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**

SIXTH AFFIDAVIT OF JARROD VILLANI

SWORN ON: 4 DECEMBER 2020

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

1. I am a Partner and authorised officer of KordaMentha, the accounting firm, under which name KordaMentha Pty Ltd trades.

2. KordaMentha Pty Ltd is the trustee (the **Trustee**) of the LM Managed Performance Fund (the **MPF**).

3. I am duly authorised by Mr Korda and Mr Mentha, the directors of the Trustee, to swear this affidavit on behalf of the Trustee.

4. Except where otherwise indicated, I depose to the matters in this affidavit from my own personal knowledge of the facts and circumstances. Where I depose to matters from information and belief, I believe those matters to be true.

5. This affidavit is sworn in support of an application by the Trustee (the **2020 Remuneration Application**) pursuant to section 101 of the *Trusts Act 1973* (Qld) (the

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Trusts Act) for authorisation to charge remuneration for its services as Trustee of the MPF for the period between 2 September 2019 and 1 November 2020 (the **Relevant Period**).

6. The 2020 Remuneration Application seeks orders authorising payment of the Trustee's remuneration during the Relevant Period totalling $254,663.00 (excl. GST and disbursements).

7. The Trustee has previously filed the following applications in these proceedings seeking authorisation to be paid remuneration out of the assets of the MPF for earlier periods of time:

   7.1 Originating Application filed in the Supreme Court of Queensland on 24 November 2015, which application sought the Court's approval for the Trustee's professional fees for the period from 12 January 2015 to 31 October 2015 (the **2015 Remuneration Application**).

   7.2 Interlocutory Application filed on 19 September 2016, which application sought the Court's approval for the Trustee's professional fees for the period from 1 November 2015 to 14 August 2016 (the **2016 Remuneration Application**).

   7.3 Interlocutory Application filed on 6 July 2018, which application sought the Court's approval for the Trustee's professional fees for the period from 15 August 2016 to 27 May 2018, and approval for the Trustee's additional remuneration in the period between 2 November 2016 and 27 May 2018 in connection with the sale of the property located at 457-459 Lygon Street, Brunswick East, Victoria (the **Lygon Street Property**) (the **2018 Remuneration Application**).

   7.4 Interlocutory Application filed on 27 September 2019, which application sought the Court's approval for the Trustee's professional fees for the period from 28 May 2018 to 1 September 2019 (the **2019 Remuneration Application**)

8. The 2020 Remuneration Application - in support of which this affidavit is sworn is a separate and distinct application to the above-mentioned applications, and relates to the period immediately following that which was the subject of the 2019 Remuneration Application. Where necessary, for completeness and context, this affidavit summarises work performed historically by the Trustee in respect of the MPF.

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9. Throughout this affidavit, I make reference to various documents that are contained in a tabbed and paginated bundle of documents exhibited to this affidavit and marked "Exhibit JV-17" (the **Exhibit**).

10. I also make reference to various documents that are contained in a paginated bundle of documents exhibited to this affidavit and marked “Confidential Exhibit JV-18” (the **Confidential Exhibit**). Documents contained within the Confidential Exhibit have been treated confidentially by the Trustee as they contain confidential or commercially sensitive information relating to the realisation of assets of the MPF and litigation being pursued or investigated by the Trustee. As disclosure of the information contained in these documents may prejudice asset realisations and/or current and future litigation, I respectfully request that the Court maintain the confidentiality of the Confidential Exhibit by storing that bundle on the Court file in a sealed envelope and not permitting it to be inspected or copied except with the leave of the Court.

11. Much of the information concerning the background to the 2020 Remuneration Application is set out in affidavits that I have previously sworn in support of the 2015 Remuneration Application, the 2016 Remuneration Application, the 2018 Remuneration Application and the 2019 Remuneration Application. To avoid unnecessary duplication, I respectfully seek leave to rely upon:

    11.1 my affidavit sworn in these proceedings on 2 December 2015 (the **December 2015 Affidavit**) and its exhibits marked “JV-1” (the **December 2015 Exhibit**) and “Confidential Exhibit JV-2” (the **December 2015 Confidential Exhibit**);

    11.2 my affidavit sworn in these proceedings on 19 September 2016 (the **September 2016 Affidavit**) and its exhibits marked “JV-11” (the **September 2016 Exhibit**) and “Confidential Exhibit JV-12” (the **September 2016 Confidential Exhibit**);

    11.3 my affidavit sworn in these proceedings on 3 July 2018 (the **July 2018 Affidavit**) and its exhibits marked “JV-13” (the **July 2018 Exhibit**) and “Confidential Exhibit JV-14” (the **July 2018 Confidential Exhibit**); and

    11.4 my affidavit sworn in these proceedings on 23 September 2019 (the **September 2019 Affidavit**) and its exhibit marked “JV-15” (the **September 2019 Exhibit**) and “Confidential Exhibit JV’16” (the **September 2019 Confidential Exhibit**).

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A. BACKGROUND

12. A detailed summary of the background to the creation of the MPF, the appointment of the Trustee, and the basis on which remuneration has previously been paid to the Trustee, is set out at paragraphs 8 to 44 of the December 2015 Affidavit and paragraphs 9 to 40 of the September 2016 Affidavit.

13. Relevantly for the purposes of this application:

13.1 The MPF was constituted as a unit trust pursuant to a deed dated December 2001 (**Constitution**), which provided that the manager and trustee of the MPF was LM Investment Management Ltd (**LMIM**). A copy of the Constitution is at pages 1 to 24 of the December 2015 Exhibit.

13.2 By order of the Supreme Court of Queensland made on 12 April 2013, LMIM was removed as trustee of the MPF, and the Trustee and Calibre Capital Ltd (**Calibre**) were appointed jointly and severally as trustees of the MPF. A copy of these Orders is at pages 146 to 147 of the December 2015 Exhibit.

13.3 On 5 January 2015, Calibre retired as trustee pursuant to a written notice issued to the members of the MPF, informing them of its intention to retire as trustee effective on 5 January 2015. A copy of Calibre's notice of intention to retire is at page 152 of the December 2015 Exhibit.

13.4 The Trustee has continued to act as sole trustee of the MPF since Calibre retired.

13.5 No management or other fees have been paid pursuant to the Constitution since the Trustee and Calibre were appointed on 12 April 2013.

13.6 For the period from 12 April 2013 until 11 January 2015, remuneration was paid pursuant to a service agreement entered into between the Trustee, Calibre and KordaMentha Pty Ltd as trustee for the KordaMentha Unit Trust (the **Service Agreement**). A copy of the Service Agreement is at pages 171 to 175 of the December 2015 Exhibit.

13.7 Following Calibre's retirement in January 2015, the Trustee's remuneration has been authorised pursuant to section 101 of the Trusts Act. Relevantly:

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(a) Pursuant to the 2015 Remuneration Application, orders were made in the Queensland Supreme Court on 17 December 2015 authorising payment of $666,522 (excl. GST) out of the assets of the MPF as the Trustee's remuneration for the period from 12 January 2015 to 31 October 2015. A copy of the Court's orders is at page 3 of the September 2016 Exhibit. Details relating to the 2015 Remuneration Application are set out at paragraphs 45 to 90 of the December 2015 Affidavit.

(b) Pursuant to the 2016 Remuneration application, orders were made in the Queensland Supreme Court on 6 October 2016 authorising payment of $479,227 (excl. GST) out of the assets of the MPF as the Trustee's remuneration for the period from 1 November 2015 to 14 August 2016. A copy of the Court's orders is at page 1 of the July 2018 Exhibit. Details relating to the 2016 Remuneration Application are set out at paragraphs 41 to 73 of the September 2016 Affidavit.

(c) Pursuant to the 2018 Remuneration Application, orders were made in the Queensland Supreme Court on 7 August 2018 authorising:

    (1) payment of $584,770 (excl. GST) out of the assets of the MPF as the Trustee's remuneration for the period from 15 August 2016 to 27 May 2018; and

    (2) payment of $171,296 (excl. GST) out of the assets of the MPF as the Trustee's remuneration for its services in relation to the sale of Lygon Street Property.

    A copy of the Court's orders is at pages 1 to 2 of the Exhibit. Details relating to the 2018 Remuneration Application are set out at paragraphs 22 to 79 of the July 2018 Affidavit.

(d) Pursuant to the 2019 Remuneration Application, orders were made in the Queensland Supreme Court on 28 October 2019 authorising payment of $501,260.10 (inc GST) out of the assets of the MPF as the Trustee's remuneration for the period from 28 May 2018 to 1 September 2019. A copy of the Court's orders are at page 1 of the Exhibit. Details

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relating to the 2019 Remuneration Application are set out at paragraphs 20 to 76 of the September 2019 Affidavit.

B. UPDATES TO INVESTORS

14. Investor updates have periodically been sent to members of the MPF. I have set out in detail information in relation to these investor updates at:

    14.1 paragraphs 20 to 28 of the December 2015 Affidavit;

    14.2 paragraphs 10 to 20 of the September 2016 Affidavit;

    14.3 paragraphs 14 to 21 of the July 2018 Affidavit; and

    14.4 paragraphs 16 to 19 of the September 2019 Affidavit.

    Copies of the updates are located at pages 153 to 170 of the December 2015 Exhibit, pages 1 to 142 of the December 2015 Confidential Exhibit, pages 1 to 27 of the September 2016 Confidential Exhibit, pages 1 to 27 of the July 2018 Confidential Exhibit and 1 to 41 of the July 2019 Confidential Exhibit.

15. Since my September 2019 Affidavit was sworn, the Trustee has issued the following updates to unitholders:

Update No.	Date of Issue of Update	Location of Update
Update 22	28 July 2020	Pages 1 to 14 of the Confidential Exhibit

16. In the December 2015 Affidavit, September 2016 Affidavit, July 2018 Affidavit and September 2019, I deposed that the Trustee maintains an email mailing list which contains, to the extent possible, the last-known email address for each of the approximately 4,500 members of the MPF (the **Email Mailing List**).

17. As I have previously deposed, not all of the email addresses on the Email Mailing List work (for instance, because the relevant email address is no longer used by the relevant unitholder). Where the Trustee has been informed or has become aware of a change to a member's contact information, the mailing list has been updated to record that change.

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As a consequence, the Trustee understands that there are some unitholders who do not have a valid email address listed in the Email Mailing List.

18. Copies of Update 22 were sent to the members of MPF via the email address recorded in the Email Mailing List at the time the updates were issued.

C. REMUNERATION SOUGHT WITH RESPECT TO THE MPF

19. A summary of the key work performed by the Trustee during the Relevant Period is at page 2 of the Exhibit.

20. The schedule which is at page 3 of the Exhibit gives an overview of the quantum of remuneration claimed by the Trustee for the Relevant Period. The schedule identifies the following information:

    20.1 each individual who carried out work during the Relevant Period;

    20.2 their position within KordaMentha;

    20.3 their hourly charge out rate;

    20.4 the hours of work they performed in total, for each of the fortnights during the Relevant Period;

    20.5 their total hours of work; and

    20.6 the total remuneration charged in respect of their work.

21. The schedule also contains information about disbursements that were incurred by the Trustee during the Relevant Period, although those disbursements are not the subject of the present application.

22. My staff and I record time on a daily basis, in six minute units. When recording our time, we also enter a description of the tasks undertaken in an electronic system. Each time entry is allocated to one of the five following categories:

    22.1 Administration and risk management;

    22.2 Assets;

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22.3 Investors;

22.4 Investigations; and

22.5 Fund trading.

23. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with investors could have been recorded under either the "Administration and risk management" category or the "Investors" category. However, each task is only recorded once, and the time for carrying out each task has only been recorded once.

24. I have reviewed the narrations for all the work claimed in the present application on a line-by-line basis. From my knowledge of the work carried out and my supervision of the tasks undertaken, I am satisfied that the time recorded for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.

25. In my view all of the tasks detailed in this affidavit, and the documents in the Exhibit, were necessary for the proper administration of the MPF, in order to maximise realisations and recover funds for the benefit of the members.

26. The partners of KordaMentha are members of the Australian Restructuring Insolvency and Turnaround Association (**ARITA**). We follow the ARITA Code of Professional Practice for Insolvency Practitioners (**ARITA Code**) in relation to the insolvency appointments we undertake.

27. The Trustee has adopted the ARITA Code as a guide to the performance of the duties involved in administering the MPF. At pages 178 to 206 of the December 2015 Exhibit is a true and correct copy of sections 14 to 16 of the Third Edition of the ARITA Code of Professional Practice (which came into effect on 1 January 2014) with respect to a practitioner's claim for remuneration.

28. I confirm that the Trustee has followed the ARITA Code in administering the MPF. As to the hourly charge out rates for the Trustee, I can say from my own knowledge and experience that these rates are commensurate with the fees charged by other insolvency practitioners.

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29. Immediately below is a summary of the amounts claimed in respect of work undertaken in each of the five categories identified in paragraph 22 above. At paragraphs 30 to 64 below, I provide more specific details of the work my staff and I performed during the Relevant Period by reference to those five categories.

Category	Fees sought to be recovered for period 2 September 2019 to 1 November 2020
Administration and Risk Management	$128,349.50
Assets	$2,395.00
Investors	$89,592.50
Investigations and Statutory Compliance	$12,741.00
Fund Trading	$21,585.00
TOTAL (excl. GST and disbursements)	**$254,663.00**

I. Administration and Risk Management

30. The total amount of remuneration sought with respect to this category is $128,349.50 (excl. GST).

31. A schedule setting out each time entry allocated to this category during the Relevant Period is at pages 4 to 9 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

32. There are a number of litigated matters, which the Trustee is conducting on behalf of the MPF. In general terms, the Trustee has charged fees for:

32.1 attending with and instructing Banton Group (previously Squire Patton Boggs) and Minter Ellison in a number of proceedings (including giving instructions, seeking advice, discussing strategy and overall litigation position);

32.2 reviewing legal correspondence and communications regarding litigation and matter strategy; and

32.3 reviewing and assisting with the compilation of affidavit materials and other evidence.

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Potential Litigation and Legal Matters

33. During the Relevant Period, the Trustee has engaged in significant work to make a final distribution to unitholders of the MPF, as well as facilitating the making of an administrative application and investigating potential claims on behalf of the MPF, as set out below.

Auditor Action

34. As I have previously detailed in the September 2016 Affidavit, the July 2018 Affidavit and September 2019 Affidavit, the Trustee has conducted investigations in relation to a potential claim against the MPF's former auditors, Williams Partners Independent Audit Specialists (**WPIAS**) in connection with WPIAS's provision of audit services to the MPF in the 2011 and 2012 financial years.

35. Prior to the Relevant Period, the Trustee instructed its solicitors, Squire Patton Boggs to prepare and send a detailed letter of demand to WPIAS in relation to losses alleged to have been caused to MPF as a result of WPIAS' audits.

36. WPIAS has not responded substantively to the demand and the Trustee is currently considering its position with respect to any action that might be taken against WPIAS in relation to the claim.

2019 Remuneration Application

37. This includes work on the 2019 Remuneration Application (that is, the previous application for approval of remuneration for the period from May 2018 to 1 September 2019, including preparing fee schedules, reviewing the application materials and providing instructions in relation to the hearing.

38. Order 1 of the orders made by Boddice J in these proceedings on 28 October 2019 (at pages 1 of the Exhibit) authorises the payment of the Trustee's costs associated with the 2019 Remuneration Application from the assets of MPF. For completeness, these costs are nevertheless included in the total for this category.

Directions Application

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39. During the Relevant Period, the Trustee has undertaken a significant amount of work in assisting Banton Group in preparing an affidavit seeking directions from the Court pursuant to section 96 of the *Trusts Act* to the effect that the Trustee is justified in making a distribution to unitholders (**Directions Application**). As part of the Directions Application the Trustee has had to investigate and resolve various issues before it is possible for any distribution to be made to unitholders.

40. As part of its preparations for making a distribution to unitholders, the Trustee has determined that it is necessary to seek directions from the Supreme Court of Queensland in relation to a number of matters prior to making a distribution to unitholders and winding up the MPF. Those matters include:

40.1 the identification of the correct version of the MPF's unitholder register, and facilitating a process by which unitholders may update their details prior to any distribution being made;

40.2 the manner in which the Trustee is to communicate with unitholders during any distribution process;

40.3 the appropriate treatment of unitholder accounts;

40.4 the treatment of unitholders whose accounts may have matured prior to closure of the MPF, but whose redemptions were not processed;

40.5 the appropriate apportionment and calculation of the distribution amount amongst unitholders;

40.6 the appropriate treatment of foreign currency investors and the proposed distribution methodology;

40.7 the appropriate characterisation and treatment of the funds received from the ATO; and

40.8 the proper treatment of potential creditors of the MPF, including financial advisors who may have claims for commission.

41. Throughout the Relevant Period the Trustee has been heavily involved in the preparation of the applications it proposes to make to the Supreme Court of Queensland seeking

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directions prior to making a distribution to unitholders. The Trustee has undertaken a large amount of work in this regard, including:

41.1 liaising with Squire Patton Boggs regarding the matters requiring directions from the Court, including treatment of foreign currency investors, distribution of the ATO refund and unpaid distributions and identifying the most appropriate strategy to resolve those issues and reviewing relevant material relating to same as requested by Banton Group;

41.2 attending on Banton Group (and Squire Patton Boggs) in relation to the preparation of materials in support of the applications to the Supreme Court of Queensland seeking directions in relation to the winding up of the MPF, including providing information and instructions in relation to a lengthy affidavit regarding various issues germane to the winding up;

41.3 attending on Banton Group in relation to the proposed distribution of the ATO refund;

41.4 reviewing relevant distribution accounts to reconcile unpaid distributions

41.5 considering, reviewing and collating relevant information and documentation to form the exhibit to the affidavit in support of the application; and

41.6 liaising with a third party regarding the process by which unitholders can be contacted and can update their contact and unitholding details, including discussions in relation to the creation of a separate website for unitholders to update their details.

42. The Trustee intends to file the application for directions, and the relevant supporting material, at the same time as this application so they may be heard together.

Anti-Money Laundering Advice

43. It has been necessary as part of the Directions Application to seek advice regarding potential implications of anit-money laundering legislation. As many investors in the MPF invested in foreign currency, during the Relevant Period the Trustee has sought advice from Minter Ellison to ensure no issues when distributing.

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II. Assets

44. The total amount of remuneration claimed for this category is $2,395.00 (excl. GST).

45. A schedule setting out each time entry allocated to this category during the Relevant Period is at page 10 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

Proofs of debt in liquidation of LMIM

46. LMIM adjudicated on the proof of debts and provided the Trustee with the proof of debts related to the MPF. During the Relevant Period, the Trustee has:

46.1 corresponded with the liquidators for LMIM regarding the proof of debts which make a claim on the MPF;

46.2 reviewed and assessed the proof of debts; and

46.3 considered any outstanding claims against the Trustee and the implications on the Distribution Application.

Proceedings No. QUD 596/2014 *Federal Court of Australia Proceedings*

47. Proceedings were commenced against the former managing director of LMIM, Mr. Peter Drake. Mr. Drake was subsequently declared bankrupt and proceedings were commenced by the Australian Securities and Investment Commission against Mr. Drake (**Drake Proceedings**).

48. Judgment was handed down in relation to the Drake Proceedings and the Trustee has since assisted the Trustee of Bankrupt Estate tin finalising the estate of the Mr. Drake. The Trustee has provided $27,403 in indemnity funding.]

49. The Trustee is a secured creditor in the Bankrupt Estate of Peter Charles Drake and has been providing funding to assist in selling the assets and obtaining a recovery.

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50. During the Relevant Period the Trustee has continued to oversee the finalisation of the estate and correspond with the Trustee of Bankrupt Estate regarding the sale of the assets.

III. Investors

51. The total amount of remuneration claimed for this category is $89,592.50 (excl. GST).

52. A schedule setting out each time entry allocated to this category during the Relevant Period is at pages 11 to 15 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

General Tasks

53. As noted in my December 2015, September 2016, July 2018 and September 2019 Affidavits, there are approximately 4,500 members of the MPF. As such, during the Relevant Period my staff and I have been required to answer an extensive number of investor enquiries, and issue investor communications to keep investors updated on the process of winding up the MPF. This has included updating investors on the progress of realising the assets of the MPF and providing current projections on the expected return to investors.

54. During the Relevant Period, the specific tasks my staff and I have undertaken in this category include:

    54.1 responding to investor queries in the "LM Inbox", which is a long-standing email account established as a channel for investor enquiries;

    54.2 preparing and drafting correspondence to be issued to investors, including preparing mass information updates that were provided to all members online and via mail outs; and

    54.3 occasionally adding investor details to the Trustee's email distribution list, where required.

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55. As is the case for other categories, work undertaken in relation to communications with investors may be recorded in more than one category. However, time for carrying out each task has only been recorded once.

Directions Application and Preparation for Distribution

56. As set out in paragraph 33 to 42 during the Relevant Period, the Trustee has undertaken a significant amount of work in reviewing the unitholder register with respect to the MPF to prepare the Distribution Application. Tasks undertaken in the Relevant Period under this category of work relating to the Distribution Application include:

56.1 correspondence with Link regarding proposed distribution and issuing notices to unitholders;

56.2 reviewing unitholder register, balance sheet and general ledger for matters impacting unit holdings; and

56.3 considering issues with distribution methodology.

<u>IV. Investigations and Statutory Compliance</u>

57. The total amount of remuneration claimed for this category is $ 12,741.00 (excl. GST).

58. A schedule setting out each time entry allocated to this category during the Relevant Period is at pages 16 to 17 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

59. This category has been used to a limited extent to record time spent in reviewing the MPF's books and records. However, most time recorded in this category relates to preparing and lodging income tax returns and BAS returns. BAS returns are prepared on a monthly basis, and the fees charged to this category accordingly include work undertaken to prepare and lodge the MPF's BAS statements for each month from September 2019 to September 2020 inclusive.

60. This category has also been used to record time spent on general accounting tasks connected with the MPF, including processing payments and receipts, attending to bank

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account reconciliations and processing receipts and payments into our accounting system, Insol, in accordance with the Trustee's statutory obligations under the *Corporations Act 2001* (Cth).

V. Fund Trading

61. The total amount of remuneration claimed for this category is $21,585.00 (excl. GST).

62. A schedule setting out each time entry allocated to this category during the Relevant Period is at pages 18 to 19 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

63. The remuneration claimed in this application includes work my staff and I undertook in respect of the administration of the MPF and carrying out the winding up of the MPF, which I would describe as 'fund trading'. In a general sense, time charged to this category relates to work undertaken in administering the trading activities of the MPF and managing its cashflows. The work captured by this category is necessary for the MPF to continue operating during the period of its winding up.

64. More specifically, this category includes time spent on tasks associated with the management of the accounts of the MPF during the Relevant Period, including:

    64.1 Reviewing and monitoring current and forecast cash flows;

    64.2 cash reconciliation; and

    64.3 considering accounts payable.

D. STATUS OF THE ADMINISTRATION OF THE MPF

65. Given the complexities involved in the administration of the MPF, in particular the Directions Application and the length of the period for which fees are sought to be recovered, I believe that the remuneration sought of $254,663.00 (excl. GST) for professional fees (across all five categories) represents a fair and reasonable claim for remuneration. I also believe that the work undertaken to which the remuneration relates was necessary for the proper conduct of the administration and winding up of the MPF.

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66. I respectfully request that this Honourable Court make orders authorising payment of the Trustee's general remuneration for the Relevant Period in the amount of $254,663.00 (excl. GST) out of the assets of the MPF.

67. Whilst this is the fifth application the Trustee has made to the Court to recover its professional fees, as the winding up of the MPF is ongoing there will likely be at least one more application for remuneration after the Directions Application has been heard and distribution made to unitholders.

68. The Trustee is in the process of finalising the Directions Application and receiving directions from the Court (as detailed at paragraphs 33 to 42 and 56 above), to make a final distribution to unitholders in the MPF. On the basis of what is presently known, I estimate that it will take at least another 6 months to complete the winding up of MPF.

F. SUBSTITUTED SERVICE ORDERS

69. The Originating Application filed on 24 November 2015 sought orders from the Court that the materials in support of the application be permitted to be served by way of substituted service. Specifically, the Court ordered that the application documents would be deemed to have been effectively served on the MPF's approximately 4,500 members, five days after the Applicant:

69.1 made the application materials available online on the page dedicated to the MPF on the Trustee's website; and

69.2 either sent an email to all members of the MPF at their last known email addresses notifying them of the Court documents and their availability on KordaMentha's website, or where an undeliverable message was received and a postal address held for that member, sent a copy of the notice by prepaid post (the **Substituted Service Orders**).

A copy of the Substituted Service Orders is at pages 1 to 2 of the September 2016 Exhibit.

70. The Substituted Service Orders included a provision permitting any further applications the Trustee might file for approval of its remuneration to be served by way of substituted service. At the hearing of the primary application on 17 December 2015, the Court varied

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71. paragraph 1(d) of the Substituted Service Orders, to permit substituted service of "any further applications and supporting affidavits" the Trustee might file for approval of its remuneration. A copy of the orders made on 17 December 2015 varying the Substituted Service Orders is at page 3 of the September 2016 Exhibit.

72. In the present application, the Trustee relies on the Substituted Service Orders (as varied) permitting substituted service of any further applications made by the Trustee for approval of its remuneration in the manner set out therein.

Sworn by JARROD VILLANI
On 4 DECEMBER 2020
at Brisbane, Queensland, in the presence of:

COMMISSIONER FOR DECLARATIONS
QUEENSLAND GOVERNMENT
Reg.No.: 113125
DEPT. OF JUSTICE & ATTORNEY-GENERAL

Signed .... Witness ....

COMMISSIONER FOR DECLARATIONS
QUEENSLAND GOVERNMENT
Reg.No.: 113125
DEPT. OF JUSTICE & ATTORNEY-GENERAL

Sworn .... Witness ....