeding \$450 million.⁵ Those receivables were spread across approximately 19 loan facilities, predominately secured against residential, commercial and industrial property developments and one direct property investment.
8. The constitution of the MPF (**Constitution**) comprised:
 - (a) a Deed Poll dated 25 November 2009, which consolidated all amendments previously made to the constitution;⁶ and
 - (b) amendments made by Supplemental Deed Polls dated 22 February 2011 and 23 October 2012.⁷
9. The records maintained by LMIM record that as at 12 April 2013 (the date of the Trustee's appointment), there were approximately 557 million units on issue in the MPF, with an Australian dollar (AUD) value of approximately \$404 million. Of those units:
 - (a) approximately 50% were held by personal investors;
 - (b) approximately 50% were held by institutional investors; and
 - (c) approximately 96% were held by investors who resided outside Australia.⁸

The appointment of the applicant as trustee of the MPF, and the winding up of the MPF

10. LMIM was the trustee of the MPF until 12 April 2013.⁹

³ 2020 Villani Affidavit, [14].

⁴ Paragraph 12 of the affidavit of Jarrod Villani sworn 2 December 2015 (**2015 Villani Affidavit**); 2020 Villani Affidavit [19].

⁵ See Update to Investors No. 7 at pp.8-18 of Confidential Exhibit JV-2 to the 2015 Villani Affidavit.

⁶ 2020 Villani Affidavit, [10], Exhibit JV-19 pp. 1 to 39.

⁷ 2020 Villani Affidavit, [11]-[12], Exhibit JV-19 pp. 40 to 52.

⁸ 2020 Villani Affidavit, [27].

⁹ 2020 Villani Affidavit, [15].

11. Pursuant to clause 23.1(b) of the Constitution, LMIM was required to resign as trustee of the MPF if, being a corporation, it became an externally administered body corporate as defined in the Act.¹⁰
12. On 19 March 2013 voluntary administrators were appointed to LMIM.¹¹ Accordingly, from that date LMIM was required to resign as trustee of the MPF.
13. On 19 March 2013 LMIM closed the MPF to new investments.¹²
14. On 12 April 2013 de Jersey CJ made orders removing LMIM as trustee of the MPF, and appointing the applicant and Calibre Capital Ltd ("**Calibre**") as Trustees of the MPF in its place.¹³
15. On 1 August 2013 the voluntary administrators were appointed liquidators of LMIM, by way of a creditors' voluntary winding-up.¹⁴
16. On 10 February 2014 Martin J ordered that the applicant and Calibre wind up the MPF, pursuant to clause 15.2(c) of its Constitution. His Honour's amended orders are dated 18 March 2014.¹⁵
17. Calibre retired as trustee of the MPF effective 5 January 2015.¹⁶ Since that date the Trustee has continued as the sole trustee of the MPF.
18. Pursuant to clause 15.6 of the Constitution, when winding up the MPF the trustee is required to (inter alia) realise the assets of the MPF, pay all its liabilities, distribute the net proceeds of realisation to the unitholders, etc.¹⁷
19. The Trustee has taken steps to realise the assets of the MPF and pay its liabilities.¹⁸ It is now in a position to distribute the net proceeds of realisation to the unitholders of the MPF.

¹⁰ Clause 23 appears at p 37 of Exhibit JV-19 to the 2020 Villani Affidavit.

¹¹ 2020 Villani Affidavit [46], Exhibit JV-19 pp. 366 to 415.

¹² 2020 Villani Affidavit, [47], Exhibit JV-19 pp. 421 to 422.

¹³ 2020 Villani Affidavit, [48], Exhibit JV-19 pp.421 to 422.

¹⁴ 2020 Villani Affidavit, [49].

¹⁵ 2020 Villani Affidavit, [50], Exhibit JV-19 pp. 423 to 424.

¹⁶ 2020 Villani Affidavit, [51], Exhibit JV-19 p. 425.

¹⁷ Clause 15.6 is at p. 29 of Exhibit JV-19 to the 2020 Villani Affidavit.

¹⁸ 2020 Villani Affidavit, [62].

20. By an application filed 8 December 2020 the Trustee sought directions as to whether it was justified in adopting the course it proposed to adopt in respect of various issues that had arisen in the winding-up of the MPF.¹⁹
21. By reasons for judgment dated 19 March 2021, Justice Williams directed that the applicant was justified in adopting the course it proposed to adopt (*KordaMentha Pty Ltd v The Members of the LM Managed Performance Fund (No 2)* [2021] QSC 55).

The present application

22. By the present application, the Trustee seeks directions regarding the process that the Trustee should employ in respect of the final distribution payment payable to:
- (a) those members of the MPF for whom the Trustee does not have banking details, and who have not provided banking details to the Trustee; and
 - (b) those members whose final distribution payments are unsuccessful, or whose payments are returned by the recipient bank.
23. The Trustee seeks directions as to whether it is justified in:
- (a) paying such amounts to the Public Trustee of Queensland as unclaimed monies, pursuant to s.102 of the *Public Trustee Act 1978 (Qld)*; or in the alternative
 - (b) paying such amounts into Court, pursuant to s.102 of the *Trusts Act 1973 (Qld)*.
24. Of the 4,525 unique unitholders in the MPF (based on Investor ID), 931 unitholders have accessed the MPF Secure Unitholder Website the Trustee has caused to be created, to permit unitholders to update their details (including their personal and banking details).²⁰
25. In addition, the Trustee has been in contact with individuals or institutions representing 2,726 unique unitholders (based on Investor ID).²¹
26. In total, either via direct contact or via the MPF Secure Unitholder Website, the Trustee has engaged with 3,657 of the 4,525 unique unitholders (approximately 81% of

¹⁹ Court document 38.

²⁰ Clisby affidavit affirmed on 10 December 2021 (**Clisby affidavit**), [45.1].

²¹ Clisby affidavit, [45.4].

unitholders in the MPF), regarding updating or confirming their personal or banking details since the process of updating unitholders' details began in June 2021.²²

27. The Trustee's review of the updated unitholder register for the MPF indicates that the Trustee holds insufficient banking details to process a distribution payment for 416 members of the MPF.²³
28. The Trustee is unable to determine whether any bank account details it may hold for the 19% of unitholders who have not formally engaged with the Trustee through the unitholder register update process may be closed accounts.²⁴
29. The Public Trustee of Queensland has advised the Trustee that based on the situation and circumstances the Trustee has outlined to it, the Public Trustee can accept monies that the Trustee is unable to distribute to members of the MPF.²⁵

²² Clisby affidavit, [45.5].

²³ Clisby affidavit, [50].

²⁴ Clisby affidavit, [55].

²⁵ Clisby affidavit [59] and [60].

SUPREME COURT OF QUEENSLAND

CITATION: *KordaMentha Pty Ltd v The Members of the LM Managed Performance Fund (No 2)* [2021] QSC 55

PARTIES: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND**
(applicant)
v
THE MEMBERS OF THE LM MANAGED PERFORMANCE FUND
(respondent)

FILE NO/S: BS No 11917 of 2015

DIVISION: Trial Division

PROCEEDING: Originating application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 19 March 2021

DELIVERED AT: Brisbane

HEARING DATE: 9 February and 9 March 2021

JUDGE: Williams J

ORDER: **THE COURT DIRECTS THAT:**

1. The applicant is justified in:

- (a) The appropriate register: adopting the unitholder transaction register titled "Register 1.xlsx" identified in paragraph 66 of the affidavit of Mr Jarrod Villani filed 8 December 2020 (court document 42, hereafter the Villani affidavit) as the unitholder register of the MPF, for the purposes of making a distribution to members and finalising the winding up of the LM Managed Performance Fund (the Fund);
- (b) Account 20003 (Returned Investment Payments): taking no further steps concerning the transactions recorded in Account 20003 that occurred prior to 1 July 2012, as identified in paragraphs 132 and 137 of the Villani affidavit;
- (c) Account 20200 (Funds Awaiting Investment): returning the amounts identified in paragraphs 144 and 145 of the Villani affidavit to the prospective investors who made the payments, or if the funds cannot be so returned, paying the

balance to the Australian Securities and Investments Commission;

- (d) **Account 20400 (Distributions Payable):** having sent a notice to all members of the first respondent, requesting any unitholder who believes they have not received a distribution for the period prior to 1 July 2012 to come forward and provide relevant supporting documentation, taking no further steps concerning the transactions recorded in Account 20400 that occurred prior to 1 July 2012, as identified in paragraph 148 of the affidavit of Villani, apart from assessing claims received from members of the first respondent in response to the applicant's notice;
- (e) **Account 20401 (Investor Funds Payable (Redemptions)):** in paying the amounts identified in paragraph 156.3 of the Villani affidavit to the members identified in the Trustee Redemption Schedule;
- (f) **Account 20402 (Accrued Interest (Distributions)):**
 - (i) making the payment identified in paragraph 169 of the Villani affidavit;
 - (ii) otherwise taking no further steps concerning the transactions recorded in Account 20402;
- (g) **Unitholdings past maturity:** not taking any steps in relation to members of the Fund whose investments expired prior to the closure of the Fund on 19 March 2013, but whose units in the Fund were not redeemed, as identified in paragraph 177.3 of the Villani affidavit;
- (h) **Nominal unitholdings:** not taking any steps in relation to those members of the Fund who have a unit balance of less than 40 units, as identified in paragraph 181 of the Villani affidavit;
- (i) **Refunded withholding tax:** including the Returned Withholding Tax in the funds available for distribution to current members of the Fund; and
- (j) **Foreign currency investors:** calculating distributions to be made to members of the Fund who invested via currencies other than Australian dollars as follows:
 - (i) by taking the value of each member's unitholding, based on the Australian dollar value for that unitholding recorded in

Register 1, as at 19 March 2013 (AUD Value of Investment);

- (ii) **by calculating the amount available for distribution by dividing each member's AUD Value of Investment against the Australian dollar value of all accounts recorded in Register 1, as at 19 March 2013.**

THE COURT ORDERS THAT:

- 2. The applicant's costs of and incidental to the application filed 8 December 2020 be paid out of the assets of the Fund, on the indemnity basis.**

CATCHWORDS:

EQUITY – TRUSTS AND TRUSTEES – APPLICATIONS TO COURT FOR ADVICE AND AUTHORITY – PETITION OR SUMMONS FOR ADVICE – GENERALLY – where the applicant trustee applies for directions under s 96 of the *Trusts Act* 1973 (Qld) regarding finalising the winding up the LM Managed Performance Fund (the Fund) and making a final distribution to members – where the trustee sought a direction regarding the appropriate unitholder register to adopt – where the trustee sought directions as to whether its proposed treatment of transactions recorded in certain liability accounts is justified – where the trustee sought a direction that the applicant is justified in not taking any steps in relation to members of the Fund whose investments expired prior to the closure of the Fund, but whose units in the Fund were not redeemed – where the trustee sought a direction that the applicant is justified in not taking any steps in relation to those members of the Fund who have a unit balance of less than 40 units – a direction that the applicant is justified in including an amount of Returned Withholding Tax in the funds available for distribution to current members of the Fund – where the trustee sought a direction regarding calculating distributions to be made to members of the Fund who invested via currencies other than Australian dollars – whether the applicant is justified in taking certain steps in relation to the winding up of the Fund

EQUITY – TRUSTS AND TRUSTEES – APPLICATIONS TO COURT FOR ADVICE AND AUTHORITY – PETITION OR SUMMONS FOR ADVICE – GENERALLY – where the applicant trustee applies for an order that service of the application under s 96(2) *Trusts Act* 1973 (Qld) is deemed effected on each of the members of the Fund – where the applicant sought an order for substituted service on the respondent – where an order was made that substituted service could be effected by a copy of the application and any orders made in respect of the application which are not required to be served personally being posted on a specified website of the applicant and notification being given to members – whether

the requirement of service under s 96(2) of the *Trusts Act* 1973 (Qld) has been met

Trusts Act 1973 (Qld), s 96

Australian Securities and Investments Commission (ASIC) v Piggott Wood & Baker (a firm) (No 6) [2019] FCA 672, cited
Australian Securities and Investments Commission (ASIC) v Tasman Investment Management Ltd (2006) 59 ASCR 113;
 [2006] NSWSC 943, cited

Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar The Diocesan Bishop of The Macedonian Orthodox Diocese of Australia and New Zealand (2008) 237 CLR 66; (2008) 82 ALJR 1425, cited

Marley v Mutual Security Merchant Bank and Trust Co Ltd [1991] 3 All ER 198, cited

Re G B Nathan and Co Pty Ltd (in liq) (1991) 24 NSWLR 674, cited

Re Spedley Securities Ltd (in liq) (1992) 9 ACSR 83, cited

COUNSEL: A Crowe QC, with P Ahern, for the applicant
 No appearance for the respondent

SOLICITORS: Banton Group for the applicant
 No appearance for the respondent

- [1] The applicant by an application filed 8 December 2020 applies to the Court for directions pursuant to s 96 of the *Trusts Act* 1973 (Qld) (the *Trusts Act*) as to whether it is justified in taking certain steps in relation to the winding up of the LM Managed Performance Fund (the Fund) (s 96 application).
- [2] By an order of the Supreme Court of Queensland on 12 April 2013 KordaMentha Pty Ltd (the Trustee) was appointed the Trustee of the Fund. Further, by an order dated 10 February 2014, the Supreme Court of Queensland ordered that the Trustee wind up the Fund pursuant to its Constitution.
- [3] The directions sought by the Trustee are to enable it to finalise the winding up of the Fund, including a final distribution to the members.¹

Background – appointment of the applicant as Trustee of the Trust and winding up of the Trust

- [4] On 19 March 2013 voluntary administrators were appointed to LM Investment Management Ltd (in liquidation) (LMIM). Clause 23.1(b) of the Constitution required LMIM to resign as trustee of the Fund when it became an externally administered corporation.²

¹ I adopt the term used in the applicant's submissions and will refer to the beneficiaries as members in these reasons.

² Statement of Facts at [11]-[12].

- [5] On 12 April 2013 de Jersey CJ made orders removing LMIM as trustee of the Fund and appointing the applicant and Calibre Capital Ltd as new trustees of the Fund.³
- [6] On 1 August 2013 the voluntary administrators were appointed liquidators of LMIM, by way of a creditor's voluntary winding up.⁴
- [7] On 10 February 2014 Martin J ordered that the applicant and Calibre Capital Ltd wind up the Fund, pursuant to clause 15.2(c) of its Constitution.⁵
- [8] Clause 15.6 of the Constitution required that when winding up the Fund, the trustee realise the assets of the Fund, pay all of its liabilities and distribute the net proceeds of realisation to the members.⁶
- [9] On 5 January 2015 Calibre Capital Ltd retired as trustee of the Fund. The applicant has been the sole trustee of the Fund since that date.⁷

Jurisdiction pursuant to s 96 of the Trusts Act

- [10] The application is brought pursuant to s 96 of the Trusts Act which states as follows:

“96 Right of trustee to apply to court for directions

- (1) Any trustee may apply upon a written statement of facts to the court for directions concerning any property subject to a trust, or respecting the management or administration of that property, or respecting the exercise of any power or discretion vested in the trustee.
- (2) Every application made under this section shall be served upon, and the hearing thereof may be attended by, all persons interested in the application or such of them as the court thinks expedient.”
- [11] There are approximately 4,500 members of the Fund located in 77 countries. The majority of the members are located overseas, with only 54 members located in Australia.⁸

Service

- [12] To effect service of the s 96 application, the applicant sought an order of this Court for substituted service on the respondent.
- [13] On 18 December 2020 I ordered that substituted service could be effected by a copy of the application filed 8 December 2020⁹ and any orders made in respect of the application, which are not required to be served personally, being posted on a specified website of the applicant and notification being given to members. The

³ Statement of Facts at [14].

⁴ Statement of Facts at [15].

⁵ Amended orders of Martin J dated 18 March 2014; Statement of Facts at [16].

⁶ Statement of Facts at [18].

⁷ Statement of Facts at [17].

⁸ Villani affidavit at [102]-[103].

⁹ And any court documents filed by the applicant in respect of that application, which the applicant seeks to serve on the respondent.

notification was to be given either by an email sent to each of the members at their last known email addresses or, if the applicant received a response that the email had not been received and the applicant has a postal address for that member, sending a notice by prepaid post to that member notifying them of the general nature of the Court documents and the documents having been posted on the website.

- [14] The effect of the order for substituted service was that the applicant was not required to take further steps to serve members whose email addresses returned an undeliverable receipt and for whom the applicant does not have a postal address.
- [15] Service was deemed to have been effected on each of the respondents five days after these steps were undertaken.
- [16] The applicant relies on an affidavit of Ms Stacey Clisby sworn 9 February 2021 which outlines the steps that were taken in relation to service.
- [17] The relevant documents were posted to the website on 18 January 2021.
- [18] On 22 January 2021 emails were sent to all members of the Fund, for whom the applicant holds a valid email address, with the notification information. The emails included summaries of the member's unitholder details and notified members of the general nature of the court documents and that the documents had been posted on the website.
- [19] Ms Clisby outlines in her affidavit that a total of 1,655 automatic undeliverable responses were received from 197 unique email addresses, which were associated with 1,473 unique unitholder accounts.
- [20] However, two of these email addresses were associated with 1,244 institutional investor accounts. On 1 February 2021, a hard copy of the email was posted to the two entities associated with these 1,244 institutional investor accounts.
- [21] Further, the applicant holds postal addresses for a further 228 members contained in the 1,655 automatic undeliverable responses referred to above. Hard copies were also posted to those members on 1 February 2021.
- [22] There are 171 unitholder accounts which do not have an associated email address, or for which all associated email addresses have previously returned an undeliverable response. Postal addresses were held for 170 of those 171 accounts and a notification was sent by post to those members on 22 January 2021.
- [23] Pursuant to the terms of the order dated 18 December 2020, the applicant is not required to take further steps to serve members whose email addresses returned undeliverable messages and for whom the applicant has not been able to identify a postal address. This applies in respect of one identified unitholder account.
- [24] In accordance with the terms of the order dated 18 December 2020, service on the respondent is deemed to have been effected on all members of the Fund by 6 February 2021, being five days after the mailout was completed on 1 February 2021.
- [25] Out of an abundance of caution the applicant has also taken steps to notify the liquidator appointed to LMIM, the former trustee of the Fund.

- [26] Further, the applicant has also taken steps to give identified creditors notice of the application. Five proofs of debt have been identified as mentioning the Fund, although none have made a claim for indemnity from the assets of the Fund.
- [27] The applicant has been able to identify an address, or other contact details, for four of the five identified creditors. In relation to one potential creditor, the applicant has been unable to identify or locate an address or other contact details.
- [28] On 4 February 2021 a notice was sent by prepaid post to the four identified potential creditors notifying them of the current application and directing them to the court documents posted on the website.
- [29] In these circumstances, I am satisfied that the requirement of service under s 96(2) of the Trusts Act has been met.

Hearing and service of supplementary material

- [30] The hearing commenced before me on 9 February 2021. The application was adjourned to 10.00 am on 9 March 2021 to enable further submissions to be provided in respect of responses received from members of the Fund.
- [31] To facilitate the further steps, the following orders were made on 9 February 2021:

“THE COURT DIRECTS THAT:

1. The applicant file and serve:
 - (a) any written submissions addressing the responses received from members of the respondent, exhibited to the affidavit of Stacey Clisby sworn 9 February 2021; and
 - (b) any further affidavit evidence addressing the responses received from members of the respondent, exhibited to the affidavit of Stacey Clisby sworn 9 February 2021;
 by 4pm on Friday 12 February 2021.
2. Any member of the respondent file and serve any written submissions that member wishes to make concerning that member’s response, and/or the written submissions served by the applicant, by 4pm on Monday 22 February 2021.
3. The applicant file and serve any written submissions in reply by 4pm on Friday 26 February 2021.
4. The application be adjourned to 9 March 2021 and listed for two hours before Williams J in the Applications List.

THE COURT ORDERS THAT:

5. Service of this order, any submissions by the applicant and any affidavit material referred to in paragraph 1(b) hereof, be deemed effected on each of the members of the respondent three days after the applicant:

- (a) posts the relevant document in PDF form on the website '<http://www.kordamentha.com/creditors/lm-managed-performance-fund>', and
- (b) sends an email to each of the members of the respondent for whom the applicant holds a last known email address, notifying them of the general nature of the document and that the document has been posted on that website."

- [32] At the resumed hearing on 9 March 2021 the applicant filed a further affidavit of Ms Clisby concerning service of the supplementary material.
- [33] The affidavit of Ms Clisby deposes to:
- (a) a copy of the order dated 9 February 2021 and the supplementary submissions were uploaded to the website on 15 February 2021 and the members of the Fund were emailed with the necessary notification also on 15 February 2021.
 - (b) a copy of the supplementary submissions in reply were uploaded to the website on 1 March 2021 and the members of the Fund were emailed with the necessary notification also on 1 March 2021.
- [34] Pursuant to paragraph 5 of the orders dated 9 February 2021 service was deemed effective three days after the date the documents were posted on the website and the email notification sent, therefore, 18 February 2021 and 4 March 2021 in respect of the supplementary submissions and the supplementary submissions in reply.
- [35] It became apparent that page 2 of the supplementary submissions in reply had been inadvertently omitted from the document uploaded to the website. On 8 March 2021 a full copy of the supplementary submissions in reply (including page 2) was posted on the website.
- [36] Further, an email was sent on 8 March 2021 to the members of the Fund notifying of the previous omission of page 2 and attaching a copy of the full supplementary submissions in reply.
- [37] In respect of the supplementary submissions in reply, the full document was uploaded and the email notification sent on 8 March 2021. Therefore, service would not be deemed effective until 11 March 2021.
- [38] At the hearing on 9 March 2021 this issue was identified by Counsel for the applicant. It was submitted that the contents of page 2 of the supplementary submissions in reply were relevant in respect of the issues raised by an individual member, MAB. MAB provided submissions in response to the replacement document on 8 March 2021. Accordingly, there is no identifiable prejudice in relation to the service of page 2 of the supplementary submissions in reply.
- [39] In all of these circumstances, I am satisfied that service has been effected and in relation to page 2 of the supplementary submissions in reply, MAB has been provided with an opportunity to respond to that material.

Material provided by MAB

- [40] An individual member of the Fund, MAB, provided an affidavit sworn 25 January 2021, submissions dated 16 February 2021, supplementary submissions dated 3 March 2021 and third submissions dated 8 March 2021.
- [41] MAB did not appear at the hearing but requested that the material be considered by the applicant and the Court.
- [42] The documents were marked as Exhibits 1 – 4 at the hearing on 9 March 2021. The applicant considered this material and addressed the issues raised in the submissions to the Court. The issues will be discussed at a relevant place in these reasons.

Is the application properly brought under s 96 of the Trusts Act rather than the Corporations Act 2001 (Cth)?

- [43] A further threshold issue needs to be considered in respect of the s 96 application.
- [44] The applicant submits that s 96 of the Trusts Act is engaged as:
 - (a) it is a trustee of the Fund as it was appointed by the orders of de Jersey CJ dated 12 April 2013; and
 - (b) the Fund was established pursuant to a trust deed being the MPF Constitution, and it was otherwise constituted as a trust.
- [45] However, the applicant has also considered the issue as to whether the Fund is a lawfully unregistered managed investment scheme.
- [46] The Fund is within paragraph (a) of the definition of “managed investment scheme” in s 9 of the *Corporations Act 2001 (Cth)* (Corporations Act).
- [47] The Fund was unregistered. The applicant has undertaken investigations and concluded that the Fund was not required to be registered as a managed investment scheme under the Corporations Act as the Fund fell within the exception set out in s 601ED(2) of the Corporations Act.
- [48] The affidavit of Mr Villani filed 8 December 2020 outlines the relevant considerations in more detail. However, for current purposes, it is sufficient to note that:
 - (a) under s 601ED(2) of the Corporations Act, 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.
 - (b) the Fund was designed to be offered to investors outside of Australia, to global platform and portfolio investors and to institutional/wholesale investors. Accordingly, the provisions in relation to investors located outside the jurisdiction and non-retail clients operated such that the exemption in s 601ED(2) would have applied.

- [49] In the circumstances, the applicant contends that the Fund is a lawfully unregistered managed investment scheme.
- [50] The relevant consequence of this is that parts of the Corporations Act in relation to registered managed investment schemes do not apply to the Fund. If it had, the Court could have had an alternative power to give directions about the winding up of a registered scheme pursuant to s 601NF(2). However, as that part of the Corporations Act does not apply to the Fund, the application proceeds pursuant to s 96 of the Trusts Act.

What principles are to be applied in an application for judicial advice?

- [51] Whilst the members of the Fund have been served, no member has appeared in respect of the application. Some responses have been provided to the applicant (exhibited to a confidential affidavit) in response to the notification to the members about the application. The responses by the members are likely to be in respect of the individual positions of specific members.
- [52] At the conclusion of the first day of the hearing on 9 February 2021, the application was adjourned so that consideration could be given to the various responses and further submissions made by the applicant, if appropriate.
- [53] The applicant has considered these responses from members of the Fund, and also further responses received after 9 February 2021. Several further confidential affidavits have been filed which exhibit the further responses. These responses from members are addressed in the applicant's supplementary submissions and supplementary submissions in reply.
- [54] The responses from members of the Fund have been considered, as relevant, as part of the applicant's considerations in respect of the directions sought. The submissions address the issues raised in responses relevant to the specific directions sought.
- [55] In these circumstances, the applicant's application is without a true contradictor. Appropriately, the applicant has made detailed submissions in respect of the general principles to be applied in respect of an application seeking judicial advice.
- [56] The applicant has taken the Court to the statement of principle in *Marley v Mutual Security Merchant Bank and Trust Co Ltd*¹⁰ where Lord Oliver of Aylmerton stated at page 201:

"A trustee who is in genuine doubt about the propriety of any contemplated course of action in the exercise of his fiduciary duties and discretions is always entitled to seek proper professional advice and, if so advised, to protect his position by seeking the guidance of the court.

...

[I]n exercising its jurisdiction to give directions on a trustee's application the court is essentially engaged solely in determining

¹⁰ [1991] 3 All ER 198.

what ought to be done in the best interests of the trust estate and not in determining the rights of adversarial parties.”

[57] Further, the applicant relies on the High Court decision in *Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar The Diocesan Bishop of The Macedonian Orthodox Diocese of Australia and New Zealand*¹¹ in respect of the general principles in applications for directions such as the current application, including:

- (a) An important purpose of directions is the protection of the interests of the trust.¹²
- (b) There is no implied limitation on the power to give advice.¹³
- (c) There are no implied limitations on discretionary factors, including the adversarial nature of the proceedings about which the advice is sought.¹⁴
- (d) The procedure is summary in nature.¹⁵
- (e) The function of the advice is to give personal protection to the trustee. It operates as an exception to the Court’s ordinary function of deciding disputes between litigants.¹⁶
- (f) Judicial advice resolves doubt as to the propriety of the trustee’s actions, when the trustee acts in accordance with the advice given by the Court.

[58] Further, it is not ordinarily appropriate on an application under s 96 of the Trusts Act for the Court to determine controversies between parties to a trust.¹⁷

[59] However, there is also recognition that it is important for beneficiaries to be engaged in a “dialogue” with the trustee. From a practical perspective, it has been recognised that:

“... the ability of the court to provide well measured advice may be affected to the extent that it is not given the benefit of a full appreciation of what competing interests might say.”¹⁸

[60] The express terms of s 96 of the Trusts Act requires a written statement of facts. A statement of facts has been prepared by the applicant and is marked “A” of Exhibit JV-19 to the affidavit of Mr Villani.

[61] It has also been recognised that affidavits, as a matter of practice, have been filed verifying the statement of facts.¹⁹ That has also been done in this matter where the detailed affidavit of Mr Villani is relied upon by the applicant.

¹¹ (2008) 237 CLR 66.

¹² At [72].

¹³ At [56].

¹⁴ At [59].

¹⁵ At [61].

¹⁶ At [64].

¹⁷ *Togito Pty Ltd v Pioneer Investments (Aust) Pty Ltd* [2011] QCA 167 at [57]-[58] per Chesterman JA with whom the other members of the Court of Appeal agreed.

¹⁸ *Re Estate Late Chow Cho-Poon* [2013] NSWSC 844 at [199].

¹⁹ *Corbiere & Anor v Dullely & Ors* [2016] QSC 134 at [29] per Burns J.

[62] The Court is entitled to act on the facts stated by the trustee, even if they are contested or controversial.²⁰

[63] The applicant also refers to authorities dealing with applications for directions in respect of registered and unlawfully unregistered managed investment schemes under the Corporations Act. The applicant submits that these authorities are of some assistance to the current application given the breadth of the powers concerned and the factual overlap between registered and unregistered managed investment schemes.

[64] Austin J in *Australian Securities and Investments Commission (ASIC) v Tasman Investment Management Ltd*²¹ recognised that the Court's power to give directions is broad and stated as follows:

“[19] Although the winding up of a managed investment scheme proceeds within the appropriate general law framework, the statutory provisions governing the winding up of schemes give the court a great deal of flexibility. Subject to the provisions of the scheme's constitution in the case of a registered scheme, the court may use its statutory powers ... and its general statutory and inherent powers, to make appropriate orders for the winding up of the scheme ...

[20] ... The court may use its statutory and inherent powers to make orders and give directions in the course of the winding up of the scheme. For example, it may give directions in the nature of judicial advice, analogous to directions under s 479(3) ... or make orders approving a compromise, analogous to orders under s 477(2A) ...”

[65] The effect of making directions was considered by McLelland J in *Re G B Nathan and Co Pty Ltd (in liq)*²² as follows:

“... the only binding effect of, or arising from, a direction given in pursuance of such an application ... is that the liquidator, if he has made full and fair disclosure to the court of the material facts, will be protected from liability for any alleged breach of duty as liquidator to a creditor or contributory or to the company in respect of anything done by him in accordance with the direction.”

[66] Recognising that the application is to proceed by way of a relatively informal procedure, Austin J in *Australian Securities and Investments Commission v Tasman Investment Management Ltd*²³ summarised the approach as follows:

“[32] ... The question is whether, on the facts presented to me, I should direct [the liquidator of the managed investment scheme] that he is justified in [paying the net funds of the scheme to the investors in a certain manner]. The answer to this

²⁰ *Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar The Diocesan Bishop of The Macedonian Orthodox Diocese of Australia and New Zealand* (2008) 237 CLR 66 at [80]-[81].

²¹ (2006) 59 ACSR 113 at 118-119.

²² (1991) 24 NSWLR 674 at 679.

²³ (2006) 59 ACSR 113 at 121.

question does not depend upon in [sic] the court determining the rights of the investors to the scheme assets. It depends upon whether there is a reasonable basis for [the liquidator's] proposal, sufficient to persuade the court that it is proper to exonerate him from liability for implementing the proposal; or conversely, whether there is any good reason why the liquidator should not proceed as proposed ..."

- [67] Specifically, in respect of a liquidator's application for directions, it has been recognised that in such cases, the Court does not:

"[R]ubber [stamp] whatever is put forward by the liquidator but ... the court is necessarily confined in attempting to second guess the liquidator in the exercise of his powers, and generally will not interfere unless there can be seen to be some lack of good faith, some error in law or principle, or real and substantial grounds for doubting the prudence of the liquidator's conduct."²⁴

- [68] The applicant also points to a statement of Kerr J in *Australian Securities and Investments Commission (ASIC) v Piggott Wood & Baker (a firm) (No 6)*²⁵ at [25]:

"It is implicit that there may be contestable issues of fact or law yet such a direction nonetheless should be made: if it were otherwise, such a direction would be unnecessary."

- [69] In the current application, the statement of facts contains 72 paragraphs and is 14 pages in length. The statement of facts sets out in a degree of detail the relevant facts.

- [70] Further, the supporting affidavit of Mr Villani has substantive exhibits which also sets out in detail relevant facts, but goes further to explain the logic and reasoning behind the applicant's approach. It is submitted that this approach has been taken to demonstrate that:

- (a) each of the applicant's proposals has a reasonable basis; and
- (b) the directions sought by the applicant are its best attempts to resolve the various issues raised in the winding up of the Fund.

Directions sought

- [71] The application seeks 10 separate directions. One relates to the unitholder transaction register, five relate to specific accounts, three relate to specific categories of members and one relates to how a refund from the Australian Taxation Office in relation to withholding tax should be dealt with.
- [72] It is necessary to consider each of these directions separately by reference to the facts set out in the statement of facts, as supplemented by the affidavit of Mr Villani and other affidavit material.
- [73] Paragraphs one to 19 of the statement of facts sets out relevant background facts in respect of the Fund and the winding up of the Fund. I do not repeat those facts here

²⁴ *Re Spedley Securities Ltd (in liq)* (1992) 9 ACSR 83 at 85.

²⁵ [2019] FCA 672.

but have had regard to them for the purposes of the consideration of the directions sought.

Paragraph 1(a) – the appropriate unitholder register to adopt

- [74] In paragraph 1(a) of the application the applicant seeks a direction that it is justified in adopting the unitholder register titled “Register 1.xlsx” as the unitholder register of the Fund, for the purposes of making a distribution to members and finalising the winding up of the Fund.
- [75] Five versions of the unitholder register for the Fund were provided to the applicant between April and October 2013. The applicant has reviewed the five versions and undertaken analysis of the unitholder registers and sought to reconcile the differences between them.
- [76] Following this analysis, the applicant has formed the view that Register 1 is the most accurate and complete unitholder register for the Fund.
- [77] Paragraph 22 of the statement of facts sets out the reasons upon which the applicant has formed this view. This includes consideration of the account IDs included in the registers, an investigation of discrepancies and a consideration of the unit quantities identified in the various versions of the register.
- [78] Paragraph 23 of the statement of facts provides that the applicant has updated Register 1 to incorporate updated email addresses of unitholders. It is proposed that the applicant make distributions to unitholders based on the updated version of Register 1.
- [79] The affidavit of Mr Villani sets out further details in respect of the analysis that has been undertaken and the conclusion reached.
- [80] I am satisfied on the facts set out in the statement of facts, and supplemented by the affidavit of Mr Villani, that the applicant has established a reasonable basis for the applicant’s proposal to adopt Register 1 as the unitholder register of the Fund. Based on the material before the Court and the explanation of the investigations undertaken by the applicant, Register 1 appears to be the most complete, accurate and up-to-date record.
- [81] In the circumstances I am satisfied that it is appropriate to make a direction as sought in paragraph 1(a) of the application.

Paragraphs 1(b) to 1(f) – proposed treatment of transactions in certain liability accounts

- [82] The applicant seeks directions as to whether its proposed steps in respect of funds in, and transactions relevant to, certain liability accounts are justified.
- [83] As set out in paragraph 24 of the statement of facts, the liability accounts were recorded in the trial balance of the Fund that was provided to the applicant upon its appointment as Trustee.
- [84] The liability accounts are identified in paragraph 25 in the statement of facts (including balances as at 12 April 2013) as follows:

- “(a) Account 20003, ‘returned investment payments’: (\$10,874.16).
- (b) Account 20200, ‘funds awaiting investment’: \$1,327,937.43.
- (c) Account 20400, ‘distributions payable’: \$179,512.39.
- (d) Account 20401, ‘investor funds payable (redemptions)’: \$851,375.73.
- (e) Account 20402, ‘accrued interest (distributions)’: \$1,578,257.96.”

[85] It is necessary to consider each of the accounts separately as they are distinct in respect of their nature and different issues arise for consideration.

Account 20003: Returned investment payments

[86] Paragraph 26 of the statement of facts identifies that LMIM used this account to record incidences where funds paid to unitholders were returned: for example, due to banking errors.

[87] In paragraph 1(b) of the application the applicant seeks a direction that it is justified in taking no further steps concerning the transactions recorded in Account 20003 that occurred prior to 1 July 2012, as identified in paragraphs 131 and 136 of the Villani affidavit.

[88] The applicant has undertaken a review of the transactions recorded in Account 20003.

[89] Paragraph 27 of the statement of facts provides that the applicant has determined that all transactions dated on and from 1 July 2012 were cleared from the account. Further, paragraph 28 of the statement of facts states that the applicant believes that the balance (\$10,874.16) in this account relates to transactions prior to 1 July 2012.

[90] In circumstances where there is a negative value for this account and that costs would be associated with undertaking a detailed analysis of the account prior to 1 July 2012, the applicant seeks a direction that it is justified in not taking any further steps in relation to this account.

[91] On consideration of the statement of facts and the supplementary explanation provided in the affidavit of Mr Villani, the applicant has established a reasonable basis for the course proposed by the applicant.

[92] As identified in *Australian Securities and Investments Commission (ASIC) v Tasman Investment Management Ltd*²⁶ the Court may give a direction to the effect that a trustee is justified in taking no further steps or making no further investigations.

[93] In circumstances, where investigations have already been undertaken by Mr Villani as outlined in his affidavit, I am satisfied that there is a reasonable basis for the applicant taking no further steps in relation to investigating the account prior to 1 July 2012.

²⁶ (2006) 59 ACSR 113 at 127-128 [63]-[66].

- [94] In the circumstances I am satisfied that it is appropriate to make a direction as sought in paragraph 1(b) of the application.

Account 20200: Funds awaiting investment

- [95] Paragraph 30 of the statement of facts identifies that LMIM used this account to record the receipt of investors' funds prior to units being issued in the Fund.
- [96] In paragraph 1(c) of the application, the applicant seeks a direction that it is justified in:
- (a) Taking no further steps concerning the transactions identified in paragraph 143 of the Villani affidavit;
 - (b) Returning the amounts identified in paragraph 144 of the Villani affidavit to the prospective investors who made the payments or, if the funds cannot be so returned, paying the balance to the Australian Securities and Investments Commission.
- [97] Following investigations by the applicant into this account from 1 July 2012, 26 credit transactions have been identified that were not reversed by the issue of units, or by other means. The 26 credit transactions exceed the balance in the account as at 12 April 2013 as the account was not reconciled for the period prior to 1 July 2012.²⁷
- [98] The applicant has further investigated these 26 credit transactions with the results as follows:
- (a) 18 of the credit transactions, totalling \$1,320,717 have been identified as "quarantined funds", as a result of the funds being received from investors after the Fund was closed to investment on 19 March 2013. Funds have been returned to 12 investors and attempts are being made to communicate with the remaining six investors. If the six investors cannot be contacted, the applicant intends to pay the balance to the Australian Securities and Investments Commission (ASIC).
 - (b) In respect of the five transactions identified in paragraph 143 of the Villani affidavit (totalling \$8,157.96) the applicant does not propose to take any further steps in relation to these five transactions as investigations revealed that:
 - (i) Three relate to a reversal of agent's commission, which has been recorded in a separate account;
 - (ii) One has a value of \$0.95 and no further analysis has been undertaken as it is not material; and
 - (iii) One relates to the receipt of funds in Turkish lira, which refers to a separate account.
 - (c) In respect of the three transactions identified in paragraphs 144 and 145 of the Villani affidavit, the applicant proposes to pay the identified amounts to the (former) unitholder or prospective investors as investigations have established that:

²⁷ Statement of Facts at [31]-[32].

- (i) One relates to a redemption payment that was returned in circumstances where the unitholder register records the redemption of all units held by the account.
- (ii) Two relate to payments received in the amounts in respect of which no units were issued.²⁸

[99] At the hearing on 9 March 2021 the applicant was invited to clarify the wording of the direction sought to reflect the proposed course of action.

[100] On 11 March 2021 a revised direction was proposed by the applicant, namely:

“Account 20200 (Funds Awaiting Investment): returning the amounts identified in paragraphs 144 and 145 of the Villani affidavit to the prospective investors who made the payments, or if the funds cannot be so returned, paying the balance to the Australian Securities and Investment[s] Commission.”

[101] This revised wording addresses the clarification raised at the hearing in respect of the proposed steps and reflects the proposal to return the monies as identified and any remaining funds to be paid to ASIC.

[102] On the facts set out in the statement of facts and supplemented by the affidavit of Mr Villani, the applicant has established a reasonable basis for the course proposed by the applicant.

[103] In the circumstances I am satisfied that it is appropriate to make a direction as sought in paragraph 1(c) of the application, with the revisions in accordance with the draft provided on 11 March 2021.

Account 20400: Distributions payable

[104] Paragraph 34 of the statement of facts identifies that LMIM used this account to record distributions payable to unitholders.

[105] Paragraph 1(d) of the application seeks a direction that the applicant is justified in:

- (a) Sending a notice to all members of the Fund, requesting that any unitholder who believes that they have not received a distribution for the period prior to 1 July 2012 come forward and provide relevant supporting documentation; and
- (b) Taking no further steps concerning the transactions recorded in account 20400 that occurred prior to 1 July 2012, as identified in paragraph 147 of the Villani affidavit, apart from assessing claims received from members of the Fund in response to the applicant’s notice.

[106] The language used in paragraph 42 of the statement of facts is that the applicant “proposes to send a notice to unitholders”. However, the supplementary affidavit of Mr Villani identifies that a notice has been sent to members requesting any unitholder who believes they have not received a distribution prior to 1 July 2012 to come forward and provide the relevant supporting documentation.

²⁸

Statement of Facts at [33].

- [107] Paragraph 151 of the Villani affidavit identifies that the notice was to be provided to the unitholders as part of the substituted service application ascertained at the same time as service of the documents in relation to the s 96 application. This has already been done.
- [108] As set out above in the consideration of the issue of service, the affidavit of Stacey Clisby sworn 9 February 2021 includes copies of the notifications which have been provided to unitholders. The sample letter provided at page 10 of the exhibit included a reference to paragraph 151 of the affidavit of Mr Villani and requests any unitholder who believes they are entitled to, but have not received a distribution prior to 1 July 2012 to come forward and provide the relevant supporting documentation proving their entitlement to a distribution.
- [109] At the hearing, it was submitted that given the notice had been given, the applicant proposes it will assess claims received and seeks a direction that it is justified taking no further steps apart from assessing such claims.
- [110] Paragraphs 35 to 41 of the statement of facts sets out the basis upon which the applicant proposes that this is a reasonable course of action. The applicant has reviewed the transactions from 1 July 2012 and determined that all transactions recorded after 1 July 2012 have a corresponding reinvestment or payment transaction. It is in these circumstances that the applicant believes that the balance in the account relates to unreconciled transactions prior to 1 July 2012.
- [111] A full analysis of the account prior to 1 July 2012 has not been undertaken given the costs that would be involved in undertaking that task.
- [112] However, some preliminary analysis has been undertaken including a sample review of transactions. These initial investigations have established that a manual review would be required in relation to the account. Consequently, the applicant does not propose to undertake any further review of the account given the time and costs associated with a manual review.
- [113] It is in these circumstances that the applicant proposed and sent a notice to unitholders requesting any unitholder 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.
- [114] The applicant received 13 emails in the responses which relate to this issue and concern missed payments or distributions.²⁹
- [115] The applicant has considered these responses and there is nothing in the responses which alters the view of the applicant as to how this issue should be dealt with.
- [116] The direction sought by the applicant does not concern the correctness of any assessment the applicant may make in respect of any claim. Rather, it seeks a direction that it take no further steps concerning transactions recorded prior to 1 July 2012 apart from assessing claims received from members in response to the notice.

²⁹ Twelve emails referred to in the supplementary submissions and one email referred to in the supplementary submissions in reply.

- [117] The applicant has indicated that it is of the view that the correspondence received to date does not establish an entitlement by any person to support a distribution of income in respect of the period prior to 1 July 2012.³⁰ The applicant intends to proceed to finalise its assessment of the claims it receives including claims that may yet be received. It is not the task of the Court on this application to evaluate any assessment of claims.
- [118] On the basis of the statement of facts and the supplementary material contained in the affidavit of Mr Villani and the further affidavits, I am satisfied that the applicant has established a reasonable basis for the course proposed by the applicant.
- [119] In the circumstances, I am satisfied that it is appropriate to make the direction contained in paragraph 1(d) of the application, as modified to take account of the fact that notice has already been provided to members.

Account 20401: Investor funds payable (redemptions)

- [120] Paragraph 43 of the statement of facts identifies that LMIM used this account as a clearing account to process redemptions prior to payment.
- [121] Paragraph 1(e) of the application seeks a direction that the applicant is justified in paying the amounts identified in paragraph 156 of the Villani affidavit to the members identified in the Trustee Redemption Schedule. At the hearing on 9 March 2021 the reference to the affidavit of Mr Villani was corrected to paragraph 156.3.
- [122] The statement of facts at [44] to [45] and supplemental affidavit of Mr Villani set out the investigations undertaken by the applicant in relation to this account.
- [123] It has been identified that 435 redemption transactions were recorded to this account in respect of which unit holdings were reduced, but no payment was made by LMIM.
- [124] Consideration has also been given to two Redemption Schedules provided to the applicant by the administrators appointed to LMIM and by Mr Hannan. A similar number of redemption transactions are recorded in these two Redemption Schedules: namely, 435 and 432.
- [125] Further analysis has also established that approximately 96 percent of these transactions occurred on or after 16 February 2013 which was approximately one month prior to the closure of the Fund.
- [126] The applicant received four emails in the responses which are relevant to this issue.³¹ The four emails related to members where unitholdings had been reduced by the former trustee but to whom no payment had been made.
- [127] On analysis by the applicant, these four members are listed on the trustee Redemption Schedule proposed by LMIM.
- [128] Accordingly, these members are already proposed to be dealt with in accordance with the proposed direction sought by the applicant.

³⁰ Affidavit of S Clisby filed 9 February 2021 at [15]; Affidavit of D Johnstone at [14].

³¹ Three emails referred to in the supplementary submissions and one email referred to in the supplementary submissions in reply.

- [129] In the circumstances, the applicant proposes to pay the redemption amounts to members where their unitholdings were reduced but no payment was made by LMIM before the closure of the Fund.
- [130] On the basis of the statement of facts and the supplementary material contained in the affidavit of Mr Villani and the further affidavits, I am satisfied that the applicant has established a reasonable basis for the course proposed by the applicant.
- [131] In the circumstances I am satisfied that it is appropriate to make the direction contained in paragraph 1(e) of the application, with the corrected reference to paragraph 156.3 of the Villani affidavit.

Account 20402: Accrued interest (distributions)

- [132] Paragraph 47 of the statement of facts identifies that LMIM used this account to record accrued distribution entitlements prior to distributions being formally processed.
- [133] Paragraph 1(f) of the application seeks a direction that the applicant is justified in:
- (a) Making the payment identified in paragraph 169 of the Villani affidavit; and
 - (b) Otherwise taking no further steps concerning the transactions recorded in Account 20402.
- [134] The investigations undertaken by the applicant reveal that once a distribution was made, it was recorded by clearing the relevant balance in liability in Account 20402 and recording a liability in Account 20400.
- [135] As a result of this, the applicant believes that this account contains accrued distributions which LMIM had not processed as of the date of the appointment of the new trustees.
- [136] As stated in paragraph 50 of the statement of facts, the investigations reveal one transaction where a single holder remains a Class A account. It appears that this unitholder selected a distribution rule of "reinvest yearly" and the last reinvestment transaction occurred on 7 May 2012.
- [137] In the particular circumstances of this transaction, the applicant proposes to pay the unpaid distribution to this unitholder, as accrued but unpaid distributions are not reflected in the unit price for Class A units. The unitholder has otherwise been deprived of the distribution that accrued between 8 May 2012 and the closure of the Fund on 19 May 2013.
- [138] In relation to the other transactions identified in respect of this account, the applicant does not consider it necessary to take any steps in respect of these transactions. This is on the basis of the unit prices of the classes of units issued reflect accrued but unpaid distributions.
- [139] On the basis of the material set out in the statement of facts and supplemented by the affidavit of Mr Villani, the applicant has established a reasonable basis for the course proposed by the applicant.

- [140] In the circumstances, it is appropriate to make a direction in accordance with paragraph 1(f) of the application.

Unitholdings past maturity

- [141] Paragraph 51 of the statement of facts identifies that investments in the Fund ordinarily remain for a fixed term of between one and five years, with investors able to elect to automatically roll over their investment to a new term upon maturity, or to redeem their investment.
- [142] Paragraph 1(g) of the application seeks a direction that the applicant is justified in not taking any steps in relation to members of the Fund whose investments expired prior to the closure of the Fund on 19 March 2013, but whose units in the Fund were not redeemed, as identified in paragraph 176.4 of the Villani affidavit.
- [143] The investigations by the applicant have identified one investor described as “the Matured Investor”, who submitted an application form on 27 July 2010 providing for a two year investment with the investment being paid out on maturity. In August 2012, some of the units were redeemed and again some further units were redeemed in February 2013. However, at the time of the closure of the Fund on 19 March 2013 the Matured Investor still held units in the Fund.
- [144] The investigations by the applicant do not reveal why LMIM did not cause the balance of the Matured Investor’s unitholding to be redeemed in August 2012.
- [145] The investigations by the applicant also looked into whether there are any other unitholders where the terms of investment had expired. The investigations identified 600 accounts where the term of the investment appears to have expired prior to the closure of the Fund where the units were not redeemed.
- [146] However, from the analysis and investigations undertaken, LMIM did not process redemptions of these units and they remained unitholders when the Fund was closed on 19 March 2013 and when the new trustees were appointed on 12 April 2013.
- [147] It is in these circumstances that the applicant seeks a direction that it is justified in not taking any steps in respect of these unitholders.
- [148] The affidavit of Mr Villani sets out further details in relation to the investigations undertaken and the consideration of this issue.
- [149] The investigations undertaken included a review of a sample of the 600 accounts identified. In some cases, redemption documentation was on file, but no redemption was ever processed or paid. In some cases, no redemption documentation was located. Further, in some cases rollover instructions appear to have been provided but are not reflected in the unitholder register.³²
- [150] The affidavit of Mr Villani also contains an estimate of the costs that would be incurred in undertaking a review of the documentation held for each of the 600 accounts concerned. The Trustee estimates costs of approximately \$40,000 to \$60,000 would be incurred to undertake a full review.

³² Villani affidavit at [176.7].

- [151] Further, the applicant also considered clause 7.3(d) of the Constitution. Pursuant to this clause, even if the term of a member's investment was to expire, a member who wished to withdraw was required to provide a Withdrawal Notice to the trustee, before the expiry of their fixed investment term. If this was not done, the member would be deemed to have elected to renew their investment.
- [152] Further, pursuant to clause 7.4(b)(ii) of the Constitution, even if a member made a withdrawal request, the manager (being LMIM at the time) had a broad discretion to refuse to agree to withdrawal requests. Clause 7.4(b)(ii) is expressed as being in the absolute discretion as "... the Manager considers in its absolute discretion may be detrimental to the interests of Members in the Scheme".
- [153] In circumstances where LMIM did not process any redemptions of the identified units, this may have occurred as a result of either the members not making a withdrawal request within time and the investments automatically renewed or LMIM exercised its discretion not to agree to the withdrawal request having regard to the position of the Fund at the time any such request was made.
- [154] In the circumstances where there are considerable costs involved in undertaking the review of the documentation and those further investigations may not conclusively determine the position under clauses 7.3(e) and 7.4(b) of the Constitution, the applicant seeks a direction that is justified in not taking any steps in respect of the unitholders identified.
- [155] The applicant received in excess of 16 emails in the responses from members which relate to this issue. The affidavit and submissions of MAB, referred to earlier in these reasons, are also relevant to this issue. There is also correspondence included in these responses from the Matured Investor which is also specifically considered in relation to this issue.
- [156] The applicant's supplementary submissions and supplementary submissions in reply further develop the applicant's position.
- [157] Generally, the responses from members indicate that they made a request prior to the closure of the Fund, which the former trustee never acted upon.
- [158] As a consequence, the applicant's position is that "Past Maturity Members" are in a different category to the "Redemption members" discussed above in respect of the relief claimed in paragraph 1(e) of the application.
- [159] Based on the investigations undertaken by the applicant, it has reached the view that LMIM did not accept the Past Maturity Members' redemption requests as evidenced by it not taking any steps to process the redemption as their unitholdings were not reduced and no amounts were paid to the clearing account, 20401. Based on these circumstances, the applicant has reached the conclusion that:
- (a) LMIM must have determined that withdrawal requests had not been made within time and consequently, the members were deemed to have elected to renew their investments pursuant to clause 7.3(e) of the Constitution; or
 - (b) LMIM must have exercised its discretion not to agree to the withdrawal requests, having regard to the position of the Fund at the time any such request was made, pursuant to clause 7.4(b)(iii) of the Constitution.

- [160] It is helpful to consider the different position in respect of the Redemption Members. In respect of those members, the investigations show a reduction in the unitholdings of the Redemption Members but not payments out of account 20401, which was used as a clearing account to process redemption prior to payment.
- [161] It appears from the steps taken in respect of the Redemption Members that LMIM accepted the redemption requests and was processing the redemption transactions by:
- (a) reducing the unitholdings;
 - (b) paying the redemption payments into account 20401; and
 - (c) recording details of the units reduced and amounts payable in the Trustee Redemption Schedule. The only outstanding action was payment of these amounts that did not occur prior to the closure of the Fund.
- [162] The steps at (a), (b) and (c) above are absent in respect of the Past Maturity Members.
- [163] This supports the reasonableness of the different approach proposed by the applicant.
- [164] MAB and the Matured Investor are addressed specifically in the applicant's submissions but are generally in the same category as the Past Maturity Members.
- [165] In respect of the Matured Investor, the investigations reveal that a small number of units were redeemed on 20 August 2012 and 20 February 2013.³³ However, at the closure of the Fund on 19 March 2013 the Matured Investor still held 3,672.96 units in the Fund.³⁴
- [166] In respect of MAB, there are extensive submissions by the applicant and MAB dealing specifically with MAB's circumstances. It is not the role of the Court on an application under s 96 of the Trusts Act to make findings of fact or to resolve disputes between parties.
- [167] The approach is to consider whether there is:
- (a) a reasonable basis for the proposal sufficient to persuade the Court that it is proper to exonerate the trustee from liability for implementing the proposal; or
 - (b) whether there is any good reason why the liquidator should not proceed as proposed.
- [168] Based on the investigations undertaken by the applicant, MAB does not have a redemption recorded in the unitholder ledger and has not had his unitholding reduced.³⁵ The three steps at [161] (a), (b) and (c) identified above are absent in respect of MAB (similar to the Past Maturity Members).
- [169] The applicant proposes that the approach with respect to MAB should be consistent to that taken in respect of the Past Maturity Members.
- [170] The applicant has also taken the step of analysing the contemporary correspondence between MAB and LMIM. The applicant has reached the view that the

³³ Villani affidavit at [172.4]-[172.5].

³⁴ Villani affidavit at [172.6].

³⁵ Affidavit of S Clisby sworn 26 February 2021 at [21]; Exhibit SC-12.

correspondence supports a conclusion that LMIM exercised its discretion not to agree to MAB's redemption request. The applicant accepts that the request was made but as no steps were taken, and taking into account the correspondence, the applicant has reached this view.

- [171] MAB in his submissions makes a number of arguments in support of his position that his redemption request should be paid out in priority. These include a "deemed acceptance" of his redemption request and the imposition of a time period within which requests are to be paid.
- [172] The applicant has considered these arguments and submits that given the very broad discretion on the trustee under the Constitution, these arguments are inconsistent and cannot be maintained.
- [173] The applicant has also considered the document referred to by MAB which was produced by the voluntary administrators.³⁶ The applicant has reached the view that this document shows that LMIM had not scheduled MAB's unitholding for repayment. It does show two distributions for payment on 19 May 2013 but that was after the closure of the Fund.³⁷
- [174] As a consequence of those further investigations, the applicant maintains its position in respect of MAB: that is, he is in the same category as the Past Maturity Members identified by the applicant.
- [175] On the material set out in the statement of facts and as supplemented by the affidavit of Mr Villani and further affidavits, the applicant has established a reasonable basis for the course proposed by the applicant.
- [176] In the circumstances, I am satisfied that it is appropriate to make a direction in accordance with paragraph 1(g) of the application.

Nominal unitholdings

- [177] Paragraph 56 of the statement of facts identifies three unitholders having a unit balance of less than 40 units. Further, none of these unitholders have a value of more than \$AUD50.00 and any distribution to these unitholders would be nominal.
- [178] Paragraph 1(h) of the application seeks a direction that the applicant is justified in not taking any steps in relation to those members of the Fund who have a unit balance of less than 40 units, as identified in paragraph 180 of the Villani affidavit.
- [179] The affidavit of Mr Villani outlines that the costs associated with contacting these members, administering the process of updating the unitholder register and making distributions would not justify the steps being undertaken in circumstances where the sums that would be available to the members are very small.
- [180] On the basis of the material set out in the statement of facts and supplemented by the affidavit of Mr Villani, the applicant has established a reasonable basis for the course proposed by the applicant.

³⁶ Affidavit of S Clisby sworn 26 February 2021 at [24]-[27]; Exhibit SC-12.

³⁷ Affidavit of S Clisby sworn 26 February 2021 at [32]-[33]; Exhibit SC-12.

- [181] In the circumstances, I am satisfied that it is appropriate to make a direction in accordance with paragraph 1(h) of the application.

Returned withholding tax

- [182] Paragraph 1(i) of the application seeks a direction that the applicant is justified in including an amount of Returned Withholding Tax in the funds available for distribution to current members of the Fund.
- [183] Paragraph 62 of the statement of facts identifies that the Australian Taxation Office (ATO) refunded an amount with respect to withholding tax, being an amount of approximately \$6.5 million dollars (after fees and disbursements in respect of the recovery).
- [184] The relevant facts in relation to the Returned Withholding Tax are set out in paragraphs 58 to 62 of the statement of facts. These relevantly include:
- (a) During 2008 to 2013, the financial statements of the Fund recorded a profit. On this basis, LMIM paid distributions to unitholders and remitted withholding tax to the ATO on behalf of the unitholders.
 - (b) Approximately \$7.9 million dollars of withholding tax was remitted to the ATO in respect of the Fund in the 2008 to 2013 financial years.
 - (c) The applicant reinstated the trust fund financial accounts for the 2008 to 2013 financial years.
 - (d) As a result of this reinstatement, the applicant sought the recovery of the Returned Withholding Tax on the basis that at the relevant time the Fund had insufficient income to permit or enable a distribution to unitholders.
 - (e) The ATO refunded the Returned Withholding Tax on this basis.
- [185] As identified in paragraph 63 of the statement of facts, the applicant proposes to include the Returned Withholding Tax in the funds available for distribution to the current unitholders of the Fund, instead of attempting to pay the Returned Withholding Tax to those current and former unitholders on whose behalf the withholding tax was paid.
- [186] The applicant relies on the affidavit of Mr Villani which sets out supplementary facts as well as a consideration of the relevant issues and an explanation for the proposed approach.
- [187] Relevantly:
- (a) The amount that individual members will receive is relatively small given the large number of members and units on issue in the Fund. The applicant estimates that if the refund was to be divided evenly between the members, they would each receive approximately \$1,760.
 - (b) The applicant sought the refund on the basis the tax payer in fact had a nil income for tax purposes for those years, and consequently no liability to pay withholding tax arose.

- (c) The applicant has taken reasonable steps to investigate possible bases for paying out the refund amount and has also obtained confidential legal advice in respect of potential claims, including in respect of potential claims by members.³⁸
- (d) The applicant has taken steps to notify members it proposes to include the Returned Withholding Tax in the funds available for distribution to current members.

[188] Paragraph 64 of the statement of facts addresses the consequences of returning the Returned Withholding Tax to the unitholders on whose behalf it was paid. This would result in a windfall benefit – unitholders received the distribution they should not have been paid and would also get a refund for tax on that distribution which should not have been paid.

[189] The affidavit of Mr Villani also sets out the basis upon which the applicant considers it is a reasonable approach to proceed by way of making the funds available for distribution to current members. These include:

- (a) As during the 2008 to 2013 financial years, the Fund did not receive income sufficient to permit distributions to be paid, no distributions should have been paid to those members who received distributions.
- (b) If the Returned Withholding Tax was returned to those members who had already received distributions, they would receive a windfall benefit. That is, they had the distribution which should not have been paid and would also get the Withholding Tax Refund, that was also refunded as the distribution, should not have been paid.
- (c) Members of the Fund were not entitled to receive distribution payments, and also amounts of withholding tax payable in respect of such payments.³⁹

[190] Paragraphs 64 of the statement of facts summarises this reasoning as follows:

“If the Returned Withholding Tax was to be returned to the unitholders on whose behalf it was paid, they would receive a windfall benefit. Those unitholders have already been paid the distribution (which they should never have been paid) and they would receive a refund of the Returned Withholding Tax for a distribution payment that should never have been paid.”

[191] On the material set out in the statement of facts and supplemented by the affidavit of Mr Villani, the applicant has established a reasonable basis for the course proposed by the applicant.

[192] In the circumstances I am satisfied that it is appropriate to make the direction in accordance with paragraph 1(i) of the application.

³⁸ The confidential legal advice has been provided to the Court as part of the evidence in support of the application.

³⁹ Villani affidavit at [190].

Foreign currency investors

- [193] Paragraph 1(j) of the application seeks a direction that the applicant is justified in calculating distributions to be made to members of the Fund who invested via currencies other than Australian dollars as follows:
- (a) By taking the value of each member's unitholding, based on the Australian dollar value for that unitholding recorded in Register 1, as at 19 March 2013 (AUD value of investment);
 - (b) By calculating the amount available for distribution by dividing each member's AUD value of investment against the Australian dollar value of all accounts recorded in Register 1, as at 19 March 2013.
- [194] As set out in paragraphs 66 to 68 of the statement of facts, clause 15.6 of the Constitution provides that subject to any special rights or restrictions attached to any unit, the Manager must distribute the net proceeds of realisation among the members in the same proportion specified in clause 11.4. However, the reference to clause 11.4 appears to be a typographical error and the correct reference is likely to be to clause 11.5 of the Constitution.
- [195] Clause 11.5 of the Constitution provides that 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.
- [196] During the course of the applicant's investigation, the applicant has identified that LMIM dealt with foreign currency investors in a different way to the methodology set out in clause 11.5 of the Constitution.
- [197] As set out in paragraph 69 of the statement of facts, LMIM dealt with the foreign currency investors as follows:
- “(a) LMIM set different unit prices for each foreign currency;
 - (b) when prospective unitholders made investments in foreign currency, LMIM calculated the units to be allotted using the applicable unit price for each currency;
 - (c) this had the effect of giving foreign currency investors more, or fewer, units than they would have received if they had invested in the equivalent amount of AUD;
 - (d) when foreign currency investments were redeemed, LMIM calculated the redemption amount using the unit price it had set for each foreign currency.”
- [198] Register 1, which is the unitholder register proposed to be adopted by the Trustee, recorded the AUD value of the unitholdings in the Trust as at 19 March 2013. Paragraph 70 of the statement of facts provides that the AUD value of the unitholdings is calculated by reference to the number of units held, the relevant unit price and exchange rate between the holding currency and AUD as at 19 March 2013.

- [199] The applicant seeks a direction that it is justified in calculating distributions to be made to unitholders who invested via currencies other than Australian dollars as proposed. This is particularly so in the circumstances where it is the view of the applicant that if foreign currency investor's distributions were paid in accordance with the distribution methodology in the Constitution, certain currency holders would receive significantly higher distributions than others.
- [200] The example given in the affidavit of Mr Villani is that if investments were made via Japanese yen and Singapore dollars, they would receive a higher distribution than those invested in British pounds.
- [201] The applicant submits that in an application for directions pursuant to s 96 of the Trusts Act, the Court does not determine substantive rights or entitlements such as the rights of investors to the scheme assets. The relevant question for the Court is whether there is a reasonable basis for the applicant's proposal, sufficient to persuade the Court that the trustee should be exonerated from liability for implementing it, or conversely, whether there is any good reason why the trustee should not proceed as proposed.⁴⁰
- [202] Further, the applicant refers to the comments by Robson J in *Re Timbercorp Securities Ltd (in liq) (No 3)*⁴¹ as providing some guidance as to the principles to be applied:
- “... [T]here are well recognised legal principles for determining the rights of several property owners whose property is lost or converted into a common fund. The fund, if it is created, is not to be allocated between the property owners on the basis of bargaining power. The fund is not to be allocated on arbitrary measures that may appear to be a fair and reasonable division of the fund. Rather, as the authorities establish, the fund is to be divided ‘by reference to the proportionate share of the fund measured by the extent and value of the claims or rights given up in exchange for an interest in the fund’.”
- [203] The applicant's proposal is in accordance with this principle. The proposal is consistent with the methodology adopted by LMIM to ascertain each member's “proportionate share of the fund” for the purpose of dividing the net proceeds of realisation. The adoption of the AUD value of investment is consistent with the methodology in place when the investments were made.
- [204] The applicant is of the view that the AUD value of investment provides a reasonable basis upon which to determine the proportionate share of the Fund attributable to each member.
- [205] While broad considerations of fairness may not be relevant to the determination of this issue, it is consistent with the practice that was adopted prior to the Fund being closed.

⁴⁰ *Australian Securities and Investments Commission v Tasman Investment Management Ltd* (2006) 59 ACSR 113 at 121 [32].

⁴¹ (2009) 74 ACSR 626 at [80].

[206] On the material set out in the statement of facts and the supplementary explanation provided in the affidavit of Mr Villani, the applicant has established a reasonable basis for the course proposed by the applicant.

[207] In the circumstances, it is appropriate to make the direction in accordance with paragraph 1(j) of the application.

Other matters

[208] The applicant's supplementary submissions deal with a number of other matters which the applicant has addressed which arise out of the responses from members. These are not directly relevant to the directions sought but are part of the matters considered by the applicant as to the overall appropriateness and reasonableness of its proposed approach.

[209] The applicant has considered these matters and reached the view that no adjustment or amendment to its proposed approach is required.

[210] Some of the responses were general enquiries regarding unitholdings or the timing of any distribution.

[211] Other responses include more substantive enquiries such as:

- (a) Switch discrepancies. Some of the responses show some uncertainty as to the effect of a "switch" in A class units to B class units, with distributions of income thereafter being redemptions. The applicant provided further information to those investors explaining the effect and provided further supporting information.
- (b) Global platform investors or beneficiaries. The applicant referred these enquiries to the global platform holder, as they are the members of the Fund.
- (c) Proposed treatment of AUD investors. There is no direction sought in respect of AUD investors but the applicant has addressed this issue in the confidential affidavit of Ms Clisby sworn 9 March 2021. This is addressed as it was raised in the responses from members and also for completeness. The contents of the affidavit are noted.

[212] It is not necessary to deal with these other matters in detail as they do not directly effect the relief sought and have been addressed in the applicant's submissions to the extent necessary. These matters do not alter the directions sought by the applicant or my considerations outlined in these reasons.

Costs

[213] The applicant seeks costs to be paid out of the Fund, on an indemnity basis. In the circumstances, I am satisfied that the proposed order in respect of costs is appropriate.

Orders

[214] Accordingly, I direct that:

THE COURT DIRECTS THAT:

1. The applicant is justified in:

- (a) The appropriate register: adopting the unitholder transaction register titled "Register 1.xlsx" identified in paragraph 66 of the affidavit of Mr Jarrod Villani filed 8 December 2020 (court document 42, hereafter the Villani affidavit) as the unitholder register of the MPF, for the purposes of making a distribution to members and finalising the winding up of the LM Managed Performance Fund (the Fund);
- (b) Account 20003 (Returned Investment Payments): taking no further steps concerning the transactions recorded in Account 20003 that occurred prior to 1 July 2012, as identified in paragraphs 132 and 137 of the Villani affidavit;
- (c) Account 20200 (Funds Awaiting Investment): returning the amounts identified in paragraphs 144 and 145 of the Villani affidavit to the prospective investors who made the payments, or if the funds cannot be so returned, paying the balance to the Australian Securities and Investments Commission;
- (d) Account 20400 (Distributions Payable): having sent a notice to all members of the first respondent, requesting any unitholder who believes they have not received a distribution for the period prior to 1 July 2012 to come forward and provide relevant supporting documentation, taking no further steps concerning the transactions recorded in Account 20400 that occurred prior to 1 July 2012, as identified in paragraph 148 of the affidavit of Villani, apart from assessing claims received from members of the first respondent in response to the applicant's notice;
- (e) Account 20401 (Investor Funds Payable (Redemptions)): in paying the amounts identified in paragraph 156.3 of the Villani affidavit to the members identified in the Trustee Redemption Schedule;
- (f) Account 20402 (Accrued Interest (Distributions)):
 - (i) making the payment identified in paragraph 169 of the Villani affidavit;
 - (ii) otherwise taking no further steps concerning the transactions recorded in Account 20402;
- (g) Unitholdings past maturity: not taking any steps in relation to members of the Fund whose investments expired prior to the closure of the Fund on 19 March 2013, but whose units in the Fund were not redeemed, as identified in paragraph 177.3 of the Villani affidavit;
- (h) Nominal unitholdings: not taking any steps in relation to those members of the Fund who have a unit balance of less than 40 units, as identified in paragraph 181 of the Villani affidavit;
- (i) Refunded withholding tax: including the Returned Withholding Tax in the funds available for distribution to current members of the Fund; and
- (j) Foreign currency investors: calculating distributions to be made to members of the Fund who invested via currencies other than Australian dollars as follows:

- (i) by taking the value of each member's unitholding, based on the Australian dollar value for that unitholding recorded in Register 1, as at 19 March 2013 (AUD Value of Investment);
- (ii) by calculating the amount available for distribution by dividing each member's AUD Value of Investment against the Australian dollar value of all accounts recorded in Register 1, as at 19 March 2013.

[215] Further, I order that:

THE COURT ORDERS THAT:

2. The applicant's costs of and incidental to the application filed 8 December 2020 be paid out of the assets of the Fund, on the indemnity basis.



Link Market Services Limited
ABN 54 083 214 537
AFS Licence No. 230895

Level 12
680 George Street
Sydney NSW 2000
Australia

January 20, 2021

Mrs. Stacey Clisby
Director
KordaMentha Restructuring
KordaMentha Pty Limited
Level 14, 12 Creek Street,
Brisbane QLD 4000, Australia

Dear Stacey

Insolvency Solutions Letter Agreement

This is an Agreement between **KordaMentha Pty Limited** ABN 43 100 169 391 in its capacity as **Trustee ("Trustee")** of the **LM Managed Performance Fund ("the Fund")** and **Link Market Services Limited** ABN 54 083 214 537 ("**Link**") ("**the Parties**") for the provision of services as set out in Appendix 3 ("**the Services**") and for the LM Managed Performance Fund unitholder register ("**the Matter**") (Oscar Code LMFI) at fees based on the insolvency standard fees schedule and shown in Appendix 1 ("**the Fees**"). We have also included a draft process flow in Appendix 2, for your consideration.

This Letter Agreement constitutes the entire agreement between the parties and overrides the provisions of any other agreement or understanding between the parties with respect to the Services.

Both parties acknowledge and agree that they have the power, skills and knowledge to enter into this Letter Agreement and carry out its obligations under this Letter Agreement for the Matter.

Term

This Letter Agreement comes into force at the date of this Letter Agreement and remains in force until the earliest of the following dates:

- (a) where an order is made for the liquidation of the Parties except for the purpose of amalgamation;
- (b) where a receiver, manager, administrator or controller is appointed to the assets or undertaking of the Parties or any part of it; or
- (c) if any party commits a material breach of any provision of this agreement ("**Defaulting Party**") the other party may give written notice to the Defaulting Party specifying the alleged breach and if the Defaulting Party does not rectify or make good the breach within 20 Business Days after the service of that notice the other party may terminate this agreement with immediate effect by notice in writing to the Defaulting Party; or
- (d) 6 (Six) months from the date of this Letter Agreement ("**Initial Term**") unless specified earlier by the Fund in accordance with termination provisions of this agreement; or
- (e) at the expiry of the Initial Term or any modified date pursuant to paragraph (d) and each succeeding renewal, the agreement is automatically renewed for a further 1 month ("**Renewal Term**") unless terminated.

Events on Termination

Upon termination of this agreement for any reason and after all amounts properly due and payable, as agreed between the parties under this agreement have been paid, Link must provide the Company with all records and must use its best endeavours to assist the Fund or its agent or contractor promptly to take over all the functions, duties and responsibilities of Link under this agreement in an orderly manner within 20 business days. Further, Link must provide the Fund or such person as the Fund

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may appoint, all files, records, ledgers and documentation and all stationery or office materials particular to the register, and all other material of any kind which are the property of the Fund. Any files, records, ledgers and documentation not returned to the Fund must be destroyed by Link.

Fees

The Fund must pay to Link from the date of this Letter Agreement fees for the Services referred to in Appendix 1, payable monthly in arrears for the Matter.

An invoice must be provided to the responsible person(s) from the Fund and the Fund must make payment of the invoice within 14 days of receipt of the invoice.

All fees are exclusive of GST, any tax, duty or other governmental impost which is or at any time becomes payable in respect of this Letter Agreement or the Services. Any such tax, duty or other impost (other than income tax) must be paid by the Fund upon demand from Link for the period no greater than commencement to the end or termination date of same.

Fees shall be adjusted on the anniversary of this agreement and annually thereafter, in accordance with changes in the Australian Consumer Price Index (All Groups). The adjustment to the Fees shall be applied to the next invoice period commenced after the review date.

"GST" means any tax payable under A New Tax System (Goods & Services Tax) Act 1999 or any related Act or Regulations.

Validity

This Agreement and the prices contained therein are valid for 60 days from the letter date.

Information Received

Link is entitled to rely on any information provided by or on behalf of the Fund. Link will not be liable for anything done or omitted to be done by it in error in reliance on any information, notice or other document or direction reasonably believed by it to be genuine or given by or on behalf of the Fund. Where Link is required to correct any incorrect information provided to it by the Fund, Link will provide the Fund with a quotation for the correction of the error and will use reasonable endeavours to correct the information within 5 business days. Where Link is aware the correction of the error will take longer than 5 business days, it will notify the Fund.

Fund Indemnity

The Fund indemnifies, and must keep indemnified, Link and its officers, employees, agents and representatives ("the Indemnified Persons") against all proceedings, claims, demands, damages, reasonable amounts paid in settlement, reasonable costs and expenses, losses and liabilities of whatever nature (whether actual or contingent) suffered or incurred by, or sustained or threatened against, the Indemnified Persons (including interest, reasonably incurred legal fees and expenses charged at the usual commercial rates of the legal services provider) arising:

- (a) out of Link's observance of this Letter Agreement or Link acting on the instructions of the Fund;
- (b) in respect of any tax, brokerage, commissions, acquisition price and costs, penalties and other expenses arising out of the performance of its obligations under this Letter Agreement and all costs and expenses incidental to any of the foregoing;
- (c) from Link acting on any information or document provided to it by the Fund, its officers, employees or agents and which Link reasonably believed to be genuine notwithstanding that the information or document is or becomes false, misleading, inaccurate or incomplete; (d) in connection with certification and reporting requirements, claims for exemption or refund, additions for late payment, interest, penalties and other expenses (including legal expenses) that may be assessed against Link on account of the Fund;
- (d) as a result of any breach of this Letter Agreement by the Fund or its officers, agents or employees, including any breach in connection with Link's Confidential Information and any breach of a warranty, covenant, or obligation under this Letter Agreement; or
- (e) any negligence, fraud or misconduct of the Fund or any breach by the Fund of any law or any fiduciary or other duty owed to any person.

The Fund is not obliged to indemnify the Indemnified Persons arising out of the default, dishonesty, negligence, fraud, misconduct, inadvertent errors or any breach of this Letter Agreement or any breach of any other applicable legislation associated with providing the Services, by Link or its employees or agents.

Link agrees that the Fund's liability for any loss or damage suffered by the Link in connection with this agreement, including (without limitation) liability for any negligent act or omission or misrepresentation of Link, shall be limited to three times the amount of fees paid by the Fund to Link under this agreement, and Link agrees to release the Fund from all claims arising in connection with this agreement to the extent that the Fund's liability in respect of such claims would exceed the amount of those fees.

Link agrees that the Trustee's liability for any loss or damage suffered by the Link in connection with this agreement, including (without limitation) liability for any negligent act or omission or misrepresentation of Link, shall be limited to the Trustee's right of recourse to the assets of the Fund.

Link Indemnity

Link indemnifies, and must keep indemnified, the Fund and its officers, employees, agents and representatives ("the Indemnified Persons") against all proceedings, claims, demands, damages, reasonable amounts paid in settlement, reasonable costs and expenses, losses and liabilities of whatever nature (whether actual or contingent) suffered or incurred by, or sustained or threatened against, the Indemnified Persons (including interest, reasonably incurred legal fees and expenses) arising:

- (a) as a result of any breach of this agreement by Link or its officers, agents, employees, including any breach in connection with the Fund's Confidential Information and any breach of a warranty, covenant, or obligation under this agreement; or
- (b) any negligence, fraud or misconduct of Link or any breach by Link of any law or any fiduciary or other duty owed to any person.

The Fund agrees that Link's liability for any loss or damage suffered by the Fund in connection with this agreement, including (without limitation) liability for any negligent act or omission or misrepresentation of Link, shall be limited to three times the amount of fees paid by the Fund to Link under this agreement, and the Fund agrees to release Link from all claims arising in connection with this agreement to the extent that Link's liability in respect of such claims would exceed the amount of those fees.

Where Link has made an error in the performance of the Services, Link will use all reasonable endeavours, in a reasonable timeframe to be agreed between the Parties upon identification of said error on a case-by-case basis, to remedy such error. Remedy includes but is not limited to, liaising with all required stakeholders for the retrieval of incorrectly paid distributions to unit holders and the provision of monies for the Fund to re-distribute to the correct unit holder(s). Link agrees to take such reasonable other steps requested by the Fund to recover any monies wrongfully paid as a result of any error in the performance of the Services.

Amendment

This Letter Agreement can be amended or modified by written agreement.

Information Security Management System

Link complies with the requirements of **ISO/IEC 27001:2013** for the provisioning of services for Funds Administration, Corporate Markets and Technology and Innovation in accordance with the Statement of Applicability version 1.3.3 dated 29/04/2018 as provided in Appendix 5.

Confidential Information

Confidential Information communicated by a party to another party must:

- (a) be received in strict confidence;
- (b) only be used in accordance with this Letter Agreement; and
- (c) not be disclosed to third parties without the prior written consent of the party supplying the information.

If Confidential Information in which a party has an interest is disclosed to a third party in contravention of this Letter Agreement, whether inadvertently or otherwise, the other party must notify the party with the interest in the Confidential Information as soon as practicable.

The provisions of this Clause will continue after the termination of this Letter Agreement.

"Confidential Information" means any information relating to or belonging to a party which comes into the possession of the other party in connection with this Letter Agreement and which is imparted in confidence but in any event includes:

- (a) in the case of information relating to or belonging to Link, processes, intellectual property, systems and application architecture, computer programs, software and technology, databases, computer hardware, business processes, administration processes, strategic technology and programs, report formats and any other information about the business affairs of Link used by it in undertaking its business activities;
- (b) in the case of the Fund, all information furnished by the Fund;

but does not include information which:

- (c) is in the public domain,
- (d) is provided to a participant and relates to that participant;
- (d) the recipient can demonstrate was known to it prior to the disclosure to it by the other party;
- (e) is developed by the recipient outside the scope of this Letter Agreement;
- (f) is obtained by the recipient from a third party having the legal right to disclose that information to the recipient;
- (g) is disclosed in accordance with the order of, or direction by, any court, tribunal or other governmental authority where the order or direction either must be followed by law or would ordinarily be followed having regard to industry practice.

Privacy Compliance

Link confirms that it has adequate operational procedures and policies to appropriately deal with the receipt and managing of personal and sensitive information which may be provided as books and records of the Fund. Link will at all times comply with the relevant and applicable Federal and State laws dealing with privacy, and the privacy of information. Link must provide the Fund with a copy of their current Privacy Policy and IT Security Policy.

Business Continuity

Link confirms that it has a board endorsed business continuity plan to action in the event a disaster is declared by the Board. A disaster typically involves a whole of site loss although it could extend to any sudden unplanned event that dramatically impacts Link's profitability, reputation or ability to operate. In the event of a disaster, Link will use all reasonable endeavors to minimize the impact of the disaster and restore Services as soon as practically possible. Link's obligations under this clause are without prejudice to the Fund's rights in the event of a force majeure.

Non-Exclusive

This Letter Agreement is not exclusive. Accordingly, both parties may provide or procure services of the same type to or from any person/s.

Severability

If any provision of this Letter Agreement is void, voidable or unenforceable that provision will be severed and the remainder of this Letter Agreement will have full force and effect unless it would alter the basic nature of this Letter Agreement.

If a party reasonably believes that severance of an invalid or unenforceable provision materially affects its position under this Letter Agreement, each party agrees to exercise, in good faith, its best efforts to agree with the other party to replace that severed provision to put the parties as far as possible in the position that they would have been in had the severed provision remained effective.

Governing Law

This Letter Agreement takes is governed by, and will be interpreted in accordance with, the laws of the State of NSW. Each party unconditionally submits to the jurisdiction of the courts of NSW.

EXECUTED AS AN AGREEMENT ON THE DATE IDENTIFIED ABOVE

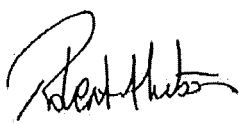
Signed by an authorised representative of)

KordaMentha Pty Limited ABN 43 100 169 391 in its)

capacity as Trustee of the LM Managed Performance)

Fund)

in the presence of:

) 
.....

) Authorised Signatory

Partner
.....

Position held

Signed by an authorised signatory of

Link Market Services Limited

ABN 54 083 214 537

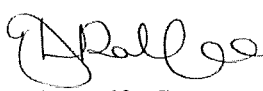
in the presence of:

) 
.....

) Authorised Signatory

Lysa McKenna, Director
.....

Position held



Janine Rolfe, Company Secretary

Appendix 1

KORDAMENTHA PTY LIMITED INSOLVENCY SOLUTIONS SCHEDULE OF FEES LM MANAGED FUNDS FEES (LMFI)

Services	Rate and Basis	Fee (\$) Ex GST
1. Call Centre Services		
Responding to telephone from Holders¹ or their agents relating to the Register of the Holders and in line with the agreed Q&A (8.30am to 5.30pm Sydney time Monday to Friday). This service relates to a <u>reserved</u> Telephone Number 1300 733 154, and International callers should dial +61 1300 733 154	Call center line set up Plus Per call fee	\$1,500.00 Once off \$8.50
Call Centre scripting (if required)	Per Script @ consultancy rates	If required
Call/Email centre report	Daily @ \$120.00 per combined Contact and Email Centre reports	If required
Call centre report	Monthly	Included
Q&A	Link will provide templates for client's modification. Assistance with updating or scripting @ consultancy rates.	If required
<u>Service levels</u> - 80% of all calls responded to within 30 seconds on monthly average. <u>Call center Live Date</u> - In general 48-72 hours after receipt of an approved Q&A from the client.		
2. Email Centre Services		
Responding to Emails based on Client's Q&A from Holders or their agents relating to the Register These services relate to email address eg: LMInvestments@linkmarketservices.com.au	Client Email Mailbox set up Plus Per call fee	\$950.00 Once off \$15.00
<u>Service level</u> - Same day auto-reply to the Holder and 1-2 days' specific reply to the Holder and practitioner for out of Q&A questions and as per the agreed business rules. Daily reports next business day (if required)		
<u>Escalations reports</u> - Contact and Email Center reports - At \$120 per report for the first few weeks of the project. Please note contact center and email center agents will report any questions outside of the Q&A for inclusion as an escalation in the reports and Link will close the system enquiry log as 'NFA- referred to the client'. The client will action/respond to the escalations included in the report.		
<u>Email In-box Live date</u> - In general 48-72 hours after receipt of an approved Q&A from the client.		

1. "Holders" means investors, creditors, Debentureholders, noteholders, employees and others with a security interest or a claim in the Matter;
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Services	Rate and Basis	Fee (\$)
3.Project Management & Data Migration		
Activities		
Establishment and system setup of register ▪ Initial setup ▪ Review of data (client to note this is based on the LM MPF unitholder register. Should this be significantly different from final list, then additional fees may apply) ▪ Upload of data ▪ Reconciliation of data ▪ Liaison with client and telephone meetings ▪ Q&A and business rules implementation ▪ Discussion of reporting requirements ▪ Design and production of initial documentation (if required)	Circa 10 business days and at scheduled hourly rates, for none consecutive days.	\$6,490.00 once only
Project Management and coordination of services ▪ assumed 1 hour per week 4 hours/month for 6 months	i.e. \$880.00 per month	\$5,280.00
4.Records Maintenance, form portal &extraction		
▪ Maintaining each Holder's record including name, address, communication options, TFN/ABN disclosure, noting, claim values (if required) and any other relevant details agreed to with the insolvency practitioner	\$0.90 Per record per month Same name multiple holders will be calculated on the basis of the number of records. (ordinarily \$5,292.9 per month). Assuming 5,881 holders based on the migration data – Client to confirm below details.	A 50% discount offered and hence \$2,646.45/month for 6 months i.e. total of \$15,878.70

	<table><tr><th>Class</th><th>Subclass</th><th>Security Name</th><th>No of holders</th></tr><tr><td rowspan="5">Global Portfolio Bond</td><td>1 Year</td><td>GPB1</td><td>1,289</td></tr><tr><td>2 Year</td><td>GPB2</td><td>383</td></tr><tr><td>3 Year</td><td>GPB3</td><td>1,074</td></tr><tr><td>4 Year</td><td>GPB4</td><td>14</td></tr><tr><td>5 Year</td><td>GPB5</td><td>152</td></tr><tr><td rowspan="5">Personal Investor</td><td>1 Year</td><td>PI1</td><td>728</td></tr><tr><td>2 Year</td><td>PI2</td><td>397</td></tr><tr><td>3 Year</td><td>PI3</td><td>1,304</td></tr><tr><td>4 Year</td><td>PI4</td><td>32</td></tr><tr><td>5 Year</td><td>PI5</td><td>355</td></tr></table>	Class	Subclass	Security Name	No of holders	Global Portfolio Bond	1 Year	GPB1	1,289	2 Year	GPB2	383	3 Year	GPB3	1,074	4 Year	GPB4	14	5 Year	GPB5	152	Personal Investor	1 Year	PI1	728	2 Year	PI2	397	3 Year	PI3	1,304	4 Year	PI4	32	5 Year	PI5	355
Class	Subclass	Security Name	No of holders																																		
Global Portfolio Bond	1 Year	GPB1	1,289																																		
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	3 Year	PI3	1,304																																		
	4 Year	PI4	32																																		
	5 Year	PI5	355																																		

Services	Rate and Basis				Fee (\$)
	Personal Investor Guarantee	1 Year	PIG1	20	
	Savings plan	5 Year	SP5	1	
	Special purposes offer	2 Year	SPO2	132	
	Total		13	5,881	
▪	Insolvency Form Portal – scanning of all received documentation relating to the Holder's records after processing. The site will be available to the client for searches and view the individual documents based on HRN for up to 24 months from appointment.	\$500 per month – Ordinarily \$3,000 for 6 months.			Not charged and included in appreciation of our association
▪	Data outbound migration & Extraction	Soft copies of all the documents/forms and images plus the investors register including all the data on project completion to be extracted and sent to the client.			\$5,000.00
5. Microsite Portal					
Secure Website for investors login and interaction	hosting and set-up White labelled with client's supplied high resolution logo Investors to login with (Investor or Account IDs) to confirm their details (for Joint Holders and Corporation updates are completed through physical forms available from the website) Provisioning for loading up to 10 circulars/PDFs relating to the matter. Confirmation auto-receipt sent via the Microsite when the Investor has completed their input of their data, edit and print.			<u>\$19,500.00</u> (wireframe invoiced in February \$3,700) hence remainder is \$19,500-\$3,700= \$15,800	
Data refresh Frequency (This is when an investor updates their details on the Microsite. Details will be updated as per the refresh frequency nominated by the client)	Weekly Refresh/update Daily refresh/Update (if required)			<u>Included</u> <u>\$500 per update</u>	
Live Date (It is recommended that Microsite should be live and finalized prior to any mailings or email blasts to the holders' community)	10 business days from the receipt of the final approved wireframe.				

6.Emailing and Mailing Services (LMFI Specifics costings subject to change based on below quantities)	Unit Price	Qty	Fee(\$) ex GST
6.1 Mailing of Unitholder Summary			
2 pages personalised letter (Printed duplex, black and white Inserted in a window faced envelope, Returned address to Link) - mail merged to client's data	\$4.98	522	\$2,599.56
Domestic Standard Postage Estimate per pack. (Priority postage not available through Aust Post due to Covid-19 presently) (overseas postage to be charged separately and based on usage and reflected in final invoice)	\$1.25	1	\$1.25
Standard Overseas postage - to be charged based on usage and reflected in final invoice. Aust Post reluctant to advise postage time in COVID environment. Could be sent by sea. If sent by Registered Post to overseas address, approximately \$17 per registered envelope and Mailhouse requires notice in advance - with acknowledgement of receipt". Express envelopes are more expensive and subject to quote.	\$3.00	521	\$1,563.00
"Email set up - per set up	\$500.00	1	\$500.00
"Email blast - personalised plus summary - 5,282 email addresses - generic email blast text - with Personalised attachment summary (which include member name, Investor ID, Account ID, Units Held and Amendment to unit balance)"	\$0.30	5,282	\$1,584.60
Email bounced report (client to ensure addresses provided to Link are not using a blacklisted server or suspicious environment as Link security will block such addresses)	\$250.00	1	\$250.00
Mailing to holders on the bounce back report (subject to a further mailing estimate from the mailhouse once the numbers are known). Client to advice if this service is required.	Subject to a quote	TBA	Based on volume
Note: Finalised documents must be available at least 3 business days in advance of the lodgment date. Please note we recommend that the data is migrated first before the mailing and email blast especially if Link is required to manage the subsequent emails and phone calls from the investors. Migration may take 10 business days subject to the client's data quality.			
Total – Mailing of Unitholder Summary			\$6,498.41

6.2 Mailing of the Update Notice			
2 pages personalised letter (Printed duplex, black and white inserted in a window faced envelope, Returned address to Link)	\$3.74	522	\$1,952.28
Domestic Standard Postage Estimate per pack. (Priority postage not available through Aust Post due to Covid-19 presently) (overseas postage to be charged separately and based on usage and reflected in final invoice)	\$1.32	1	\$1.32
Standard Overseas postage - to be charged based on usage and reflected in final invoice. Aust Post reluctant to advise postage time in COVID environment. Could be sent by sea. If sent by Registered Post to overseas address, approximately \$17 per registered envelope and Mailhouse requires notice in advance - with acknowledgement of receipt". Express envelopes are more expensive and subject to quote.	\$3.00	521	\$1,563.00
"Email set up - per set up	\$500.00	1	\$500.00
"Email blast - personalised plus summary - 5,282 email addresses - generic email blast text - with Personalised attachment summary (which include member name, Investor ID, Account ID, Units Held and Amendment to unit balance)"	\$0.30	5,282	\$1,584.60
Email bounced report (client to ensure addresses provided to Link are not using a blacklisted server or suspicious environment as Link security will block such addresses)	\$250.00	1	\$250.00
Mailing to holders on the bounce back report (subject to a further mailing estimate from the mailhouse once the numbers are known). Client to advice if this service is required.	Subject to a quote	TBA	Based on volume
Note: Finalised documents must be available at least 3 business days in advance of the lodgment date. Please note we recommend that the data is migrated first before the mailing and email blast especially if Link is required to manage the subsequent emails and phone calls from the investors. Migration may take 10 business days subject to the client's data quality.			
Total - Email Blast & Mailing Services			\$5,851.20

7.Transactions/Operational Processing Services	Rate and Basis	Fee(\$)
" 1.Processing ownership transfers, by way of transmissions following death of Holder and providing confirmation of transfer to Holder	Per activity	\$4.95
" 2.Deceased Estates – ownership transfers to beneficiaries by way of standard transfer form and providing confirmation of transfer to Holder	Per activity	\$69.00
" 3.Non-Deceased Estate – Processing ownership transfers, including completion of Deed, schedules and providing confirmation of transfer to Holder.	\$250 Per Deed (if applicable)	Monthly charged base on quantity received and processed
" 4.Pods and Proxy processing and entering the amounts and details against the record holders identity and load into the Insolvency form portal for external viewing.	\$15.00 Per POD or Proxy SLA – processing and upload within 24-48hrs of receipt of the form.	if required
" 5.Other documents, Forms and ID processing for the record holders identity and load into the Insolvency form portal for external viewing.	Per holder pack received	\$15.00
" 6.Registering changes of address and/or name by record holders.	Per activity	\$2.95
" 7.Providing confirmation of change of name or address to record holder, notations, TFNs, telephone and E-mail contact details, direct credit processing.	Per confirmation letter (excludes postage)	\$4.95
" 8.Rejection letters for insufficient or incomplete changes	Per letter (excludes postage)	\$4.95
" 9.Balance Statements	Per standard statement (excludes postage)	\$69.00
" 10.Request to review and confirm other evidence,	Per request for further information Per review of death certificate, will and	Consultancy hourly rates

including: Identification, Death certificate, Will and probate	probate Liaise with Insolvency practitioner	
11. <u>Service level</u> - within 10 Business Days of the Holder's or practitioners advice		
12. Postal Fees (all overseas and domestic postal fees standard or priority in type will be back charged to the client)	At cost (Please note Australia Post has changed many aspects of their services due to the Covid-19 and would be applicable for this project)	At cost and applied when mailing takes place

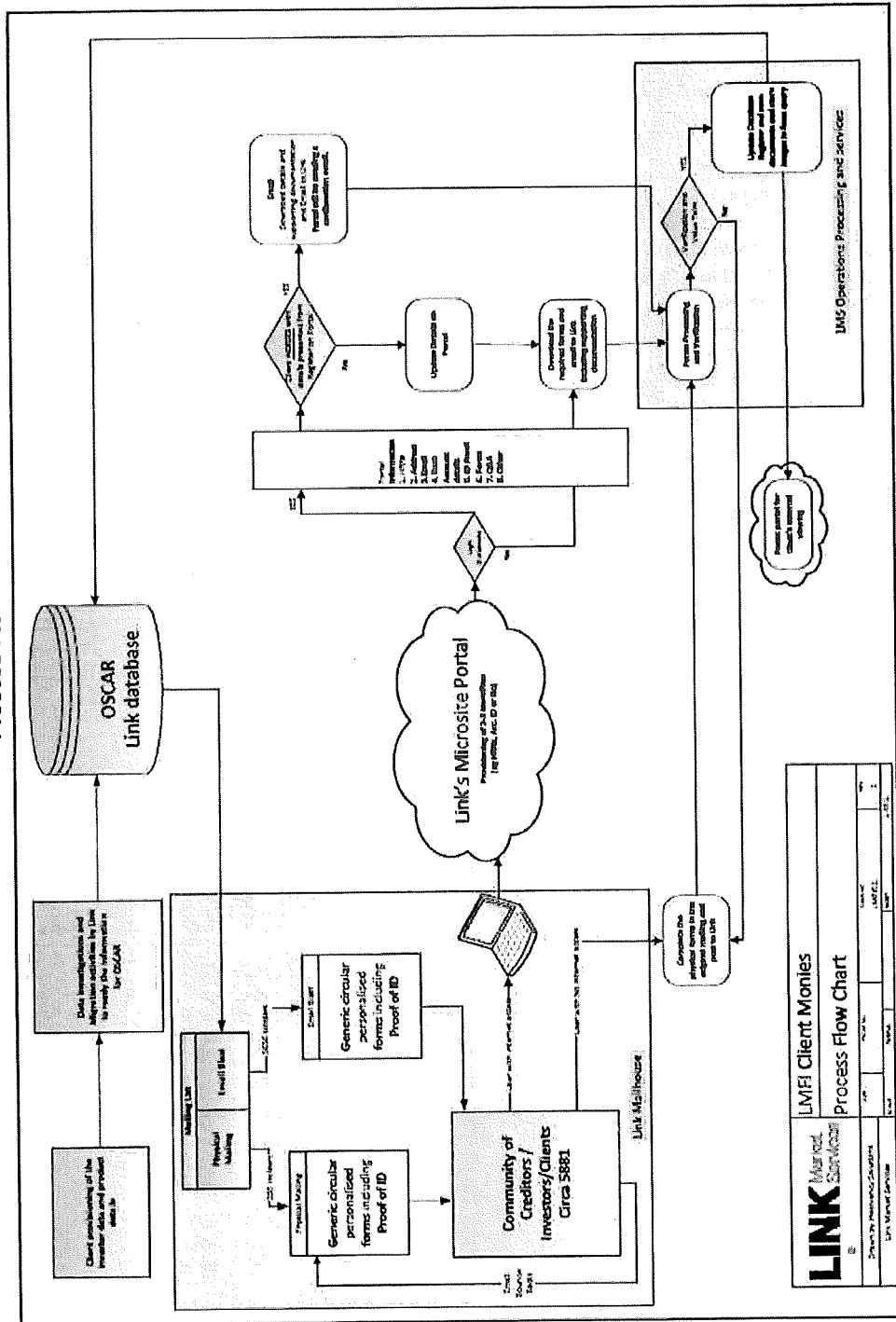
8.Distribution Payments and Treasury Services (LMFI Specifics costings subject to change based on below quantities) – <u>Future consideration</u>	Unit Price	Qty	Amount(\$)
▪ We understand that the client is expecting to use a 3rd party provider for the distribution services; ▪ We are also following up with a 3rd party who is already a supplier to the registry side of Link business; ▪ There may be a need for customization of the existing system and this is currently under discussions; and ▪ Accordingly, we shall revert with our update when final information on the service is available which could be a few weeks at this stage.			

9. Other Services		
▪ Other Mailing services – Please note that postal Fees (all international and domestic postal fees standard or priority in type will be charged to the client)	Per mailing	Subject to quotation
▪ Prepare and provide other ad-hoc reports or specialised project management	Per activity SLA - Within 5 Business Days of request or as advised at the time	At Consultancy Rates
▪ Provide copies/extracts from Register	Per extract	\$250.00
▪ Meetings services - mailings, PODs/Proxy processing, voting cards, registration terminals, meeting reports, polls.	Per Meeting	Subject to quotation
▪ AML and KYC	We understand the client does not require this service and is proposing to pass on the requirements to the 3 rd party distribution service provider	Link provided an estimate in Appendix 4 which would need to be updated if utilised
10. Consultancy Rates	Basis	Fee Rates (\$)
Executive/Head of Business	Per hour	\$375.00
Senior Manager	Per hour	\$290.00
Manager/Project Manager	Per hour	\$220.00
Assistant Manager/Project Officer	Per hour	\$170.00
Other/Registry Officer	Per hour	\$140.00
IT Consultant	Per hour	\$200.00
Personnel Travel Time	Per hour	\$100.00

Additional Notes

1. Normal level of transactions and services are assumed in compiling these fees.
2. Any changes in legislation that may impact on the maintenance of the registers managed by Link on the client's behalf will be separately charged to the client in terms of development costs and/or ongoing fees.
3. Out of pocket expenses are charged separately and will include stationery, postage, mailings, printing costs, **Oscar (our registry data base)** reports etc.
4. The fees set out in this letter are exclusive of Goods & Services Tax (GST). Link will charge an additional amount in respect of GST payable on supply of its services when rendering invoices. Link reserves the right to apply to the fees, any change in the rate of GST or any amendments to GST law.
5. Fees above are in Australian Dollars (AUD).
6. Fees indicated above are in Australian Dollars.
7. Mailings and email blasts – All finalized documents and data must be available (ideally and subject to the mailhouse work in hand and holder numbers) to Link, at least 5 days before the required lodgment date.
8. Q&A template for the client's customization plus a sample escalation report will be forwarded upon endorsement of this Letter Agreement.
9. We have assumed that the client will provide all the relevant details and the Holders' database and images for initial migration into the Link's system, if applicable. These are needed for handling calls, emails and processing of the forms and capturing, book building and maintaining the register.
10. Online Form Portal - URL- <https://www.linkmarketservices.com.au/InsolvencyPortal/login.aspx>. Login details to be provided upon endorsement.
11. Client acknowledges that Link may use software such as "Sharefile" to send images, zipped files, register list and other project information to the client. Sharefile content typically expire after a week and the client will ensure that the material is downloaded onto their systems before expiration. Retransmission of expired information may incur additional costs which Link is at liberty to charge

Appendix 2 Process Flow





Appendix 3
KORDAMENTHA PTY LIMITED
LM MANAGED FUNDS FEES (LMFI)
INSOLVENCY SOLUTIONS

Link Market Services Limited Insolvency Solutions shall provide the following Services where selected by the client:

Contact Centre and Email Services

Link's Contact Centre services and Email Services cover day-to-day activities:

- Enquiries from Holders, third party requestors, complaint callers, miscellaneous calls and responses based on an agreed script;
- Prompt attendance to correspondences and mails based on Q&A prepared in consultation with the Practitioner; and
- Preparing enquiry log reports required by the client (reporting statistics and escalations).

This includes a dedicated contact line with customised banners and a personalised email address with auto-reply functionality.

Ongoing Maintenance

Link's ongoing service will include the maintenance of the Holders' in accordance with the clients and legislative requirements and would cover aspects of day-to-day activities such as:

- Prompt attendance to correspondence including estate letters and in accordance with the client's business rules;
- Attending to personal callers at our office;
- Noting Power of Attorney, Probates and Memorandum and Articles/Constitution which relate to the register of Holders;
- Preparing standard returns and reports required by legislation and business rules;
- Advice on design of Holder communications documents;
- Arranging for banks to issue MICR authorities to cheque printers;
- General database housekeeping including: standardised format of names and addresses; use of titles; and Audit of transactions.

Transaction and Operational Processing Services

Services included in the fees for transaction processing will encompass all documents instigated by the security holder that require the amendment, addition or deletion of their holding record and include such transactions as:

- Change of address and or name;
- Transaction processing;
- Off Market Transfers (Standard or Deed based);
- Processing of PODs and Proxies;
- ID proof of identity information sheet;

- Upload of received documentation to online form portals for clients' access and viewing; and
- Extensive reporting suites for the practitioners.

Distributions and Payments

Liaison with you, your printers, mail houses and banks in all matters relating to the preparation and mailing of cheques such as:

- Preparation of distribution and/or interest cheques and statements;
- Preparation of data files relating to direct credit payments for your bank;
- Preparation of data files covering payment details for submission to the Australian Taxation Office;
- Accounting for MICR accountable numbers on all cheques used in producing distributions and/or interest payments;
- Arranging and accounting for the insertion and mailing of cheques;
- Withholding tax matters;
- Receipt of presented cheque data files from your bank and the preparation of regular account reconciliations; and distribution calculations.

Bank Reconciliation and Treasury Services

Peripheral services associated with the dividend payment include:

- Immediate attention to security holders' inquiries, be they written or verbal;
- Replacement of lost cheques and preparing the appropriate stop payment notices upon receipt of necessary advices;
- Processing of bank reconciliation tapes and/or accounting for all paid cheques and the preparation of bank reconciliations for each account;
- Preparation of unpaid dividend and interest cheques lists for inclusion in your unclaimed money returns;
- Any other matters relating to the reconciliation of dividend and or interest payments; and
- Return of unpresented cheques and funds to OSR/ASIC on client's instructions.

Creditors, Scheme, Debentureholders Meetings

- Assistance with planning of meetings including venue selection and helping with meeting procedures;
- Assistance with the design of proxy forms and meeting registration forms;
- Assistance in organising the printing and mailing of personalised notice of meeting and proxy forms for despatch with annual reports;
- Processing and summarisation of returned proxies;
- Registration of attendees;
- Provision of computerised registration facilities integrated with a proxy recording system to provide the chairman with the total voting power of the meeting;
- Assistance with the conduct of a poll at meetings, together with the reporting of poll results; and
- Assured security and confidentiality relating to the processing of proxies, registration of attendees and conduct and results of polls.

Appendix 4
KORDAMENTHA PTY LIMITED
LM MANAGED FUNDS FEES (LMFI)
INSOLVENCY SOLUTIONS

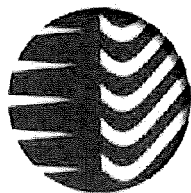


KM _ LM Fund_ PEP
Screening Estimate_

Appendix 5

KORDAMENTHA PTY LIMITED
LM MANAGED FUNDS FEES (LMFI)
INSOLVENCY SOLUTIONS

ISO CERTIFICATIONS



CERTIFICATE
OF REGISTRATION

This is to certify that:

Link Administration Holdings Limited

ABN 27 120 004 008

Trading as
Link Group
ABN 27 120 004 008
Link Market Services Limited
ABN 54 083 214 537
Link DigiCom Pty Limited
ABN 39 062 500 117

Australian Administration Services Pty Limited
ABN 62 003 429 114
Orient Capital Pty Limited
ABN 80 010 142 453
Empirica Marketing Pty Ltd
ABN 16 115 085 620

1A Homebush Bay Drive, Rhodes Corporate Park, Rhodes, NSW 2138 AUSTRALIA
1/15 Percy Street, Auburn, NSW 2144 AUSTRALIA
Level 12, 680 George Street, Sydney, NSW 2000 AUSTRALIA
Level 21, 10 Eagle Street, Brisbane, QLD 4000, AUSTRALIA
727 Collins Street, Collins Square, Tower 4, Level 13, Melbourne, VIC 3008 AUSTRALIA
QV1, Level 12, 250 St Georges Terrace, Perth, WA 6000 AUSTRALIA

operates an

INFORMATION SECURITY MANAGEMENT SYSTEM

which complies with the requirements of

ISO/IEC 27001:2013

for the following scope

Provision of services for Fund Administration, Corporate Markets and Technology and
Innovation in accordance with the Statement of Applicability version 1.3.3 dated 29/04/2018.

Certificate No: ITGOV40039

Issued: 4 July 2018

Originally Certified: 28 August 2015

Expires: 27 August 2021

Current Certification: 3 July 2018

Kevin Goodwin
General Manager Technical Services
SAI Global Assurance



ISO 27001

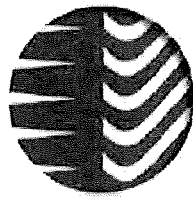
JAS-ANZ



www.jas-anz.com.au

Registered by:
SAI Global Certification Services Pty Ltd (ACN 108 716 898) 680 George Street, Sydney NSW 2000 Australia with SAI Global
Pty Limited 680 George Street Sydney NSW 2000 Australia (SAI Global) and subject to the SAI Global Terms and Conditions
for Certification. While in due care and skill was exercised in carrying out this assessment, SAI Global accepts responsibility
only for proven negligence. This certificate remains the property of SAI Global and must be returned to SAI Global upon its
request. To verify that this certificate is current please refer to SAI Global On-Line Certification register at
<http://www.sai-global.com>

 **SAI GLOBAL**



ATTACHMENT TO CERTIFICATE OF REGISTRATION

These sites are registered under certificate No: ITGOV40039 issued on 4 July 2018.

Link Administration Holdings Limited

SAI Site Cert no.	Certified Site Details	Effective Date
-------------------	------------------------	----------------

C-327434	1/15 Percy Street, Auburn, NSW 2144 AUSTRALIA	3 July 2018
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Site Scope:

Provision of services for Fund Administration,
Corporate Markets and Technology and Innovation.

C-173637	1A Homebush Bay Drive, Rhodes Corporate Park, Rhodes, NSW 2138 AUSTRALIA	3 July 2018
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Site Scope:

Provision of services for Fund Administration,
Corporate Markets and Technology and Innovation
in accordance with the Statement of Applicability
version 1.3.3 dated 29/04/2018.

C-173638	Level 12, 680 George Street, Sydney, NSW 2000 AUSTRALIA	3 July 2018
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Site Scope:

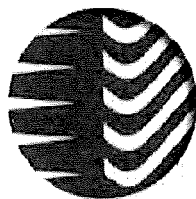
Provision of services for Fund Administration,
Corporate Markets and Technology and Innovation.

These registrations are dependent on Link Administration Holdings Limited maintaining their scope of registration to ISO/IEC 27001:2013.

Registered by:
SAI Global Certification Services Pty Ltd (ACN 108 716 669) 680 George Street, Sydney, NSW 2000 Australia with SAI Global
Pty Limited 680 George Street Sydney NSW 2000 Australia (SAI Global) and subject to the SAI Global Terms and Conditions
for Certification. While at due care and skill was exercised in carrying out this assessment, SAI Global accepts responsibility
only for proven negligence. This certificate remains the property of SAI Global and must be returned to SAI Global upon its
request. To verify that this certificate is current please refer to SAI Global On-Line Certification register at
<http://www.sai-global.com>



SAI GLOBAL



ATTACHMENT TO CERTIFICATE OF REGISTRATION

These sites are registered under certificate No: ITGOV40039 issued on 4 July 2018.

Link Administration Holdings Limited

C-402050 **Level 21, 10 Eagle Street, Brisbane, QLD 4000, 3 July 2018**
AUSTRALIA

Site Scope:
Provision of Corporate Markets and Fund
Administration.

C-374100 **727 Collins Street, Collins Square, Tower 4, Level 3 July 2018**
13, Melbourne, VIC 3008 AUSTRALIA

Site Scope:
Provision of services for Fund Administration,
Corporate Markets and Technology and Innovation.

C-374099 **QV1, Level 12, 250 St Georges Terrace, Perth, WA 3 July 2018**
6000 AUSTRALIA

Site Scope:
Provision of services for Fund Administration,
Corporate Markets and Technology and Innovation.

These registrations are dependent on Link Administration Holdings Limited maintaining their scope of registration to ISO/IEC 27001:2013.

Registered by:
SAI Global Certification Services Pty Ltd (ACN 108 716 868) 880 George Street, Sydney, NSW 2000 Australia with SAI Global
Pty Limited 880 George Street, Sydney, NSW 2000 Australia (SAI Global) and subject to the SAI Global Terms and Conditions
for Certification. While all due care and skill was exercised in carrying out this assessment, SAI Global accepts responsibility
only for proven negligence. This certificate remains the property of SAI Global and must be returned to SAI Global upon its
request. To verify that this certificate is current please refer to SAI Global On-Line Certification register at
<http://www.sai-global.com/>



From: LM MANAGED PERFORMANCE FUND <linkmarketservices@median.com>
Sent: Friday, 11 June 2021 12:17 PM
To: Adam Dajani
Subject: Circular to Unitholder – Distribution Notice

15th June 2021

LM MANAGED PERFORMANCE FUND

Dear Unitholder,

Please see below linked Distribution Notice.

<https://kordamentha.com/getmedia/90ba98c2-f551-4c76-93ff-02557364f810/Distribution-Notice>

Regards

For and on behalf of KordaMentha

Link Market Services Limited

KordaMentha

GPO Box 964
Brisbane QLD 4001

Level 14
12 Creek Street
Brisbane QLD 4000

+61 7 3338 0222
info@kordamentha.com

To the unitholder

14 June 2021

Dear Unitholder

Distribution Notice – LM Managed Performance Fund ('MPF' or 'the Fund')

The purpose of this notice is to inform you that KordaMentha Pty Ltd in its capacity as the Trustee of the LM Managed Performance Fund (the Trustee) intends to make a distribution to Unitholders of the LM MPF. Please note that this distribution will not represent a full return of your invested capital and is currently calculated to be at a proportion of 1.3 to 1.5 cents in the dollar relative to the Australian Dollar holding value of the investment at 19 March 2013 (in accordance with the records of the Fund).

Prior to making this distribution, the Trustee invites unitholders to verify their unitholding information and confirm, and if necessary request an amendment to their contact and banking details. The update of the Unitholder Register will be managed by Link Market Services ('Link').

Unitholders should use the below information to verify their unitholding information. Unitholders will be provided 90 days within which to update their details. The Trustee may make a distribution at any time after **13 September 2021** utilising the information contained on the Unitholder Register. Please ensure that you review your unitholding details, particularly bank account details, and advise us of any changes as soon as possible to avoid distribution using incorrect details.

Logging in to the Secure Unitholder Website

Unitholders may access the Unitholder Website by accessing the URL:

<https://events.miraql.com/OCP/LMFI/>

In order to login to the Secure Unitholder Website, you will be required to enter both your Investor ID and Account ID associated with your unit holding. Please note that if you have multiple Unitholder Accounts, you will need to login separately for each Unitholder Account (or refer below for information regarding bulk update).

Your Investor ID and Account ID can be found in previous investor statements issued by LM Investment Management Pty Ltd as Trustee of the LM MPF or alternatively this information can be found in your Unitholding Summary which was sent to Unitholders on 22 January 2021. If you are unable to locate your Investor ID and Account ID, please contact KordaMentha by email at lminvestors@kordamentha.com and include as much detail of your unitholding as possible. If you have invested through a global platform or global portfolio bond, please refer to the section 'Indirect Investors' below.

Upon logging in to the Secure Unitholder Website, you will be able to review the following details presently associated with your unit holding:

- Number of Units Held
- Holding Currency
- AUD value* at 19 March 2013
- Unitholder Name and Postal Address
- Unitholder Email Address
- Unitholder Bank Account Details

* Please be advised that this value is calculated in accordance with number of units held, unit price as reflected in the records of the fund and relevant exchange rate. This amount is not reflective of the true value of your investment at this date.

Requesting update to unitholder details – Personal Investors

Once you are logged in to the Secure Unitholder Website, you will have the option of requesting amendments to the details recorded in the Unitholder Register either through the Secure Unitholder Website or by completing a manual form and returning it to Link by email or post. 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.

Supporting documentation relating to verification of information will be required for all changes to bank account details. Further details regarding documentation required is detailed on the Secure Unitholder Website.

Certain Unitholders have been categorised as being either 'high value' based on their estimated distribution amount. Unitholders who have been categorised as 'high value' will need to provide additional documentation to confirm their identity if seeking to make changes to bank account details. Upon logging in to the Secure Unitholder Website, you will be notified if you have been categorised as a 'high value' unitholder. Further details regarding documentation required is detailed in the Proof of Identity Information Sheet which is available on the Secure Unitholder Website, however an example of the types of documentation which may be required is as follows:

- Passport/travel document (certified copy)
- Birth certificate (certified copy)
- Citizenship certificate (certified copy)

For joint holdings, the above documentation will be required for each joint holder. For corporate holdings, the above documentation will be required for each director/secretary signing the change of details form.

All foreign language documents must be accompanied by a certified English translation prepared by an accredited translator.

Requesting update to unitholder details – Global Platform/Portfolio Bond Investors

Once you are logged in to the Secure Unitholder Website, you will have the option of requesting amendments to the details recorded in the Unitholder Register either through the Secure Unitholder Website or completing a manual form and returning it to Link by email or post. 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. Details of required supporting documentation is detailed on the Secure Unitholder Website.

We may also request a signed undertaking from the member company that you are authorised to make the requested changes.

If you hold four or more Unitholder Accounts and would like to request a bulk update, please send an email containing the following details to linvestors@kordamentha.com and you will be provided with further instructions:

- Investor ID
- Member Name
- Account IDs

Transfer of unit holdings

Transfer of unit holdings will be able to be requested by completing a manual form and returning it to Link by email or post. Appropriate supporting documentation must be provided before adjustments to the register are processed. Details of required supporting documentation for transfer of unit holdings is detailed on the Secure Unitholder Website.

Indirect Investors

If you have invested through a global platform or global portfolio bond, you are not a Unitholder, you are not able to request update to unitholder details and you will not receive any payment directly from the Trustee (unless your payment details have been nominated by the Unitholder). You should contact the operator of your global platform or global portfolio bond to obtain information regarding how this distribution will impact you. If you are an indirect investor and would like to have an investment transferred to yourself personally, you will need to contact the operator of your global platform or global portfolio bond who will need to request this transfer.

If you have any questions regarding the update process, please first review the frequently asked questions document available on the KordaMentha website - [LM Managed Performance Fund \(kordamentha.com.au\)](http://LM Managed Performance Fund (kordamentha.com.au)). If you are not able to find an answer to your question in this document, please contact Link Market Services by email at lmfi@linkmarketservices.com.au or by phone at +61 1300 733 154, phone lines are open 09:00 to 17:00 Australian Eastern Time AEDT.

General queries regarding the Fund, including those relating to the amount or timing of distributions, should continue to be directed to KordaMentha by email at linvestors@kordamentha.com.

Yours faithfully

KordaMentha
Trustee of the MPF

From: LM MANAGED PERFORMANCE FUND <linkmarketservices@median.com>
Sent: Friday, 11 June 2021 12:18 PM
To: Adam Dajani
Subject: Circular to Unitholder – Distribution Notice

Notification of incorrect or absent bank account details

Dear Unitholder

LM Managed Performance Fund ('the Fund' or 'MPF')

I refer to the appointment of KordaMentha Pty Ltd as Trustee for the Fund on 19 March 2013 and to the Distribution Notice recently distributed to Unitholders of the Fund.

The Trustee has recently conducted a review of the unitholder register and has identified a number of Unitholder accounts which do not have corresponding bank account details or where the bank account details held are insufficient to enable a distribution payment.

If you have received this email, **there are no valid bank account details held on the register for one or more of your unitholdings.**

To enable payment of your distribution, you **must** update your bank account details during the unitholder registry update process. This process is being facilitated by Link Market Services (Link). Please refer to the Distribution Notice which can be accessed via [this link](#) for further instructions on updating your bank account details.

Yours sincerely

KordaMentha
Trustee of the MPF

KordaMentha

GPO Box 964
Brisbane QLD 4001
Level 14
12 Creek Street
Brisbane QLD 4000

+61 7 3338 0222
info@kordamentha.com

To the unitholder

14 June 2021

Dear Unitholder

Notification of incorrect or absent bank account details

LM Managed Performance Fund ('the Fund' or 'MPF')

I refer to the appointment of KordaMentha Pty Ltd as Trustee for the Fund on 19 March 2013 and to the Distribution Notice enclosed.

The Trustee has recently conducted a review of the unitholder register and has identified a number of Unitholder accounts which do not have corresponding bank account details or where the bank account details held are insufficient to enable a distribution payment.

If you have received this notice, **there are no valid bank account details held on the register for one or more of your unitholdings.**

To enable payment of your distribution, you **must** update your bank account details during the unitholder registry update process. This process is being facilitated by Link Market Services (Link). Please refer to the enclosed Distribution Notice for further instructions on updating your bank account details.

Yours sincerely

KordaMentha
Trustee of the MPF

From: lminvestors <lminvestors@kordamentha.com>
Sent: Friday, 20 August 2021 1:42 PM
Subject: LM MPF – Urgent Action Required for Distribution Payment
Attachments: Distribution Notice - Email.pdf; FAQ-LM Managed Performance Fund-V2.pdf

Dear Unitholder

I refer to the Distribution Notice sent to Unitholders on 14 June 2021. This Distribution Notice contains details of an upcoming first and final distribution payment relating to investments in the LM Managed Performance Fund.

The purpose of this correspondence is to reach Unitholders for whom our records indicate:

- i. Hold an investment that has **insufficient** bank details to receive the distribution, and
- ii. Have not accessed the secure Unitholder website to update their details.

The attached Distribution Notice contains details of the secure Unitholder website.

If you are receiving this correspondence, your email address is linked to a unitholding for which there are insufficient bank details to receive the distribution. This may be as a direct investor, or as an advisor.

To receive the distribution, you must access the secure Unitholder website and enter your current address and banking details. You must then provide adequate supporting documentation for these changes.

Please see below minimum requirements for each class of Unitholder (High Value and non-High Value). The Unitholder classification can be seen on the Summary of Unit Holding screen on the website.

High-Value Investors:

- Documents include:
 - A **certified** bank statement or letter from your bank confirming name of the bank account and bank account details
 - A Proof of Identity form (this can be found in the 'Forms' tab on the website)
 - **Original certified copies** of proof of identity documents (ie. passport)
 - Other document requirements for companies, trusts etc.
- The above documents must be sent **by mail** to the address at the top of the Proof of Identity form
- Further information regarding certified document requirements is contained in the FAQ attached

Non-High Value Investors:

- Documents include:
 - A bank statement or letter from your bank confirming name of the bank account and bank account details
- The above document may be sent **by email** to Link at lmfi@linkmarketservices.com.au, ensuring your Account ID is quoted in the subject heading

If you do not know your Investor ID(s) or Account ID(s) in order to access the secure Unitholder website, please reply to this email with any details relating to your unitholding and we will attempt to locate these for you.

Kind Regards

KordaMentha

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



Grow. Protect. Recover.

Notice: The information in this email is confidential. If you are not the intended recipient, you must not distribute, copy, disclose or use the information or attached files in this email in any way. We do not guarantee that the integrity of this communication has been maintained. Liability limited by a scheme approved under Professional Standards Legislation.

KordaMentha

GPO Box 964
Brisbane QLD 4001

Level 14
12 Creek Street
Brisbane QLD 4000

+61 7 3338 0222
info@kordamentha.com

To the unitholder

14 June 2021

Dear Unitholder

Distribution Notice – LM Managed Performance Fund ('MPF' or 'the Fund')

The purpose of this notice is to inform you that KordaMentha Pty Ltd in its capacity as the Trustee of the LM Managed Performance Fund (the Trustee) intends to make a distribution to Unitholders of the LM MPF. Please note that this distribution will not represent a full return of your invested capital and is currently calculated to be at a proportion of 1.3 to 1.5 cents in the dollar relative to the Australian Dollar holding value of the investment at 19 March 2013 (in accordance with the records of the Fund).

Prior to making this distribution, the Trustee invites unitholders to verify their unitholding information and confirm, and if necessary request an amendment to their contact and banking details. The update of the Unitholder Register will be managed by Link Market Services ('Link').

Unitholders should use the below information to verify their unitholding information. Unitholders will be provided 90 days within which to update their details. The Trustee may make a distribution at any time after **13 September 2021** utilising the information contained on the Unitholder Register. Please ensure that you review your unitholding details, particularly bank account details, and advise us of any changes as soon as possible to avoid distribution using incorrect details.

Logging in to the Secure Unitholder Website

Unitholders may access the Unitholder Website via this link: [LMFI | Online Creditor Portal \(miraqle.com\)](https://events.miraqle.com/OCPLMFI/) or by accessing the URL: <https://events.miraqle.com/OCPLMFI/>.

In order to login to the Secure Unitholder Website, you will be required to enter both your Investor ID and Account ID associated with your unit holding. Please note that if you have multiple Unitholder Accounts, you will need to login separately for each Unitholder Account (or refer below for information regarding bulk update).

Your Investor ID and Account ID can be found in previous investor statements issued by LM Investment Management Pty Ltd as Trustee of the LM MPF or alternatively this information can be found in your Unitholding Summary which was sent to Unitholders on 22 January 2021. If you are unable to locate your Investor ID and Account ID, please contact KordaMentha by email at linvestors@kordamentha.com and include as much detail of your unitholding as possible. If you have invested through a global platform or global portfolio bond, please refer to the section 'Indirect Investors' below.

Upon logging in to the Secure Unitholder Website, you will be able to review the following details presently associated with your unit holding:

- Number of Units Held
- Holding Currency
- AUD value* at 19 March 2013
- Unitholder Name and Postal Address
- Unitholder Email Address
- Unitholder Bank Account Details

* Please be advised that this value is calculated in accordance with number of units held, unit price as reflected in the records of the fund and relevant exchange rate. This amount is not reflective of the true value of your investment at this date.

Requesting update to unitholder details – Personal Investors

Once you are logged in to the Secure Unitholder Website, you will have the option of requesting amendments to the details recorded in the Unitholder Register either through the Secure Unitholder Website or by completing a manual form and returning it to Link by email or post. 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.

Supporting documentation relating to verification of information will be required for all changes to bank account details. Further details regarding documentation required is detailed on the Secure Unitholder Website.

Certain Unitholders have been categorised as being either 'high value' based on their estimated distribution amount. Unitholders who have been categorised as 'high value' will need to provide additional documentation to confirm their identity if seeking to make changes to bank account details. Upon logging in to the Secure Unitholder Website, you will be notified if you have been categorised as a 'high value' unitholder. Further details regarding documentation required is detailed in the Proof of Identity Information Sheet which is available on the Secure Unitholder Website, however an example of the types of documentation which may be required is as follows:

- Passport / travel document (certified copy)
- Birth certificate (certified copy)
- Citizenship certificate (certified copy)

For joint holdings, the above documentation will be required for each joint holder. For corporate holdings, the above documentation will be required for each director/secretary signing the change of details form.

All foreign language documents must be accompanied by a certified English translation prepared by an accredited translator.

Requesting update to unitholder details – Global Platform/Portfolio Bond Investors

Once you are logged in to the Secure Unitholder Website, you will have the option of requesting amendments to the details recorded in the Unitholder Register either through the Secure Unitholder Website or completing a manual form and returning it to Link by email or post. 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. Details of required supporting documentation is detailed on the Secure Unitholder Website.

We may also request a signed undertaking from the member company that you are authorised to make the requested changes.

If you hold four or more Unitholder Accounts and would like to request a bulk update, please send an email containing the following details to lminvestors@kordamentha.com and you will be provided with further instructions:

- Investor ID
- Member Name
- Account IDs

Transfer of unit holdings

Transfer of unit holdings will be able to be requested by completing a manual form and returning it to Link by email or post. Appropriate supporting documentation must be provided before adjustments to the register are processed. Details of required supporting documentation for transfer of unit holdings is detailed on the Secure Unitholder Website.

Indirect Investors

If you have invested through a global platform or global portfolio bond, you are not a Unitholder, you are not able to request update to unitholder details and you will not receive any payment directly from the Trustee (unless your payment details have been nominated by the Unitholder). You should contact the operator of your global platform or global portfolio bond to obtain information regarding how this distribution will impact you. If you are an indirect investor and would like to have an investment transferred to yourself personally, you will need to contact the operator of your global platform or global portfolio bond who will need to request this transfer.

If you have any questions regarding the update process, please first review the frequently asked questions document available on the KordaMentha website - [LM Managed Performance Fund \(kordamentha.com.au\)](http://LM Managed Performance Fund (kordamentha.com.au)). If you are not able to find an answer to your question in this document, please contact Link Market Services by email at lmfi@linkmarketservices.com.au or by phone at +61 1300 733 154, phone lines are open 09:00 to 17:00 Australian Eastern Time AEDT.

General queries regarding the Fund, including those relating to the amount or timing of distributions, should continue to be directed to KordaMentha by email at lminvestors@kordamentha.com.

Yours faithfully

KordaMentha
Trustee of the MPF

LM Managed Performance Fund

Frequently asked questions for investors regarding distribution process

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Background

On 12 April 2013, KordaMentha and Calibre Capital Limited were appointed as trustees of the LM Managed Performance Fund pursuant to an Order of the Supreme Court of Queensland in Brisbane. Our appointment as Trustees was to ensure independence in the management of the Fund's investments in the best interests of all investors. Calibre Capital has since resigned as Trustee and KordaMentha is the sole Trustee of the Fund.

The Fund has been closed since 19 March 2013 and no distributions have been made since this time.

On 19 March 2021, the Trustee received directions from the Court in relation to a number of matters to facilitate a distribution to unitholders. Following receipt of these directions, the Trustee has commenced a process to enable Unitholders to update their contact and bank account details prior to the Trustee processing the first and final distribution.

Link Market Services ('Link') has been engaged to facilitate the unitholder register update process. You will be able to utilise a secure website (the 'Secure Unitholder Website') to review the details currently associated with your unit holdings. If your address and bank account details have changed, you can use the Secure Unitholder Website to update your details.

The purpose of this correspondence is address commonly asked questions of members in relation to the distribution process.

Distribution

How much money will I receive in the distribution?

The Trustee has advised in previous update reports that the return to Unitholders is likely to be less than five cents in the dollar (or 5% of your initial investment amount). Based on current calculations, we now expect the distribution to be in the range of 1.3% and 1.5% of the AUD value of your investment. The AUD value of your investment will reflect your initial investment amount, reinvestment of income (if applicable) in the period to 19 March 2013 and currency fluctuations between your investment currency and AUD in the period to 19 March 2013. The Secure Unitholder Website will display the AUD value of your investment.

An example of the distribution calculation would be that if you invested AUD \$10,000 in the Fund and had reinvested distributions totalling \$1,000 over the period to 19 March 2013, the AUD value of your investment would be \$11,000. Based on the current estimate, you could expect to receive a distribution of between \$143 and \$165.

Detail	AUD \$	Worst case (AUD \$)	Best case (AUD \$)
AUD value of investment	\$11,000.00	1.3%	1.5%
Distribution payable		\$143.00	\$165.00

We are not able to provide a precise estimate of the distribution amount at this stage as it is still subject to change based on costs of the Fund in the lead up to a distribution. For example, costs will be incurred for each change to investor details, and we are not able to estimate with certainty the number of changes which will be required.

What do I need to do to ensure that I receive my distribution?

All Unitholders should log in to the Secure Unitholder Website to confirm that your bank account details are correct. Distribution payments will be made to the bank account details contained in the register. If no bank account details are held in the register or if the details are not correct, you may not receive a distribution payment.

Due to Anti-Money Laundering and Counter Terrorism Financing legislation, we will also need to hold address details to facilitate international payment. Please ensure that your address information shown on the Secure Unitholder Website is also correct.

In what currency will the distributions be paid?

Distributions will be calculated in AUD, however Unitholders will have the option of nominating a proposed distribution currency. You are responsible for ensuring that your bank will accept payment in the nominated distribution currency.

If you select a currency other than AUD, the AUD value of your distribution will be converted to the nominated currency at the relevant spot rate on the date of distribution (or shortly prior).

When will I get my distribution?

The Trustee is providing Unitholders with 90 days to update their contact and bank account details prior to processing the distribution. We expect to process the distribution shortly after this 90 day period, subject to any outstanding matters which arise during the register update process.

Secure Unitholder Website

How do I access the secure unitholder website?

In order to access the Secure Unitholder Website, you will need both your Investor ID and Account Number. These details can be obtained from either:

- the contract note provided to you when you invested in the Fund
- transactions statements or other documentation provided to you by the former Trustee
- your Unitholder Summary which was issued on 22 January 2021.

If you do not have access to any of the above documents, please contact KordaMentha by email at linvestors@kordamentha.com and include as much detail of your unit holding as possible.

What information will be provided on the Secure Unitholder Website?

When you successfully log in to the Secure Unitholder Website, you will be presented with a summary of your unit holding and your personal details as reflected in the Unitholder register, including:

- Number of units held
- AUD value of unit holding as at 19 March 2013
- Investment class
- Redemption payable or quarantined funds amount and currency (if applicable)
- Unitholder address
- Unitholder bank account details

Updating investor details

How can I change my address and bank account details?

Instructions will be provided on the Secure Unitholder Website regarding change of details.

Unitholders will be required to provide supporting documentation to verify any update to bank account details, this may include a bank statement or letter from your bank confirming these details. If you are a High Value Unitholder, you will also need to provide proof of identity information in order to change your bank details.

We encourage Unitholders to update their details via the Secure Unitholder Website in the first instance rather than completing the forms and posting them, this will avoid any potential delays.

What does it mean if I been classified as a High Value Unitholder?

The Secure Unitholder Website will include a Summary of your Unit Holding, which will include notification as to whether you are a High Value Unitholder.

Unitholders have been categorised as High Value Unitholders based on the AUD value of their investment in the Fund.

If you have been categorised as a High Value Investor, you will be required to provide proof of identity documentation to facilitate the process of updating your bank account details in the unitholder register. This will include certified copies of proof of identification documentation and a proof of identification form.

Can I transfer my interest in the Fund?

As part of the update process, unitholders will have the opportunity to transfer their unit holdings. In order to transfer your unit holdings you will need to complete a form which can be accessed on the Secure Unitholder Website. You will also need to provide proof of identity.

I am the beneficiary of a deceased estate which holds units in the Fund, how do I transfer these units?

In order to transfer the units of a deceased estate, you must complete a deceased estate transfer form which can be accessed via the Secure Unitholder Website. Supporting information will be required to be provided and details of necessary supporting documentation is provided on the form.

What if I can't find my contract?

Unitholders will be required to provide details to verify their investment, including Investor ID and Account ID. If you are able to provide these details, a contract is not necessary.

If you do not have access to the necessary details regarding your investment, please contact KordaMentha by email at Iminvestors@kordamentha.com and include as much detail of your unit holding as possible.

What are the requirements for certified documents?

We have received a number of queries from Unitholders requesting further guidance in relation to certified documents. A certified copy is a copy which has been certified as a correct copy of the original document by a person who in the jurisdiction of certification has the power to witness and certify a document. As there are different rules which apply in different jurisdictions regarding who can certify a document, we provide the following additional guidance that the Trustee will accept certification from any of the following:

- Any authorised affidavit taker (i.e. judge or magistrate, public notary, member of parliament)
- Justice of the peace
- Police officer
- Licenced legal practitioner/lawyer
- Licenced medical practitioner (i.e. doctor/nurse)
- An accountant who is a member of a professional accounting body
- School principal
- A teacher employed on a permanent basis at a school or tertiary education institution

However, the certifier may not be you, a relative of yours or somebody living at the same address as you.

Please ensure that the certifier:

1. Writes or stamps the copy with the words: 'Certified to be a true copy of the original seen by me'
2. Signs and dates the copy, and
3. Writes or stamps their: name, personal or professional address and qualification as an authorised certifier

Original certified copies must be posted to the address on the proof of identity form. Please do not send original documents as they will not be returned.

Unitholder Summary provided on 22 January 2021

Why does the Unitholder Summary show a separate balance for 5 registers?

The Trustee was provided with five different versions of the unitholder register for the MPF. The Unitholder Summary showed the balance of your unit holding in each of the five versions of the register. The Trustee has now obtained court directions that they are justified in adopting Register 1, which was determined to be the most accurate and complete version of the register.

Further information regarding the analysis undertaken by the Trustee to determine that Register 1 is the most correct version of the register is contained in the Jarrod Villani's Affidavit sworn on 4 December 2020.

Why is the number of units held on my contract note different to the number of units in the Unitholder Summary provided on 22 January 2021?

If there is a difference between your Unitholder Summary and your contract note or the last transaction statement provided to you by the former Trustee of the Fund, this may be due to either of the following:

- Your unit holding was impacted by the bulk switch transaction which occurred on 1 August 2012. This transaction had the effect of changing the number of units held, but not the value of the investment. This switch transaction will not impact your return. Further details regarding the switch transaction are contained below.
- Your unit holding was one which received regular distributions of income which were processed as redemptions of units. If a redemption transaction has been processed (i.e. units reduced) but payment was not made to you, you will be entitled to receive this payment in priority to the general distribution. Details of any redemption payable to you will be contained in the secure unitholder portal, details of which will be provided shortly.

If you would like further information regarding your unique situation, please send an email to lminvestors@kordamentha.com and include as much information regarding your unit holding as possible.

Switch transaction

On 1 August 2012, the Fund switched all Class A units to Class B units as part of a bulk switch of unitholders.

The difference between Class A and Class B units was that the unit price of Class B units reflected accrued but unpaid distributions, whereas the unit price for Class A units did not. The discrepancy in unit prices was such that the unit price for Class B units was generally higher than the unit price for Class A units. As a result, when Class A units were switched out, a lower number of Class B units were issued, however these units had a higher unit price and the ultimate value of the unit holding was maintained.

An example of how the switch transaction impacted unit holdings is as follows: if the 'value' of an investment on 1 August 2012 was \$10,000 being 10,000 units at \$1.00 unit price and this unit holding was switched to a unit class with a unit price of \$1.25, the number of units issued at \$1.25 would be 8,000 (rather than the previously held 10,000), however the ultimate value would remain at \$10,000 (being 8,000 x \$1.25).

Example

Detail	Units	Price	Value (\$)
Investment	10,000.00	\$1.00	10,000.00
Balance prior to switch			10,000.00
Switch	8,000.00	\$1.25	10,000.00
Balance after switch			10,000.00

Unit holdings past maturity

My investment matured prior to the closure of the fund or I requested a redemption of my investment prior to the closure of the fund. Will I be paid in priority to other Unitholders who had not requested redemption?

There are many Unitholder accounts which may have matured prior to the closure of the MPF or where a redemption request was pending. Shortly prior to the closure of the MPF, we understand that the Fund was receiving a significant volume of redemption requests. Whilst the Fund was in receipt of these redemption requests, a significant number of redemptions requests were not processed before the Fund closed.

If your redemption request was not processed prior to the closure of the Fund, i.e. you still have units in the Fund, you will be treated as a Unitholder and receive a distribution calculated in the same manner as all other Unitholders in the Fund.

The Directions of Williams J of the Supreme Court of Queensland dated 19 March 2021 state that the Trustee is justified in not taking any steps in relation to members of the Fund whose investments expired prior to the closure of the Fund on 19 March 2013, but whose units in the Fund were not redeemed.

Quarantined funds

What are quarantined funds?

Quarantined funds are monies which were invested in the Fund either inadvertently or for investment, but where no units were issued in return. The majority of these funds have been returned. There remains a limited amount of quarantined funds which have not been returned and are associated with existing unit holdings. These amounts will be paid to Unitholders together with their distribution payment.

Is it possible that any of my investment is part of quarantined funds?

If there are quarantined funds associated with your unit holding, details of the quarantined funds amount will be contained on the Secure Unitholder Website.

Redemptions payable

What are redemptions payable?

Shortly prior to the closure of the Fund, there were a number of redemption transactions processed by the Fund which had the effect of reducing the number of units held by certain Unitholders. These redemption transactions should have resulted in a payment to the impacted Unitholders. However, the Trustee has identified a number of instances where this payment was not made.

As the redemption of units was reflected in the records of the Fund, the Trustee will be making payment in respect of these transactions in priority to the general distribution to Unitholders.

It is noted that these redemption transactions were only partial redemption of unit holdings and related to distribution of earnings for certain unitholder accounts where earnings were paid out periodically rather than reinvested in the Fund.

Do I have any redemptions payable associated with my unit holding?

A listing of redemptions payable amounts, together with associated account numbers is contained in the Trustee Redemption Schedule which formed part of the application material for the recent directions application and is available on the KordaMentha website.

If there are redemptions payable associated with your unit holding, details of the redemptions payable amount will also be contained on the Secure Unitholder Website.

Global platforms and institutional Unitholders

The Fund allowed for investment by operators of global platforms, global portfolio bonds, master trusts, wrap accounts and institutions ('Global Platform/Portfolio Bond Investors') investing the funds of their clients ('Indirect Investors')

Indirect Investors who gained exposure to the Fund through a Global Platform/Portfolio Bond Investor did not become unit holders in the Fund or acquire the rights of a unit holder in the Fund.

How do I know if I am an Indirect Investor?

When you log in to the Secure Unitholder Website, details of your unit holding will be displayed. If the Unitholder name associated with the unit holding is not your name but is the name of a Global Platform/Portfolio Bond Investor, the investment is held by this Global Platform/Portfolio Bond Investor and you are an Indirect Investor.

If I am an Indirect Investor, how do I change the details of my unit holding?

If you are an Indirect Investor, you should contact the operator of your global platform, global portfolio bond, master trust or wrap account to obtain further information regarding updating your details.

If I am an Indirect Investor, how can I receive my distribution?

If you are an Indirect Investor you will not receive a distribution payment directly from the MPF. You should contact the operator of your global platform, global portfolio bond, master trust or wrap account to confirm details of how and when you can expect to receive your distribution payment.

If I am an Indirect Investor, can I transfer my unit holding?

If you are an Indirect Investor and would like to have an investment transferred to yourself personally, then you will need to contact the operator of your global platform, global portfolio bond, master trust or wrap account who will need to request this transfer. There are a number of forms which will need to be completed to effect a transfer, which can be accessed on either the Secure Unitholder Website or the KordaMentha website.

I am a Global Platform/Portfolio Bond Investor, how can I view and/or change the details of multiple accounts without logging in to the Secure Unitholder Website separately for each account.

Please contact KordaMentha via email at lminvestors@kordamentha.com.au and provide detail of all accounts for which you would like to access details.

We will then provide you with further instructions in relation to bulk update of multiple accounts if appropriate.



16 April 2021

By Email

Attn: Aida Vucic
Level 14, 12 Creek Street
Brisbane QLD 4000, Australia

Email: AVucic@kordamentha.com

Dear Aida,

Corporate Client Agreement – Letter of Variation

We refer to the Corporate Client Agreement between OzForex Limited trading as OFX (ABN 65 092 375 703) ('OFX') and KORDAMENTHA PTY LTD (ABN 43 100 169 391) ('KordaMentha') acting in its capacity as Trustee of the LM Managed Performance Fund dated 16 April 2021 (the 'Agreement'). Capitalised terms in this letter have the same meaning as those in the Agreement.

The purpose of this letter is to confirm the variations to the Agreement that the parties have agreed.

Agreed Variations

On and from the 16 April 2021 the Agreement is varied as follows:

Insert new clause 13.2A Cap on Liability:

"Your maximum aggregate liability to us arising out of clause 13.2 is limited to the extent that it can be satisfied out of the assets of the LM Managed Performance Fund."

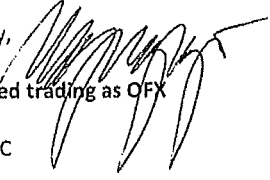
Insert new clause 16.4 Cost per Beneficiary:

"In addition to the Margin and any fees, costs, duties and taxes charged by third parties, for each Transaction, regardless of value, we will charge you AUD5 per beneficiary."

Apart from the variations set out in this letter, the Agreement remains unchanged and in full force and effect from the Commencement Date.

By signing below, KordaMentha agree to continue to be bound by the Agreement and have read and understood and agree to be bound by the terms of this Letter of Variation.

Yours sincerely,


OzForex Limited trading as OFX
Yung Ngo
President APAC

Tel +61(0) 2 8667 8000 • customer.service@ofx.com • ofx.com
Level 19, 60 Margaret Street, Sydney NSW 2000 Australia

OzForex Limited (ABN 65 092 375 703) is regulated by Australian Securities and Investments Commission (AFS Licence No. 226484)



Executed for and on behalf of KORDAMENTHA PTY
LTD (ABN 43 100 169 391) by its Authorised
Representative

A handwritten signature in black ink, appearing to read 'M. Korda'.

Signature of Authorised Representative

MARK KORDA

Name of Authorised Representative

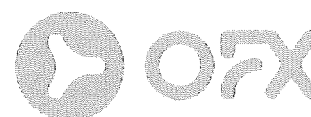
DIRECTOR

Title

Tel +61(0) 2 8667 8000 • customer.service@ofx.com • ofx.com
Level 19, 60 Margaret Street, Sydney NSW 2000 Australia

OzForex Limited (ABN 65 092 375 703) is regulated by Australian Securities and Investments Commission (AFS Licence No. 226484)

Customer Identification Form



Company Details

Use this form if you have a corporate trustee to the trust or entity that you are acting on behalf of to finalise your account with OzForex Limited trading as OFX (OFX). Where more than two Authorised Signatories are required, please also complete a Multiple user Authorisation Request form.

Full name as registered with ASIC

KORDAMENTHA PTY LTD

Australian Company Number (ACN)

100169391

Registered office address (cannot be a post office box)

Street name and number

Suburb

State

Postcode

Country

525n Collins Street

MELBOURNE

VIC

3000

AU

Principal place of business (if different from above and cannot be a post office box)

Street name and number

Suburb

State

Postcode

Country

525n Collins Street

MELBOURNE

VIC

3000

AU

Company Type: ☒ Proprietary ☐ Public

Are you acting on behalf of another entity?

Only complete this section if you are acting on behalf of a Trust, Partnership or other entity. In order to start dealing you will need to include a scanned copy of the full Trust Deed or Partnership Agreement.

Name of Trust, Partnership or other entity

LM MANAGED PERFORMANCE FUND

Entity number if applicable (e.g. ABN)

95595833174

Authorised signatories

This section should include any directors who are being appointed as Authorised Signatories (even if the same directors are signing the Agreement section).

Primary user

NOTE: Primary user has their own login access, with the following authorities:

Authorise - Authorise release of funds to beneficiary. Instructions - Create or amend beneficiary information.

Payments - Book transfers. Quotes - View live rates. View Deals - View organisation's dealing history.

Full name

Robert Hutson

Date of birth

09/Oct/1968

Telephone

33380270

Email

rhutson@kordamentha.com

Additional user

NOTE: Limited authority for additional user. Please complete a 'Multiple User Request form' if you require additional authority.

Full name

Date of birth

Telephone

Email

Management and Ownership

Primary Director

Full name

MARK ANTHONY KORDA

Date of birth

25/Mar/1957

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

525s Collins Street

MELBOURNE

VIC

3000

AU

Second Director

Full name

MARK FRANCIS XAVIER MENTHA

Date of birth

25/Dec/1959

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

525s Collins Street

MELBOURNE

VIC

3000

AU

Third Director

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

Fourth Director

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

Fifth Director

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

Sixth Director

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

*If more than 6 Directors please provide details on a separate page.

Beneficial Owner[s]

To be completed for each natural person who is beneficially entitled to and/or controls (directly or indirectly) 25% or more of issued capital in the company.

Beneficial Owner 1

Full name

MARK ANTHONY KORDA

Date of birth

25/Mar/1957

Residential address (cannot be a post office box)

525s Collins Street

Suburb

MELBOURNE

State

VIC

Postcode

3000

Country

AU

Beneficial Owner 2

Full name

MARK FRANCIS XAVIER MENTHA

Date of birth

25/Dec/1959

Residential address (cannot be a post office box)

525s Collins Street

Suburb

MELBOURNE

State

VIC

Postcode

3000

Country

AU

Beneficial Owner 3

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

Beneficial Owner 4

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

Other Entity Owner(s)

To be completed for each natural person of the other entity, who is beneficially entitled to the assets of the other entity.

Beneficial Owner 1

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

--	--	--	--	--

Beneficial Owner 2

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

--	--	--	--	--

Beneficial Owner 3

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

--	--	--	--	--

Beneficial Owner 4

Full name

Date of birth

Residential address (cannot be a post office box)

Suburb

State

Postcode

Country

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*If more than 4 Beneficial Owner please provide details on a separate page.

Corporate Client Agreement

I/We have read, understood and agree to the attached corporate client agreement and acknowledge that the corporate client agreement will govern all future transactions that I/we enter into. Sign for and on behalf of the client.

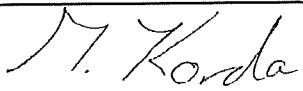
Please note: If the Company has more than one director, please ensure that two directors, or a director and a company secretary sign and print their names.

Full name

MARK KORDA

Sign

Date

	
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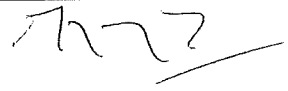
☒ Director ☐ Company secretary

Full name

MARK MENTHA

Sign

Date

	
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☒ Director ☐ Company secretary

☒ I confirm that all Authorised Signatories and any other individual who is authorised to act on behalf of the company are authorised to provide/release Personal Information of Beneficial Owners.

Corporate Client Agreement

Terms and Conditions

1. This Agreement

1.1 Capacity - These terms and conditions apply to registered domestic and foreign companies, registered associations, registered co-operatives, corporate trustees, limited liability partnership or other partnerships having separate legal personality, government bodies or other statutory bodies ("the Client" or "you") who are dealing with OzForex Limited trading as OFX (ABN 65 092 375 703) ("OFX", "us" or "we") through any of our Websites.

1.2 Structure of this Agreement - This Agreement is a master agreement that applies to all Transactions that you subsequently enter into with us. The specific transactional details of each Transaction, including the currencies to be exchanged and the amount of the transaction, will be agreed separately when you book the Transactions; they will constitute separate agreements in their own right, but will incorporate these terms and conditions.

1.3 Other Documents - You acknowledge that you have been provided with copies of the following documents in accordance with, to the extent applicable, the requirements of the Corporations Act:

- (i) Our Product Disclosure Statement ("PDS").
- (ii) Our Financial Services Guide ("FSG").
- (iii) Our Website Use Agreement.
- (iv) Our Privacy Policy.

2. Our Service

2.1 Foreign Exchange Services - We hold an Australian Financial Services Licence authorising us to provide foreign exchange products and services. We offer Spot Contracts, Forward Contracts and Options, the details and mechanics of which are explained in our PDS. You should read our PDS before signing this agreement so that you understand exactly how our service operates.

2.2 No Margin or Speculative Trading - We do not offer any form of margin or speculative trading facilities. When you enter into a Transaction, you must deliver to us the full amount of the funds you are transferring on or before the Delivery Date.

2.3 No Exchange Rate Set-Off - We will not agree to enter into any kind of set-off arrangement that would allow you to pay us only the amount of any loss, or for us to pay you any profit, that might be realised as the result of exchange rate movements on settlement of the Transaction.

2.4 No Financial Advice - We will not take into account your specific financial circumstances or needs when we enter into a Transaction with you. To the extent that we provide you with any advice, it will relate only to the mechanics of the transaction you are proposing to enter into or to publicly available information. You must obtain your own financial advice and make your own assessment as to whether our service is appropriate for your particular requirements. You must select the type and timing of each Transaction you enter into yourself.

2.5 Ownership of Funds - You may not enter into Transactions on behalf of third parties. You must be the owner of any funds that are the subject of a Transaction.

3. Your Instructions

3.1 Authorised Signatories - You must appoint one or more Authorised Signatories (even if you are a company and you have a sole director who has already signed the Agreement in the capacity of a director). An Authorised Signatory may have unlimited authority to give us Instructions on your behalf or you may specify the stages of a Transaction they are authorised to undertake.

We will rely on Instructions received by the individual/s appointed by you as Authorised Signatories in this agreement until such time as you revoke or vary that authority by giving us 48 hours notice in writing. If you wish to change the Authorised Signatories, you may do so by completing a Change of Authorised Signatory Form or otherwise notifying us in writing.

3.2 Username and Password - We will issue each of your Authorised Signatories with a Username and Password in order that they may provide us with Instructions online, by telephone or by email, subject always to any limits on authorisation that you may have set in this agreement. We will accept any Instructions received pursuant to the use of the Username and Password without checking the identity of the user or their level of authorisation and you will at all times be bound by those Instructions.

4. Transactions

4.1 Transaction Binding - If you wish to enter into a Transaction, you may do so by giving us Instructions online, by telephone or by email. The Transaction will be legally binding on you when we receive your Instructions in accordance with this clause 4 or clause 5.

4.2 Online Auto Confirm Transaction - If you enter into an Auto-Confirm Transaction online, the Transaction will be legally binding on you as soon as we receive your electronic Instructions. We will provide you with confirmation of the Transaction Details on the screen at the time you book the Transaction, but we will not provide you with any subsequent confirmation of any kind, unless you request it.

4.3 Online Booking Confirmation - If you book a Transaction online that is not an Auto-Confirm Transaction, we will attempt to contact you by telephone within 15 minutes of your online booking to confirm the Transaction details. The Transaction will be legally binding on you at the conclusion of the telephone call. If we cannot contact you by telephone on the number you have given to us within 15 minutes of your booking, we reserve the right to cancel the booking and not enter into the Transaction.

4.4 Email Booking - If you book a Transaction by email, the Transaction will be binding on you when we process your email. You acknowledge that, if you choose to book a Transaction by email, it may not be processed immediately. When we process your Instructions, we will send you an email headed "Deal Confirmation". The Deal Confirmation constitutes an error correction mechanism only. If there is any discrepancy between the Deal Confirmation and the details of the Transaction set out in your email, you must contact us within 24 hours of receipt of the Deal Confirmation, failing which the Transaction details in the Deal Confirmation will be deemed to be correct.

4.5 Telephone Booking - If you book a Transaction by telephone, the Transaction will be legally binding at the conclusion of the telephone call. We will send you an email headed "Deal Confirmation". The Deal Confirmation constitutes an error correction mechanism only. If there is any discrepancy between the Deal Confirmation and the details of the Transaction that have already been agreed in the telephone conversation, you must contact us within 24 hours of receipt of the Deal Confirmation, failing which the Transaction details in the Deal Confirmation will be deemed to be correct. In the event of any dispute, the recording or transcript of our telephone conversation may be used as evidence as to the terms of the agreement that was entered into.

4.6 Cancellation - Once a Transaction has become legally binding, you may not cancel the Transaction in any circumstances. You may only take action to correct any of the Transaction details set out in the Deal Confirmation if the Deal Confirmation does not reflect the transaction details that have already been agreed.

4.7 Out-of-Market Quotes - If we quote you a Rate that is clearly a mistake on our part ("Out-of-Market Quote") as the result of a technical or human error, it is not binding on us. You must notify us as soon as the mistake comes to your attention and we will requote the Rate as soon as possible.

4.8 Prompt Performance by You - You acknowledge that exchange rates can fluctuate rapidly, so the Rate we quote you for a particular Transaction is contingent on the prompt performance of your obligations. We reserve the right to requote the Rate if you do not provide us with requested information or funds on time.

5. Forward Transactions

5.1 Forward Contract Details - A Forward Contract can only be booked by telephone and will become legally binding as and from the time that the Transaction details are orally agreed between us in the telephone call. After the telephone call, we will send you a Deal Confirmation. The Deal Confirmation constitutes an error correction mechanism only; if you do not contact us within 24 hours of receipt of the Deal Confirmation, the Transaction details will be deemed to be correct. If you do not receive the Deal Confirmation, the Transaction is still legally binding and will be evidenced by the transcript of the telephone conversation in which it was booked.

5.2 Advance Payment - You acknowledge that we bear the risk that you might default on settlement of your Forward Contract and, to mitigate this settlement risk, we reserve the right to request that you make one or more Advance Payments in relation to all Forward Contracts. We may request an Advance Payment both at the time you book the Forward Contract and at any time prior to the Maturity Date. You acknowledge that the amount of any Advance Payments requested will be determined by us in our discretion and that we may request an Advance Payment even if we have entered into a credit limit arrangement with you.

5.3 Failure to Pay a Advance Payment - If we have asked you to make an Advance Payment, you must pay the amount we have requested on the date we have nominated. If you do not do so, we reserve the right to Close Out the Forward Contract in accordance with clause 9.

5.4 Change to the Maturity Date - You may ask us to bring forward the Maturity Date ("pre-delivery") or to extend the Maturity Date ("roll over") in relation to the whole or only part of your Forward Contract. You acknowledge that we may agree to such a request entirely at our discretion. If we agree, you acknowledge that the Rate will be adjusted to account for the timing of the new Delivery Date.

5.5 Settlement - You must transmit to our nominated account the full amount of the funds that are the subject of the Forward Contract, less any Advance Payment already paid, together with any service fees that we or any third party have requested, on or before the Maturity Date.

5. Payment

6.1 Spot Contract Payments - You must initiate payment into our nominated account of the full amount required to settle a Spot Contract on the day the Transaction becomes legally binding in accordance with clause 4. If we have not received the funds within 2 business days, we reserve the right to Close Out the Transaction in accordance with clause 9.

6.2 Forward Contract Payments - You must ensure that you pay into our account the full amount required to settle all Forward Contracts on or before the Maturity Date. If we have not received the funds by the Maturity Date (or any agreed change to the Maturity Date), we reserve the right to Close Out the Transaction in accordance with clause 9.

6.3 No Cash or Cheques - You acknowledge that we do not accept cash or cheques. You agree to make all payments to our account electronically and you acknowledge that we will transmit your funds by electronic means only.

6.4 Beneficiary Account - You must provide us with full details of your Beneficiary Account, including the full name and address of the account holder and the full name and address of the beneficiary bank, on or before the date that we nominate. If you fail to do so, we reserve the right to Close Out the Transaction in accordance with clause 9.

6.5 Beneficiary Account Number - We will rely solely on the account number you give us for your Beneficiary Account and will not check to ensure that the name provided by you accords with the account number you have given us.

6.6 Full Amount - All payments must be received by us in cleared funds and for the full amount being transferred, including any transaction fees that may be payable and any service fees that have been requested by us or any third party, before we will credit your Beneficiary Account. In the event that we agree to make a payment for you without having received the full amount, you acknowledge that we are not waiving our right to ask you for the full amount after the Transaction has been processed.

6.7 Funds Held by Us - You acknowledge and agree that we do not hold your funds on trust and will not put your funds into a separate bank account.

6.8 No Interest Paid - You acknowledge that we will not pay to you any interest on any funds held by us whether by way of Advance Payment or otherwise.

7. Options

7.1 Option Agreement - Options may be entered into only by telephone. The Option Agreement will become legally binding as and from the time that the Option Transaction details are orally agreed between us in the telephone call. After the telephone call, we will send you an Option Agreement Confirmation. The Option Agreement Confirmation constitutes an error correction mechanism only; if you do not contact us within 24 hours of receipt of the Option Agreement Confirmation, the details of the Option Agreement will be deemed to be correct. If you do not receive the Option Agreement Confirmation, the Transaction is still legally binding and will be evidenced by the transcript of the telephone conversation in which it was booked.

7.2 Payment of Premium - The Premium agreed to in the Option Agreement must be paid within 2 Business Days of the Option being entered into in accordance with clause 7.1.

7.3 Non Payment of Premium - In the event that you fail to pay the Premium in accordance with clause 7.2, we reserve the right to terminate the Option Agreement upon 24 hours oral or written notice. In the event that we do terminate the Option Agreement, the Premium remains payable by you as a debt.

7.4 Premium Non-Refundable - You acknowledge and agree that the Premium is a separate, non-refundable fee. It does not relate to the underlying foreign exchange transaction that will be entered into if the Option is Exercised and will not be applied in reduction of the settlement sum payable under any such foreign exchange transaction.

7.5 Exercise of Option - Should you decide to exercise the Option, you must notify us of your election to do so either orally by telephone or in writing by email not later than midday (12.00pm) on the Expiry Date.

7.6 Consequences of Exercising the Option - You acknowledge that, upon exercise of the Option, you will automatically have entered into the Spot Contract detailed in the Option Agreement Confirmation and will be bound by the terms and conditions of this Agreement that apply to such Spot Contract. In particular, you must immediately provide us with details of your Beneficiary Account and deliver to us in full the funds you are transferring within 48 hours of Exercising the Option.

7.7 Expiry - In the event that no notification is received by OzForex by midday (12.00pm) on the Expiry Date, the Option will expire at that time.

8. Orders

8.1 Legally Binding - You may enter into an Order online, by telephone or by email. Subject to your right to cancel the Order in accordance with clause 8.2, the Order will become binding as and from the time that your Instructions are received by us. After we receive your Instructions, we will send you an Order Confirmation. The Order Confirmation constitutes an error correction mechanism only; if you do not contact us immediately on receipt of the Order Confirmation, the Transaction details will be deemed to be correct.

8.2 Cancellation of Orders by Telephone Only - You may cancel an Order at any time before the Target Rate is reached by giving us notice by telephone. You may not cancel an Order after the Target Rate has been reached, whether or not we have notified you that the Target Rate has been reached. When the Target Rate is reached, you are legally bound by the Transaction.

8.3 Target Rate - The Target Rate will be deemed to have been reached only when the exchange rate nominated in your Order has been filled with our provider. This will occur when the rate you have nominated has been exceeded by an amount that includes our Margin. You may find that, in some cases, the exchange rate spikes with the result that the exchange rate you have nominated in your Order has been reached but has changed before we are able to fill the Order with our provider; for the avoidance of doubt, we will not fill your Order in those circumstances.

8.4 Payment - We will endeavour to notify you by telephone or email as soon as possible on the Business Day or on the next Business Day after the Target Rate has been reached. As soon as you receive our notification, you must take action to ensure that the funds reach our account by the Delivery Date. If we do not receive the funds in time, we reserve our right to Close Out the Transaction in accordance with clause 9.

9. Closing Out

9.1 Closing Out Transactions - We may refuse to perform a Transaction or to Close Out a particular Transaction and all current Transactions that you have with us, without notice to you:

- (i) if you fail to make any payment when it is due, including the payment of any Advance Payment that has been requested by us;
- (ii) if you fail to provide any material information we have requested;
- (iii) any information you have provided to us or any warranty you have given to us is or becomes, in our opinion, materially inaccurate, incorrect or misleading;
- (iv) on the occurrence of an Insolvency Event;
- (v) if the performance of our obligations under this Agreement become illegal;
- (vi) if a serious dispute has arisen between us; or
- (vii) if you breach a material term of this Agreement or of any Transaction.

9.2 Consequences of Closing Out - When we Close Out any or all of the Transactions that you have entered into, we buy back the currency that we have bought for you when you entered into the Transaction at prevailing market rates chosen by us in good faith. If the value of the currency you have asked us to exchange has strengthened, a loss will be incurred on the Transaction and you will be liable to pay us the amount of that loss, together with any expenses, premiums, commissions or other fees incurred by us.

9.3 No Payment of Profit - We will not pay you any profit arising from Closing Out a Transaction in any circumstances.

9.4 Payment of Loss - You acknowledge that the amount of any loss realised on the Closing Out of a Transaction is a debt payable by you and agree that we may immediately deduct the total amount of any loss (together with any expenses, premiums, commissions or other fees) from any funds we hold in relation to any Transaction whether in the form of an Advance Payment or otherwise.

If the amount we are seeking to recover exceeds the amount of any Advance Payment or other funds held by us, you agree to pay the balance within 7 days of being notified by us of the total amount due.

9.4 Payment of Loss - You acknowledge that the amount of any loss realised on the Closing Out of a Transaction is a debt payable by you and agree that we may immediately deduct the total amount of any loss (together with any expenses, premiums, commissions or other fees) from any funds we hold in relation to any Transaction whether in the form of an Advance Payment or otherwise. If the amount we are seeking to recover exceeds the amount of any Advance Payment or other funds held by us, you agree to pay the balance within 7 days of being notified by us of the total amount due.

9.5 Interest - You agree that we may charge you interest on any sum "that remains payable to us after we Close Out any or all of your Transactions at a rate of 2% per annum over the base rate of the Reserve Bank of Australia (or of such monetary authority as may replace it). Interest will accrue and will be calculated daily and be compounded monthly from the date payment was due until the date full payment is made by you.

9.6 Default Notification - You must notify us immediately if you become aware of any event referred to in Clause 9.1 above.

9.7 Notice of Monies Due - If we Close Out a Transaction, we will send you a written statement explaining the amount of any sums that may be payable to us and the amount of any sums being withheld by us.

10. Anti-Money Laundering and Counter-Terrorism Financing ("AML/CTF")

10.1 AML/CTF Compliance - You undertake that you will not knowingly do anything to put us in breach of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006, rules and other subordinate instruments (AML/CTF Laws). You undertake to notify us if you become aware of anything that would put us in breach of AML/CTF Laws.

10.2 Provision of Information - If requested, you undertake to provide additional information and assistance and comply with all reasonable requests to facilitate our compliance with AML/CTF Laws in Australia or an equivalent overseas jurisdiction.

10.3 No Grounds for Suspicion - You undertake that you are not aware and have no reason to suspect that:

- (i) the money you are transferring is derived from or related to money laundering, terrorism financing or similar activities (Illegal Activities); and
- (ii) the money you are transferring will be used to finance, or in connection with, Illegal Activities.

10.4 Consent to Collection of Information by Us - We are subject to AML/CTF Laws. You consent to us disclosing in connection with AML/CTF Laws any of your Personal Information (as defined in the Privacy Act 1988 (Cth)) we may have. For Authorised Representatives providing Personal Information of Beneficial Owners, please to clause 14.1.

10.5 Freezing or Blocking Transfer of Funds - In certain circumstances, we may be obliged to freeze or block an account where it is used in connection with Illegal Activities or suspected Illegal Activities. Freezing or blocking can arise as a result of the account monitoring that is required by AML/CTF Laws. If this occurs, we are not liable to you for any consequences or losses whatsoever and you agree to indemnify us if we are found liable to a third party in connection with the freezing or blocking of your account.

10.6 Right to Refuse to Provide Our Service - If You fail to provide Us with any information that we are required to collect under the AML/CTF Laws, we retain the right, at any time, to refuse, in our sole discretion, to provide the service.

11. Disputes

11.1 Disputes Policy - If you have a problem with our service, you should initially bring your complaint to our attention so that we can deal with it in accordance with our internal disputes policy. Our complaints officer will attempt to resolve the dispute to your satisfaction as quickly as possible.

11.2 Financial Ombudsman Service - If the dispute cannot be resolved under our internal disputes policy, you may then, if you are a Retail Client, formally submit the dispute to the office of the Financial Ombudsman's Service ("FOS") for determination in accordance with its rules.

11.3 Arbitration - If your dispute does not fall within the rules of the FOS, you may submit the dispute to arbitration to be determined by the Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules, the Arbitrator will be a person recommended by the New South Wales Chapter of the Institute of Arbitrators and Mediators of Australia. You agree to accept the determination of the arbitrator.

11.4 Legal Action - Nothing in this clause prevents either of us from approaching a court either for an urgent injunction or to appeal the decision of an arbitrator and nothing prevents us from taking immediate legal action to recover any amounts that you may owe us as the result of Closing Out a Transaction/s under clause 9.

12. Limitation of Liability

12.1 No Liability for Delays - You acknowledge that delays in the transmission and receipt of payments may occur. In particular, you acknowledge that we operate an online dealing platform that could be subject to technical, or other, problems, the nature and duration of which may be beyond our control. Our service also involves the use of intermediaries who are outside our control. Accordingly, while we do everything in our power to ensure the timely transmission of funds, we cannot guarantee that transfers of funds will always be made on time and cannot accept any liability to you for any loss suffered by you as a result of any delays in the transmission of funds.

12.2 Liability Limited - We do not in any circumstances assume liability to you in excess of the amount of money you have actually paid to us in relation to any particular Transaction. We will not be liable to you for any form of consequential damages or loss that you may suffer as a result of:

- (i) delays in the transfer of your funds, or
- (ii) our refusal at any time to transfer your funds. Without in any way limiting the effect of this clause or any other clause of this agreement, "consequential damages" shall be taken to include damages arising from:
 - (i) loss of business,
 - (ii) loss of opportunity to realise a gain as a result of foreign exchange fluctuations;
 - (iii) loss of any other opportunity, or
 - (iv) loss of interest on funds.

For the avoidance of doubt and without limiting any other provision of this Agreement:

(a) if your funds are sent to the wrong account or otherwise fail to reach your Beneficiary Account as the result of a mistake made by us, we will credit your Beneficiary Account in the full amount of the funds you expect to receive (subject always to your obligations under clause 7.2), but that shall be the full extent of our liability to you;

(b) if we Close Out or refuse to process one or more of your Transactions for any reason, we shall refund to you any funds that we hold on your behalf by way of Advance Payment or otherwise, but that shall be the full extent of our liability to you.

13. Warranties and Indemnities

13.1 Your Warranties - You agree that the following statements are true and accurate, and you acknowledge that we may refuse to process, or Close Out, a Transaction if we find at any stage that they are not true and accurate:

- (i) you are incorporated and/or registered and have full authority to enter into this Agreement and any Transaction/s;
- (ii) you are the owner of the money being transferred;
- (iii) you will inform us if you are acting as:
 - (a) a corporate trustee of a trust; or
 - (b) a corporate partner of a partnership;
- (iv) if you are acting as a corporate trustee of a trust, you are properly authorised to enter into this Agreement and any Transactions in accordance with the terms of the relevant trust deed;
- (v) you have a valid commercial reason for entering into each Transaction and will not enter into any Transaction for speculative purposes; and
- (vi) in making a decision to enter into a Transaction, you will not rely on any market-related information that may be provided from time to time by us on our website or by our employees or consultants.

13.2 Your Indemnity - You agree to indemnify us for any costs, expenses or fees we may incur as a result of your failure to perform your obligations under this Agreement, whether they arise under clause 9 or in some other way. This includes any legal costs, on a solicitor and own client basis, that we may incur in order to enforce our rights or recover any amounts you owe us. You also agree to indemnify us for any fees, costs, duties and taxes charged by third parties in relation to the Transactions you enter into, including fees charged by your beneficiary bank, whether or not those fees or charges were notified to you in advance.

14. Privacy

In this clause 14, "you" means any Authorised Representative.

14.1 Personal Information of Authorised Representatives - You acknowledge that, in order to provide our service to the Client, we must collect your Personal Information. The Client warrants that it has given you a copy of this clause 14. If you refuse or fail to provide any requested information, we may not be able to process any Transaction/s for the Client. Pursuant to clause 14.4, we may also ask you, as an Authorised Representative, to provide Personal Information of Beneficial Owners. When you give us Personal Information of Beneficial Owners, you represent that you are authorised to do so and agree to inform any Beneficial Owners of the contents of this clause 14 and our Privacy Policy as it relates to them.

14.2 Contact Us - If you have any questions about the collection and use of your Personal Information, you may contact our Compliance Officer on +612 8667 8090 or at compliance@afx.com.au.

14.3 Access to your Personal Information - You may obtain access to most Personal Information we hold about you by contacting our Compliance Officer. Sometimes there may be a reason why access will not be possible. If that is the case, you will be told why.

14.4 Purpose of Collection - We collect your Personal Information in order to provide our products and services to the Client and to satisfy our regulatory obligations under AML/CTF Laws. We are required under AML/CTF Laws to collect Personal Information of individuals (being a natural person or persons) who ultimately own or control (whether directly or indirectly) the Client (Beneficial Owners). We are required to collect Personal Information of Beneficial Owners to assist us to verify information about the beneficial ownership and control of our clients.

14.5 Organisations who may receive your Information - We may provide your Personal Information to our intermediary bankers and to any government regulatory bodies that normally require it or may request it. We may also provide your Personal Information to any partners, agents or intermediaries who are a necessary part of the provision of our products and services.

14.6 Information Correct and Up to Date - You must ensure that all information you give to us is accurate and up-to-date at all times. You must tell us if any details change as soon as practicable.

14.7 Protection of Information - We collect and store all information electronically and take all reasonable steps to protect information from unauthorised access, but we cannot accept liability for unauthorised access or use of information.

14.8 Retention of Information - Any information collected by us, including telephone recordings or transcripts, may be kept or destroyed in accordance with our information retention policy.

14.9 Recording Phone Conversations - You consent to the electronic recording of all telephone conversations that take place between us without an automatic warning tone or warning message being given and you agree that we may use the recordings as evidence in any dispute or anticipated dispute between us.

14.10 Electronic Databases - You acknowledge and agree that we may access any electronic databases necessary to assist us to identify you and to assess your credit worthiness.

15. Misdirected Funds

15.1 Your Mistake - If your funds are sent to the wrong account as the result of a mistake made by you, and we have acted in accordance with your Instructions, we will be under no obligation either to recover the funds or to resend the funds to the correct Beneficiary Account. You will need to book a new Transaction.

15.2 Our Mistake - If your funds are sent to the wrong account as the result of a mistake made by us, we will take urgent action at our own expense to recover those funds, provided that you take immediate action to assist us to recover any such funds if the mistaken beneficiary is related to you or associated with you in some way.

16. General

16.1 Notices - Where notice in writing is required under this agreement, it may be sent by fax, post or email. Proof of posting will be proof of receipt; in the case of facsimile or email on the day of dispatch, in the case of delivery by post 48 hours from the date of posting. Documents shall be sent to the last known postal address, email address or fax number you have given to us. If they change, you must notify us as soon as possible.

16.2 Modification of this Agreement - We may alter some of the terms of this agreement by posting the new terms on our website. This will not affect any rights or obligations you already have, but you will be bound by the new terms when you enter into subsequent Transactions.

16.3 Governing Law - This agreement shall be interpreted in accordance with the laws of New South Wales, Australia and you submit to the jurisdiction of the courts of New South Wales, Australia.

16. Definitions

Advance Payment means a payment of part of the sum that is due us on the Maturity Date.

Authorise means authorise the stage of a Transaction when we transmit your funds from our account to your to your nominated beneficiary account.

Authorised Representative means an individual who is duly authorised to execute this Agreement or an Authorised Signatory.

Authorised Signatory means an individual appointed and authorised by you to provide Instructions to us on your behalf.

Auto-Confirm Transaction means a Transaction that has been booked online and has been processed by us automatically with no telephone call or other communication being entered into.

Beneficiary Account means the account to which you are sending your funds.

Booking means booking a Transaction by providing us with all of the relevant Transaction details.

Business Day means a day on which we are open for business which shall not include Saturday and Sunday, New Year's Day, Christmas Day, Boxing Day, but will include Good Friday and Easter Monday. Close Out means reversing a Transaction in the circumstances set out in Clause 9 or otherwise pursuant to this Agreement.

Deal Confirmation means a written communication, however described, provided by us confirming the details of any Transaction that you have booked by telephone, email or online, which shall be an error correction mechanism only.

Delivery Date means the date on which we have requested that you deliver your funds to our account for transmission.

Exercise means exercise or take up an Option.

Expiry Date means the date on which an Option must be Exercised, failing which it will expire.

Forward Contract means a foreign exchange contract under which we agree to exchange money at an agreed exchange rate and at an agreed time which is between 48 hours and 12 months from the time of the contract being entered into.

Insolvency Event means:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of the Client;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to the Client or all or any asset the Client;
- (c) a mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security under which the Client is the mortgagor or chargor;
- (d) the Client is a domestic company and the company has become insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth);
- (e) the Client has stopped paying its debts as and when they fall due; or
- (f) the Client is a domestic company and the company is subject to voluntary administration under Part 5.3A of the Corporations Act 2001 (Cth).

Instructions means a request made by you to enter into a Transaction and shall be taken to include any information, communications or documents incidental to or relating to a Transaction whether we process the Transaction or not.

Margin means the difference between the retail exchange rate we quote to you and the whole exchange rate we obtain from our provider.

Maturity Date means, in relation to a Forward Contract, the date on which the currency exchange is to be made by us and includes any agreed variation to the original date, being either an earlier or a later date.

Option or Option Agreement means an agreement pursuant to which you have the right but not the obligation to enter into a specified foreign currency transaction on the Expiry Date.

Option Agreement Confirmation means the written notification that we send you after you enter into an Option Agreement confirming the details of the agreement we have reached by telephone.

Order Confirmation means the notification we send you confirming the details of the Order you have entered into with us.

Order means an instruction pursuant to which we will enter into a Spot or Forward Transaction for you only at an exchange rate nominated by you.

OzForex means OzForex Limited (ACN: 092 375 703) whose principal trading address is Level 9, 10 Bridge Street, Sydney, NSW, 2000, Australia.

Payment means payment by you to us of funds for transmission.

Premium means the fee non-refundable fee payable under the Option Agreement.

Rate means the foreign currency exchange rate that we quote you for a Transaction.

Retail Client has the meaning given in s761G of the Corporations Act 2001 (Cth).

Spot Contract means a foreign exchange contract under which we agree to exchange money at an agreed rate within 48 hours of the contract being entered into.

Target Rate means the rate at which an Order is triggered, being the exchange rate nominated by you in your Order plus our Margin and shall be contingent on our ability to fill the Order with our own provider.

Transaction means a Spot Contract, a Forward Contract or an Order, and shall be taken to refer to a series of transactions pursuant to standing instructions given by you.

View Deals means viewing all pending and completed transactions on our website.

Websites means any websites owned by us.

From: unclaimed lodging <unclaimed.lodging@asic.gov.au>
Sent: Monday, 22 March 2021 11:42 AM
To: Aida Vucic
Cc: Stacey Clisby; David Johnstone
Subject: LM Managed Performance Fund | Unclaimed monies [SEC=OFFICIAL]
Attachments: guide-to-company-unclaimed-money-return-forms-2018.pdf

Dear Aida

Thank you for your email.

All lodgements with the ASIC Unclaimed Monies Unit must submit a CSV file for review. Your lodgement advice will be reviewed and our unit will confirm whether your lodgement has been accepted or alternatively if further information is required.

It is the lodging party's responsibility to ascertain if funds comply with the provisions of the Corporations Act 2001.

To determine which section the funds fall under, you may wish to visit our [website](#) for more details in regards to lodgement of unclaimed money under the Corporations Act.

Attached is a guide to assist you in preparing the CSV file for review. Please do not forward payment prior to your lodgement being accepted.

You will need to include the declaration and provide a CSV file via email for review

Declaration:

[Your company/entity name]

The attached CSV return form is lodged with ASIC to provide unclaimed money/records to ASIC pursuant to the applicable section of the Corporations Act 2001 as listed in the attached csv file.

I confirm that the unclaimed money records provided comply with the requirements of the section and can be lodged with ASIC.

I confirm that I have provided all relevant information regarding the owner/s of the money including their name, last known address and any other information that may assist ASIC to assess a claim by a person that the person is entitled to the money.

[Name of person submitting this statement]

[Position of person]

[Contact phone number]

<CSV template - please refer to links below>

668

1343

414

544

601

601NG

1343A

601AD(1A)

1017E

Additional Information if required

ASIC has no authority to accept funds that do not comply with the provisions of the above Sections of the Corporations Act 2001. We could only accept funds if a court order specifically refers funds to be paid to ASIC Unclaimed Monies. In this instance, you would need to provide a copy of the Court Order.

If you have ascertained that the above is not appropriate for your circumstances you may wish to contact the relevant state authority who may accept the funds:

- **ACT:** Public Trustee and Guardian for the ACT
- **New South Wales:** Revenue NSW
- **Northern Territory:** Northern Territory Treasury
- **Queensland:** Public Trustee of Queensland
- **South Australia:** SA Department of Treasury and Finance
- **Tasmania:** Tasmanian Department of Treasury and Finance or phone (03) 6166 4188
- **Victoria:** State Revenue Office Victoria
- **Western Australia:** WA Department of Treasury

Kind Regards

Unclaimed Money Unit

Australian Securities and Investments Commission

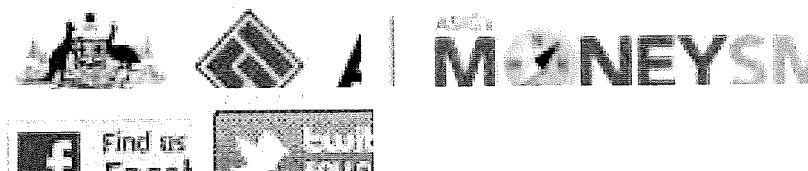
Postal: GPO Box 9827, Brisbane, QLD, 4001

Tel: 1300 301 198, Overseas Tel: +61 7 3867 4700

Fax: 07 3867 4725

unclaimed.lodging@asic.gov.au

ASIC is authorised to collect information provided under Part 9.7 of the Corporations Act. The information collected will be used in the assessment of an application for unclaimed monies and for personal identification purposes. For more details, please see Privacy Statement on www.asic.gov.au.



From: Aida Vucic <AVucic@kordamentha.com>

Sent: Wednesday, 17 March 2021 11:47 AM

To: unclaimed lodging <unclaimed.lodging@asic.gov.au>

Cc: Stacey Clisby <sclisby@kordamentha.com>; David Johnstone <djohnstone@kordamentha.com>

Subject: LM Managed Performance Fund | Unclaimed monies

Dear Sir/Madam

KordaMentha Pty Ltd trustee of the LM Managed Performance Fund ('the MPF')

On 12 April 2013, KordaMentha and Calibre Capital Limited were appointed as trustees of the MPF pursuant to an Order of the Supreme Court of Queensland in Brisbane. Our appointment as Trustees was to ensure independence in the management of the Fund's investments in the best interests of all investors. Calibre Capital has since resigned as Trustee and KordaMentha is the sole Trustee of the Fund.

The Fund has been closed since 19 March 2013 since which time no further monies have been accepted by the Fund. As at the date of closure of the Fund there were 5,881 unique accounts and 4,525 unique members. During this time we have been in regular contact with members regarding the status of the Fund.

As we prepare for finalisation of the winding up and distribution of monies held to members of the Fund, we will be providing members with an opportunity to review and update their address and bank account details to facilitate the

distribution. In the event that we are not able to distribute to any member based on the details held (due to incomplete or inaccurate information), we are seeking confirmation from ASIC that you will accept these unclaimed monies.

Would you also please advise of what documentation the Trustee will be required to provide to ASIC, either prior to, or upon payment of the unclaimed monies.

Should you have any queries please contact me on the below.

Kind regards

Aida Vucic | Senior Executive Analyst

KordaMentha

T +61 7 3338 0247

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

Website | **Blog** | **LinkedIn** | **Twitter**



Grow. Protect. Recover.

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General Information

- Ensure all information is correct and accurate.
- Do not include dollar signs when entering amounts and remove any commas.
- All amounts must be rounded to 2 decimal places.
- Fields have character limits - shown in brackets in the example below. If the character limits are exceeded the form may be rejected.
- Mandatory fields must be populated – identified by “*” below.
- Once all information is entered please “save-as” a **csv file** (e.g. “govreturn.csv”).
- Lodge your csv file with ASIC by email using the link at www.asic.gov.au/unclaimed-money (go to Lodging unclaimed money returns, Companies with unclaimed money/property).
- **Payment:** Your CSV return form will be checked to ensure the unclaimed money can be accepted by ASIC and that the form is compliant. ASIC will then email you with details of how to make payment of the unclaimed money to ASIC.
- For more information on how to lodge unclaimed money go to:
www.asic.gov.au/unclaimed-money.

Header Record

Your entity's information
(row 1)

- A1 must contain a number zero (“0”).
- Form type (B1) must **CMLCUMA** - for unclaimed money returns made under sections 1017E, 1343, 1343A, 414, 544, 601, 601NG or 668 of the *Corporations Act*
- ‘Number of records’ (E1) is the total number of Detail records included in the file.
- ‘Total amount’ (F1) must match the total of the amount due in the Detail record/s.
- ‘Total shares’ (G1) must be completed – e.g. if no shares, enter ‘0’.
- ‘Return type’ (H1) must be entered as ‘N’.
- Use the relevant ‘Legislation reference’ (I1) for the return which is being made under the *Corporations Act*: **1017E, 1343, 1343A, 414, 544, 601, 601AD(1A), 601NG or 668.**
- ‘State’ (O1) must be the valid abbreviation (e.g. NSW, NT, WA, etc.).
- ‘Country’ (Q1) must be a valid 2-letter country code by ISO 3166 standards.

Detail Records

The unclaimed money record information.
(row 2 & beyond)

- Column A must contain the number one (“1”).
- If two or more records have the same address & owner/s, they must be consolidated into one row.
- All overseas addresses must be contained in address fields 1-4 (columns E-H) with the 2-letter country code in column L.
*Suburb/State/Postcode is for domestic use.
- Each record may have up to five joint holders/owners (columns N&O; P&Q; R&S; T&U; V&W)
 - Remove all titles (Mr, Mrs, Dr, etc.)
 - Any company trading as another name should be included in the Company name column (e.g. “Gov Ltd T/A Government”)
 - If applicable, “ESTATE OF” should appear at the end of the given names field, after the given name/s.
- **If 668:** Detail records in columns X&Y need to be completed only if your return relates to section 668 (A or B) of the *Corporations Act*.
- **If 1017E:** Detail records in columns Z, AA & AB need to be completed only if your return relates to section 1017E of the *Corporations Act*.
 - Date (column Z) to be entered DD/MM/YYYY (e.g. 30/04/2018)
 - Method funds sent by (column AA) must be included (e.g. EFT, Cheque, etc.)
 - Reference details (column AB) contains information that was provided with the payment that may assist ASIC in identifying the rightful owner of the funds.
 - * Any additional details are to appear in columns E-H and the reference field.

EXAMPLE SPREADSHEET

Header record – Row 1

Header record (1)*	Form type (12)*		ACN/ABN/ ARSN (11)*		Company Name (79)*		Number of records (6)*		Total amount (12)*		Total shares (12)*		Return type (1)*		Legislation reference (9)*		Address line 1 (64)*		Address line 2 (64)		Address line 3 (64)		Address line 4	
	A	B	C	D	E	F	G	H	I	J	K	L	M											
1	0	CMLCUMA	10123456789	GOV LIMITED	2	215.60	100	N	668		PO BOX 1													
2	1	215.60			29 QUAY ST SMITH HOUSE				MANLY	NSW	2095	AU	SMITH FAMILY TRUST											
3	1	0	100	AUSI LTD		PO BOX 329			SYDNEY	NSW	2000	AU												
Detail record (1)*	Amount due (12)*	Number of shares (12)	Name of company shares are in (79)	Owner's address line 1 (64)*	Owner's address line 2 (64)	Owner's address line 3 (64)	Owner's address line 4 (64)	City/Suburb (30)*	State (3)*	Postal code (4)*	Country (2)*	Superannuation/ Trust fund name (79)												
Not mandatory for s1017E lodgements																								

Detail records - Row 2 & Beyond

...Header record (cont.) – Row 1

Suburb (30)*	State (3)*	Postal code (4)*	Country (2)*	Email (70)*	T	U	V	W	X	Y	Z	AA	AB		
N	O	P	Q	R	S										
BRISBANE	QLD	4000	AU	ABC@EMAIL.COM											
SMITH	ROBERT P	SMITH	JAN	SMITH	JOE				AUSI LTD	111222111					
SMITH BROS LIMITED	ACN 111 222 333								AUSI LTD	111222111					
Surname/ Entity name (79)*	Given name/ ACN/ABN/ ARSN (79)	Surname/ Entity name (79)	Given name/ ACN etc. (79)	Surname/ Entity name (79)	Given name/ ACN etc. (79)	Given name/ ACN etc. (79)	Surname / Entity name (79)	Given name/ ACN etc. (79)	Bidder company name (79)	Bidder ABN (11)	Date funds sent to provider (8)	Method funds sent by (20)	Reference Details (140)		
Owner 1				Owner 2		Owner 3		Owner 4		Owner 5		If 668*		If 1017E*	

...Detail records (cont.) – Row 2 & beyond

Example Excel Screenshot 1 – s544/s601

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
1	0	CMLCUMA	10123456789	SAMPLE PTY LIMITED	3	3185.21	0	N	544	GPO BOX 1			MELBOURNE VIC	3001	AU	EMAIL@SAMPLE.COM.AU	
2	1	2000.01		3/4 KING STREET					SYDNEY NSW	2000	AU		SMITH	WILL			
3	1	100.00		6/3 QUEEN AVE					SYDNEY NSW	2000	AU		TIMBERLAKE	JUSTIN			
4	1	1085.20		1 F STREET NE	WASHINGTON DC 20549						US		SIMMONS	PAT			

Example Excel Screenshot 2 – s1017E

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	
1	0	CMLCUMA	10123456789	ABC SUPERANNUATION FUND	2	191.34	0	N	1017E	GPO BOX 9			MELBOURNE VIC	3001	AU	EXAMPLE@SAMPLE.COM.AU											26/04/2018	EFT	ELTON JOHN- TINY DANCER P/L - REFERENCE:11111
2	1	123.45			UNKNOWN									UNKNOWN															
3	1	67.89			UNKNOWN									UNKNOWN															

Example Excel Screenshot 3 – s668

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	
1	0	CMLCUMA	10123456789	SAMPLE LIMITED	4	1000	320	N	668	GPO BOX 1			ABBOTSFORD	VIC	3067	AU	EMAIL@SAMPLE.COM.AU								
2	1	100	10	3/4 KING STREET					SYDNEY NSW	2000	AU		UNDERWOOD	FRANCIS										EXAMPLE PTY LTD	390111111111
3	1	200	100	6/3 QUEEN AVE					SYDNEY NSW	2000	AU		UNDERWOOD	CLAIRE										EXAMPLE PTY LTD	390111111111
4	1	300	10	PO BOX 10					PERTH WA	6001	AU		DANTON	REMI										EXAMPLE PTY LTD	390111111111
5	1	400	200	GPO BOX 11					SYDNEY NSW	2000	AU		STAMPER	DOUGLAS										EXAMPLE PTY LTD	390111111111

From: Jason Wollington <jason.wollington@pt.qld.gov.au>
Sent: Tuesday, 30 November 2021 1:56 PM
To: Stacey Clisby
Cc: Craig Dean
Subject: RE: KordaMentha Pty Ltd trustee of the LM Managed Performance Fund ('the MPF')

Dear Stacey

The Public Trustee is able to confirm that based on the situation and circumstance outlined we can accept the unclaimed funds you have referred to.

For information on how to lodge funds with the Public Trustee please see the link below;

[Lodge unclaimed money - The Public Trustee of Queensland \(pt.qld.gov.au\)](https://pt.qld.gov.au)

Should you have any issues or would like further information please contact me directly via email or alternatively on 3564 2028.

Regards
Jason Wollington
Team Leader
Unclaimed Money Unit

From: Stacey Clisby <sclisby@kordamentha.com>
Sent: Tuesday, 30 November 2021 12:39 PM
To: Jason Wollington <jason.wollington@pt.qld.gov.au>
Cc: Jack Johnstone <jack.johnstone@bantongroup.com>; pahern@northbankchambers.com.au; Joseph Kerins <jkerins@kordamentha.com>
Subject: KordaMentha Pty Ltd trustee of the LM Managed Performance Fund ('the MPF')

Dear Mr Wollington,

KordaMentha Pty Ltd trustee of the LM Managed Performance Fund ('the MPF')

We have contacted you in light of recent conversations between yourself and Mr Jack Johnstone of Banton Group, legal representatives of KordaMentha, in respect of potential payments of unclaimed monies to the Public Trustee of Queensland. As discussed, the purpose of this email is to seek confirmation regarding potential payments of unclaimed monies to the Public Trustee of Queensland. Also copied to this email are Mr Johnstone and Philippa Ahern, Barrister at Law who are assisting us in this matter.

On 12 April 2013, KordaMentha and Calibre Capital Limited were appointed as trustees of the MPF pursuant to an Order of the Supreme Court of Queensland in Brisbane. Our appointment as Trustees was to ensure independence in the management of the Fund's investments in the best interests of all investors. Calibre Capital has since resigned as Trustee and KordaMentha is the sole Trustee of the Fund.

The Fund has been closed since 19 March 2013 since which time no further monies have been accepted by the Fund. As at the date of closure of the Fund there were 5,881 unique accounts and 4,525 unique members. During this time, we have been in regular contact with members regarding the status of the Fund.

As we prepare for finalisation of the winding up and distribution of monies held to members of the Fund, we have been providing members with an opportunity to review and update their address and bank account details to facilitate the distribution. This process has been ongoing since June 2021. In the event that we are not able to distribute to any member based on the details held (due to incomplete or inaccurate information), we are seeking confirmation from the Public Trustee of Queensland that you will accept these unclaimed monies. Would you also please advise of what

documentation the Trustee will be required to provide to the Public Trustee of Queensland, either prior to, or upon payment of the unclaimed monies.

We also inform you that we have been in contact with ASIC in relation to the potential payment of the unclaimed monies to ASIC, though have taken the view that this will not be possible pursuant to the Corporations Act 2001 (Cth).

Should you have any queries please contact me on the below.

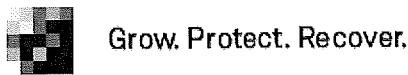
Regards,

Stacey Clisby | Director | KordaMentha

KordaMentha

T +61 7 3338 0276
M +61 408 063 559
Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
Website | **Blog** | **LinkedIn** | **Twitter**

M	T	W	T	F
✓	x	✓	✓	✓



KordaMentha COVID-19 vaccination policy

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