

SUPREME COURT OF QUEENSLAND

**REGISTRY: Brisbane
NUMBER: 11112 of 2013**

**First Applicants: JOHN RICHARD PARK AND GINETTE DAWN
MULLER IN THEIR CAPACITY AS
LIQUIDATORS OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 077 208 461**

AND

**Second Applicant: LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461**

AND

**Respondents: KORDA MENTHA PTY LTD ACN 100 169 391
AND CALIBRE CAPITAL LIMITED ACN 108 318
985 AS TRUSTEE FOR THE LM MANAGED
PERFORMANCE FUND**

ORDER

Before: Justice Jackson

Date: 29 November 2013

Initiating document: Originating Application filed 22 November 2013

THE ORDER OF THE COURT IS THAT:

1. Pursuant to s 96 of the *Trusts Act* 1973 (Qld), the applicants are advised and directed that, in their capacity as trustees of the LM Australian Income Fund, the LM Australian Structured Products Fund, the LM Cash Performance Fund, the LM First Mortgage Income Fund, the LM Currency Protected Australian Income Fund and the LM Institutional Currency Protected

ORDER
Filed on behalf of the Applicant
form 59 Rule 661

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Lawyers
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Australian Income Fund (“**Funds**”) and in their capacity as the former trustees of the LM Managed Performance Fund:

- (a) they are justified in disclosing information of the Funds to the respondents, as new trustee of the LM Managed Performance Fund in accordance with the confidentiality regime and document protocols set out in annexure “A” to this Order;
 - (b) they are justified in negotiating and agreeing terms of the confidentiality regime with the respondents and establishing a document protocol regime for the orderly access by the respondents to information under the control of the applicants that pertains to the Funds and the LM Managed Performance Fund.
2. The costs of this application of the respondents be paid out of the estate of the LM Managed Performance Fund, to be assessed on an indemnity basis.
 3. There be liberty to the parties to apply on three (3) business days’ notice to the other parties.
 4. The application be adjourned to be heard in the civil list for hearing on 10, 11 and 12 February, 2014.

Signed:

DEPUTY REGISTRAR

Annexure A

ACCESS TO BOOKS AND RECORDS CONFIDENTIALITY REGIME AND DOCUMENT PROTOCOLS

- Subject to the Court's direction, the course proposed by LM Investment Management Ltd (in liquidation) ("LMIM") as former trustee of the LM Managed Performance Fund ("MPF") would be as follows:
 - subject to the next dot point, nominated individuals of KordaMentha Pty Ltd to be provided with, alternatively take, under the supervision of LMIM, a mirror image of the virtual server containing all of the LM books and records by 10 December, 2013.
 - a strict confidentiality regime to be entered into between LMIM, KordaMentha Pty Ltd and the said nominated individuals (the "**named individuals**"):
 - for access to the mirror image of the virtual server by named individuals;
 - the named individuals each to undertake to the Court and to the former trustee to maintain confidentiality with respect to the data to be provided to them in a deed to be executed by each individual prior to them having access to the data (former trustee to draft) and provided to Piper Alderman by midday 4 December, 2013;
 - regime to include a further nominated individual process for new people to be given access;
 - regime to include provision for limitations on electronic and hard copies, return of records and destruction of all notes after the inspection process has been completed.

- The named individuals may access the data for the purposes of identifying documents that are to be claimed as “pertaining to the MPF” and which they would like to provide to Korda Mentha Pty Ltd and Calibre Capital Pty Ltd;
- By 17 January 2014, the Korda Mentha Entity is to provide to the former trustee;
 - a list of documents which KordaMentha Pty Ltd wishes to disclose to KordaMentha Pty Ltd and Calibre Capital Pty Ltd as trustees for the MPF; and
 - electronic images of the selected documents or, alternatively, the file paths of the selected documents.
- By 31 January, 2014, the former trustee to notify to KordaMentha Pty Ltd any designated documents over which objections are maintained to such documents being provided to KordaMentha Pty Ltd and/or Calibre Capital Pty Ltd as trustees for the MPF and the basis for each objection by schedule to also be provided.
- KordaMentha Pty Ltd and Calibre Capital Pty Ltd as trustees for the MPF to have access to everything otherwise identified by KordaMentha Pty Ltd that is not objected to by the former trustee;
- KordaMentha Pty Ltd to return to the former trustee all electronic records of other documents inspected and in respect of which access is not sought to be provided to KordaMentha Pty Ltd and/or Calibre Capital Pty Ltd as trustees for the MPF. KordaMentha Pty Ltd and/or Calibre Capital Pty Ltd reserve their right to request electronic records for further review by KordaMentha Pty Ltd and the named individuals.
- The application by the former trustee for directions is otherwise adjourned to the civil list for hearing on 10-12 February, 2014 for determination of any objections by the former trustee which have not been resolved and any other issues with respect to this regime and protocol.

Michael Baltins

From: Michael Baltins
Sent: Friday, 10 January 2014 10:57 AM
To: Amanda Banton; Paul Springthorpe
Subject: FW: LM Managed Performance Fund - Supreme Court of Queensland Proceedings 3691 of 2013
Attachments: SCPR_20131545_008.doc; SCPR_20131545_009.doc

Paul and Amanda,

These orders and the access regime and protocol match what was agreed to on the day match the orders made by Justice Jackson on 29 November 2013.

I have confirmed this by checking the attached documents against our notes of the hearing and against our copy of the access regime as agreed to on 29 November 2013 before the hearing.

Thanks,

Michael Baltins
Law Graduate | Piper Alderman



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From: Sean Russell [<mailto:SeanRussell@russellslaw.com.au>]
Sent: Thursday, 9 January 2014 12:07 PM
To: Michael Baltins; Ashley Tiplady
Cc: Amanda Banton; Paul Springthorpe
Subject: RE: LM Managed Performance Fund - Supreme Court of Queensland Proceedings 3691 of 2013

Dear Colleagues

Please find attached a draft of the orders of Justice Jackson of 28 November, 2013 in proceedings 11112 of 2013 along with the annexure.

We are conscious that there was some confusion at the hearing as to which draft precisely His Honour entered so please let us know if your recollection suggests orders in different terms to the attached draft.

Yours faithfully

RUSSELLS

Sean Russell
Lawyer

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From: Michael Baltins [<mailto:MBaltins@piperalderman.com.au>]
Sent: Wednesday, 8 January 2014 12:11 PM
To: Ashley Tiplady; Sean Russell
Cc: Amanda Banton; Paul Springthorpe
Subject: LM Managed Performance Fund - Supreme Court of Queensland Proceedings 3691 of 2013

Sirs,

I refer to my email to you of 18 December 2013, which is reproduced below.

Please provide us with a copy of the draft orders referred to below so that we can arrange to have them entered.

Kind regards,

Michael Baltins
Law Graduate | Piper Alderman



PiperAlderman

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From: Michael Baltins
Sent: Wednesday, 18 December 2013 2:27 PM
To: atiplady@russellslaw.com.au; 'seanrussell@russellslaw.com.au'
Cc: Amanda Banton; Paul Springthorpe
Subject: LM Managed Performance Fund - Supreme Court of Queensland Proceedings 3691 of 2013

Sirs,

I refer to the hearing of the above proceedings before the Honourable Justice Jackson on 28 November 2013.

As you will recall, his Honour made orders by reference to draft orders prepared on behalf of your clients.

Please provide us with a copy of the draft orders as handed up to his Honour at the hearing so that we can arrange to have the orders entered. As you may recall, we were provided with one hard copy of the draft orders on 28 November 2013. During the hearing, his Honour was initially handed the incorrect version of the draft orders, following which counsel for our clients handed up our copy of the draft orders for his Honour's convenience.

Kind regards,

Michael Baltins
Law Graduate | Piper Alderman



PiperAlderman

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