

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: **RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE**

AND

First Respondent: **LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE
INCOME FUND**

AND

Second Respondent: **THE MEMBERS OF THE LM FIRST MORTGAGE INCOME
FUND ARSN 089 343 288**

AND

Third Respondent: **ROGER SHOTTON**

AND

Intervener: **AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

**AFFIDAVIT OF DAVID WHYTE
SWORN ON 28 APRIL 2024**

I, **DAVID WHYTE** of Level 10, 12 Creek Street, Brisbane in the State of Queensland,
Registered Liquidator, state on oath:-

1. I am a Registered Liquidator and a Consultant in the employ of the firm BDO. I am an affiliate member of the Chartered Accountants Australia and New Zealand.
2. I refer to my affidavit sworn 9 April 2024 and filed 12 April 2024 with Exhibit Bundle DW-128 ("**Finalisation Affidavit**") and my affidavit sworn 9 April 2024 with Exhibit

Page 1

Signed:



Witnessed by:



AFFIDAVIT
Form 46, R.431

Filed on behalf of the Applicant

Cowen Schwarz Marschke Lawyers
Level 8, 300 George Street
Brisbane, Qld, 4000
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Bundle DW-129 (“**Remuneration Affidavit**”) in support of an application by me for authority to make a final distribution to FMIF members and other orders to finalise the winding up of the LM First Mortgage Income Fund (“**FMIF**”), (“**Finalisation Application**”).

3. Now produced and shown to me and marked “**DW-130**” is an indexed paginated bundle of the documents referred to in this Affidavit (“**the Bundle**”).
4. Throughout this Affidavit, I use definitions set out in paragraph 7 of my Remuneration Affidavit.

Notice to FMIF members

5. On 26 April 2024, I caused a notice to be issued to FMIF members inviting them to submit claims as foreshadowed by paragraphs 22 to 24 of the Finalisation Application, and requesting that they update their bank account details in anticipation of the final distribution. This notice attached a notice to members regarding the Finalisation Application and the application by Mr Park and LMIM for determination of remuneration and payment of expenses from the FMIF.
6. At pages 1 to 6 of the Bundle is a copy of this notice.

Summary of Benefits to FMIF

7. The “gross” benefits obtained, or received by the FMIF to date as a result of work undertaken by BDO include (but are not limited to) the following:-

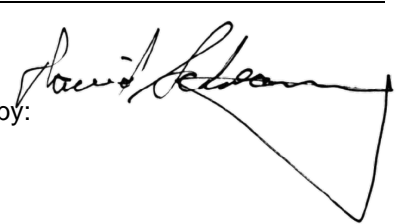
Description of benefit	Approximate or estimated quantum of benefit, gross of fees or expenses of my receivership (funds received by FMIF, estimated costs savings, or face value of claim discontinued or dismissed)	Reference
Net Proceeds of sale of retirement village assets held by FMIF as security for loans to borrowers, which were sold by BDO	Approximately \$40 million – see note 1 below.	Paragraphs 58 to 61 of June 2019 Affidavit

Signed:

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Witnessed by:



Description of benefit	Approximate or estimated quantum of benefit, gross of fees or expenses of my receivership (funds received by FMIF, estimated costs savings, or face value of claim discontinued or dismissed)	Reference
Settlement Sum paid by EY to settle Auditors Claim (otherwise, the EY Proceeding in the Finalisation Affidavit)	To be deposited to in a confidential affidavit	
Recoveries in relation to the proceedings against the Feeder Funds (otherwise, the Feeder Fund Proceedings in the Finalisation Affidavit)	<p>\$4,131,535.74 withheld from the interim distribution to the Feeder Funds of 6.5 cents per unit – see Note 6 below.</p> <p>As at 31 December 2023, it is estimated that a further \$6,402,171 will be withheld from the final distribution to the Feeder Funds</p>	98 to 111 of May 2020 Affidavit
Judgment in professional negligence proceedings against a quantity surveyor, the conduct of which was taken over by me	\$2.39 million plus costs	Paragraphs 17(a), 92 to 94 of June 2016 Affidavit
Remuneration and expenses sought from FMIF by the Liquidators but opposed by Mr Whyte and not approved by the Court	Approximately \$2 million (excluding any GST) – See Note 2 below	Paragraphs 146 to 153, 166, of May 2020 Affidavit
Distributions received from the Bellpac Liquidator, as a result of various legal proceedings, partially funded by the FMIF	Approximately \$4 million	Paragraphs 87, 93 and 96 of March 2021 Affidavit
Recovery of additional funds from a borrower to whom the FMIF had advanced funds, as a result of negotiations undertaken by BDO	\$7.5 million	N/A
Distributions from trustee of the administration of the bankrupt	\$877,000	Paragraphs 103 and 104

Signed:



02473332-012

Witnessed by:



Description of benefit	Approximate or estimated quantum of benefit, gross of fees or expenses of my receivership (funds received by FMIF, estimated costs savings, or face value of claim discontinued or dismissed)	Reference
estate of Mr Lamb, partially funded by the FMIF		of Finalisation Affidavit
Discontinuance of MPF Proceedings (otherwise, the KPG and Lifestyle Proceedings in the Finalisation Affidavit), in which I was joined as Second Defendant to defend claims made against FMIF assets	Amounts claimed by the trustee of the MPF against FMIF assets approximately \$24 million plus interest and costs	Paragraphs 200 to 204 of May 2020 Affidavit
Discontinuance of the AIFS Proceeding	Amount claimed by plaintiff against FMIF assets approximately \$3.9 million plus interest and costs	Paragraphs 205 to 209 of May 2020 Affidavit
Costs savings to the FMIF as a result of applications by me to ASIC for financial reporting and audit relief	<p>From about 2016 (after all real property assets had been realised reducing the number of transactions), auditor's fees would be about \$12,500 to \$20,000 for each yearly audit and between 50% to 70% of that for each half yearly audit.</p> <p>By about 2024/2025, due to an increase in staff and overhead costs and compliance costs, an auditor's fees would be about \$30,000 for an annual audit and \$20,000 for a half year review. See Note 3</p> <p>These figures do not include insolvency practitioners' fees to instruct auditors or respond to queries from auditors.</p>	Paragraph 144 of May 2020 Affidavit

Note 1 – The amount received from the sale of the retirement village assets was about \$10 million above the value of the retirement village assets, as assessed in professional valuations obtained by BDO prior to the sales.

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Note 2 – this figure does not take into account additional remuneration or legal costs incurred by me as a result of opposing the applications or the Liquidator’s costs that were ordered to be paid out of the FMIF, nor any future costs savings on future remuneration applications by the Liquidator that may result from His Honour apportioning work referable to all of the funds as between the various funds that LMIM is or was responsible entity or trustee of in a manner more favourable to the FMIF than was proposed by the Liquidators, nor from his Honour’s ruling that corporate remuneration is not recoverable from the FMIF.

Note 3 – ASIC has granted the FMIF exemptions from the relevant financial reporting and audit obligations for the 2016 to 2025 financial years (inclusive). The estimated costs savings are based on information provided to me by Mr Craig Jenkins, an audit partner at BDO, who has audited several managed investment schemes.

8. The figures set out in the above “table of benefits”, do not take into account:
 - (a) Remuneration or legal costs incurred to achieve the stated recoveries or other benefits;
 - (b) The costs and losses associated with the Claim against the directors of LMIM and the MPF (Supreme Court of Queensland Proceeding 12317/14), which was unsuccessful, including but not limited to, the adverse costs orders made against LMIM as RE of the FMIF.
9. That benefits have been realised as a result of the work undertaken by BDO is also evident from the matters referred to in paragraphs 10 to 19 below.
10. At the time of my appointment, the FMIF had cash at bank of approximately \$9 million and owed a secured creditor, DB approximately \$25 million.
11. In the first unaudited accounts that I caused to be prepared during my appointment, I estimated that the net assets of the FMIF per unit as at 31 December 2013 were 14.4 cents per unit. This estimate was based on the available cash and the impaired value of the securities securing the FMIF’s loans at that time, but did not take into account the likely future costs of the winding up, potential further recoveries from litigation or other activities referred to above, nor exposure to litigation against the FMIF including the MPF and the AIIIS Proceedings mentioned above.

Signed:



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12. At pages 7 to 31 of the Bundle is a copy of the Financial Statements for the FMIF for the year ended 30 June 2013 and the half year ended 31 December 2013.
13. As a result of realisations of property, DB was paid out in early January 2014 (although the DB Receivers did not immediately retire for reasons explained in previous affidavits).
14. The amount recovered from realisation of the retirement village assets sold by BDO (which represented about 50% of the FMIF's loan book at the time of my appointment) was approximately \$40 million.
15. The DB Receivers, either directly or by myself and Mr Fielding as appointed controllers, had carriage of the realisation of the remaining real property securities of the FMIF.
16. In October 2019, I caused an interim distribution to be made to FMIF members. The total amount of this distribution was approximately \$32 million, reflecting 6.5 cents per unit.
17. As at 31 December 2023, the FMIF had cash and cash equivalents of approximately \$58.980 million.
18. Once all liabilities of the FMIF has been paid or accounted for, I presently estimate that a final distribution of approximately \$56 million can be made to FMIF members, reflecting a further 11.4 cents per unit.
19. Based on the above, I estimate that the FMIF members will received a total of 17.9 cents per unit as a result of my and the DB Receivers' work (after all remuneration, costs and expenses are accounted for), which compares favourably to the 14.4 cents per unit referred to above estimated by me as at 31 December 2013 at the commencement of my appointment (an increased return of 3.5 cents per unit represents an additional \$17.2 million to investors, approximately).

Estimates of remuneration from 1 March 2024 to completion of winding up

20. I have undertaken an estimate of my anticipated remuneration from 1 March 2024 until the conclusion of the winding up and the expenses which I expect to incur after the making of the final distribution.
21. The below estimates are made on the basis of the following key assumptions:-

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- (a) That the orders sought in the Finalisation Application are made on 27 May 2024 (being the second return date of the application);
- (b) that the winding up will be concluded by 31 August 2024. I estimate that the finalisation of the winding up will be concluded by 31 August 2024, based on my estimate that I will require three months following the making of orders in the Finalisation Application to arrange the making of the final distribution, to pay any unclaimed or undistributed money to ASIC, and to publish unaudited accounts as required;
- (c) that the books and records of the FMIF will be retained by me for five years before being destroyed, and that it will not be necessary for me to deliver all of the books and records of the FMIF to the Liquidator of LMIM. If it is necessary for me to deliver books and records of the FMIF to the Liquidator of LMIM, substantial further costs would likely be incurred reviewing the books and records held by me to separate the books and records that LMIM as RE of the FMIF is entitled to from documents that I am entitled to retain (which may include for example, privileged legal advices provided to me in my capacity as Court appointed Receiver and other privileged communications with my solicitors relating to the various legal proceedings relevant to the winding up of the FMIF).

22. I estimate that my remuneration from 1 March 2024 to the conclusion of the winding up (estimated to be by 31 August 2024), will be approximately \$540,000 (exclusive of GST) made up as follows:

- (a) Remuneration relating to the main tasks required to operate the fund, including maintaining the register of members, responding to member queries, reporting to members, and ASIC (**Operating Remuneration**) - \$240,000;
- (b) Remuneration relating to finalisation of the winding up, including remuneration relating to the Finalisation Application, updating member bank account details in anticipation of the final distribution, making the final distribution, preparing final accounts of the Fund and lodging notification of completion of the winding up with ASIC (**Finalisation Remuneration**) - \$300,000.

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Operating Remuneration

23. I have analysed the average remuneration that has been required since 1 May 2022 to perform the main 'operating' tasks of running the Fund, which include:
- (a) All those matters relating to investors under the "Creditors" category, set out in paragraphs 92 to 95 of my Remuneration Affidavit;
 - (b) Maintenance of financial records;
 - (c) Preparation of the half-yearly and full year accounts;
 - (d) Quarterly reports to members; and
 - (e) ASIC statutory reporting.
24. Based on that analysis, the average remuneration per month for these 'operating' tasks since 1 May 2022 has been approximately \$40,000 (exclusive of GST) per month.
25. That analysis was arrived at by taking into account the amounts of remuneration claimed from 1 May 2022 to 29 February 2024 (that is, \$1.073M), less the remuneration claimed in respect of the Liquidator Proceeding (about \$175,000), less the remuneration claimed in the assets category relating to other legal proceedings including the Auditors Claim, where the matters are now finalised (about \$32,000) divided by 22 months.
26. Accordingly, I estimate that the remuneration for the performance of the work described in paragraph 23 above will be \$240,000, assuming \$40,000 (exclusive of GST) per month for six months.

Finalisation Remuneration

27. In addition to the operating costs referred to above, there will be a number of further tasks relating to the finalisation of the winding up of the Fund.
28. *First*, there will be work relating to the Finalisation Application, preparing material, attending conferences with lawyers to provide instructions, communicating with members, and attending Court as required.

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Witnessed by:



29. *Second*, I anticipate (based on my experience relating to the interim distribution paid to FMIF members in October 2019) that a significant number of investors will update their bank and other details in the near future, in anticipation of the final distribution. That is because the Fund has not been making regular distributions, and as a result there has not been a reason for members to keep their details up to date over time.
30. This will require the following work by BDO, in addition to the usual operating expenses referred to above:
- (a) reviewing the change of details forms submitted by the investor;
 - (b) updating the database; and
 - (c) confirming the change in writing to the investor.
31. *Third*, there will also be work required to be performed by BDO in relation to:-
- (a) paying out the ledgers as described in paragraphs 153 to 194 of my Finalisation Affidavit, including writing to members to invite them to submit claims (as referred to in paragraph 5 above), responding to queries from members, and considering any claims submitted by members;
 - (b) paying the final distribution;
 - (c) paying the remaining liabilities, as described in paragraphs 195 to 197 of my Finalisation Affidavit; and
 - (d) distributing any unclaimed monies to ASIC, as referred to in paragraph 188 of my Finalisation Affidavit.
32. *Fourth*, there will be work preparing the final accounts, ASIC final return, and notice of conclusion of winding up, as referred to in paragraphs 198 to 206 of my Finalisation Affidavit.
33. I estimate remuneration of \$300,000 (exclusive of GST) to perform the work described in paragraphs 28 to 32 having regard to the large number of investors in the Fund, which is calculated as follows:

Finalisation Application	\$35,000
Updating member details	\$180,000

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Paying out the Fund	\$60,000
Preparing final accounts, etc	\$25,000
Total	\$300,000

34. I have arrived at my estimated remuneration relating to updating member details due to the final distribution and payment of the final distribution, having regard to the amount of remuneration incurred in respect of the interim distribution paid in October 2019.
35. In addition to the above, if a final audit is required and BDO are arranging that, the amount of additional work involved will depend on the scope of the audit.
36. If the audit is limited to the period from the start of the financial year in which the winding up is concluded, to the conclusion of the winding up, then I estimate that my remuneration for the work required will be \$10,000 to \$20,000 plus auditor's fees.

Existing Work in Progress

37. I confirm that I have had regard to the amount of work in progress actually incurred from 1 March 2024, when preparing the above estimates.
38. From 1 March 2024 to 23 April 2024, BDO have incurred further remuneration of approximately \$160,939.50 plus GST.
39. This remuneration primarily relates to performing the investor management function, providing instructions in respect of and swearing detailed affidavits in support of the Finalisation Application, and preparing management accounts for the half year ended 31 December 2023.
40. As to the investor management function, I have noticed a significant increase in communications from investors since the 45th report to investors issued on 28 March 2024 (remuneration of approximately \$47,574 plus GST has been incurred for three weeks in April 2024).

Remuneration approval

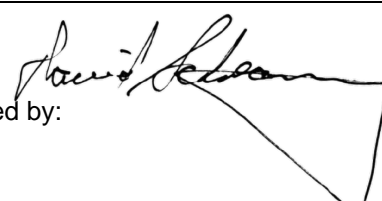
41. Given the anticipated work to the conclusion of the winding up, as set out in paragraphs 20 to 34 above, I believe that the estimated sum of \$540,000 plus GST

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for the period from 1 March 2024 represents a reasonable estimate of the remuneration for that period and that the work to be undertaken will be necessary for the proper conduct of the winding up of the FMIF pursuant to the Orders.

42. Of this amount, I anticipate that about \$75,000 plus GST will be incurred after the making of the final distribution.
43. I anticipate that the tasks which will be required after the making of the final distribution, will include:
- (a) Corresponding with members;
 - (b) Preparing the final accounts;
 - (c) paying unclaimed monies to ASIC;
 - (d) paying any costs which will be incurred after the making of the final distribution.
44. I respectfully request this Honourable Court to make the following orders in relation to my remuneration from 1 March 2024 to the conclusion of the winding:
- (a) That I be authorised to draw remuneration of “up to” \$465,000 plus GST for the period from 1 March 2024 up to the making of the final distribution;
 - (b) That my remuneration after the making of the final distribution be fixed in the sum of \$75,000 plus GST and that I be authorised to withhold this amount from the final distribution.

Estimated expenses or liabilities after final distribution

45. Prior to making the final distribution, it is my intention to pay all expenses and liabilities of the Fund in the usual way, from the property of the Fund.
46. The storage of books and records will be billed up front for the full period in respect of which the records are to be retained.

Signed:



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Witnessed by:



Final matters

- 47. I seek liberty to apply in the event that any unexpected complications or issues arise prior to the making of the final distribution, including for example if they materially affect my estimates set out above.
- 48. In this Affidavit, where I have referred to dealings with solicitors and Counsel in order to explain work undertaken for which I seek to be remunerated, I do not intend, in doing so, to waive any legal professional privilege that may attach to communications between me and my solicitors and Counsel.

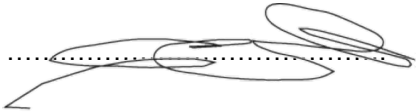
The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.

I understand that a person who provides a false matter in an affidavit commits an offence.


I state that:

- A. This affidavit was made in the form of an electronic document;
- B. This affidavit was electronically signed;
- C. This affidavit was made, signed and witnessed under part 6A of the *Oaths Act 1867*.

SWORN by DAVID WHYTE)
)
 at Taormina, Italy)
)
)
)


 28 April 2024

BEFORE ME:)
)
)
David Heiner Schwarz)
 [*name of witness*])
Australian legal practitioner)
 Cowen Schwarz Marschke Lawyers)
 Special witness under the Oaths Act 1867)


 29 April 2024

SPECIAL WITNESS to complete – tick as applicable

- I am a **special witness** under the *Oaths Act 1867*.
 (*see section 12 of the Oaths Act 1867*)
- This affidavit was made in the form of an electronic document.
- I electronically signed this affidavit.

Signed: 
 02473332-012

Witnessed by:

- ☑ This affidavit was made, signed and witnessed under part 6A of the *Oaths Act 1867* – I understand the requirements for witnessing a document by audio visual link and have complied with those requirements.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: **RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE**

AND

First Respondent: **LM INVESTMENT MANAGEMENT LIMITED
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AND

Second Respondent: **THE MEMBERS OF THE LM FIRST MORTGAGE INCOME
FUND ARSN 089 343 288**

AND

Third Respondent: **ROGER SHOTTON**

AND

Intervener: **AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

CERTIFICATE OF EXHIBIT

Exhibit "**DW-130**" to the Affidavit of **DAVID WHYTE** sworn this 28th day of April 2024


Deponent


Witness

David Heiner Schwarz
[name of witness]
Australian legal practitioner
Cowen Schwarz Marschke Lawyers
Special witness under *Oaths Act 1867*

CERTIFICATE OF EXHIBIT:

Form 47, R.435

Filed on behalf of the Applicant

02473332-012

Cowen Schwarz Marschke Lawyers

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INDEX OF EXHIBITS

No.	Index to "DW-130"	Date	Page No.
1.	Notice to FMIF members	April 2024	1-6
2.	Financial Statements for the FMIF for the year ended 30 June 2013 and the half year ended 31 December 2013	7.8.2014	7 to 31



TO THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVER APPOINTED) ("FMIF")

I have filed an application in Court seeking orders or directions to enable finalisation of the winding up of the FMIF.

Attached is a copy of the notice to members in respect of this application.

The orders or directions sought in the application include orders authorising the payment of a final distribution to FMIF members.

Bank Account Details

There are a number of members whose bank account details are not up-to-date.

In anticipation of a final distribution being paid (subject to Court approval), members whose bank account details have changed or are not up-to-date, are encouraged to provide up-to-date bank account details to BDO as soon as possible.

For instructions on how to update or change a member's bank account details, and copies of the form/s that are required to be completed, investors should visit the website www.lmfimf.com.

If the bank account details for a member are not current and the payment of the final distribution to that member is not successful and is returned to BDO, any unclaimed funds will be paid to ASIC.

Residual Member Claims

In the final distribution, all investors in the FMIF will receive a final distribution based on their interest in the FMIF.

In my review of the FMIF's accounts, however, I have identified records suggesting that some investors are still owed money for historical entitlements, including declared but unpaid income or capital distributions, approved but unpaid redemptions (including hardship redemptions), and other returned or unsuccessful payments.

In some cases, I have been unable to identify the investor entitled to the benefit of these entitlements.

If you believe that you are still owed money from the FMIF, other than your entitlement to a final distribution in the winding up, please contact BDO, and submit details of your claim to BDO with supporting documentation by 24 May 2024.

Upon receipt of a claim, I will assess it and I will promptly inform you of my determination.

It is **not** necessary for investors to submit any claim or proof of debt in order to be paid their final distribution.



If investors have any queries, please do not hesitate to contact BDO on +61 7 3237 5999 or email lmfmif@bdo.com.au.

A handwritten signature in black ink, appearing to be 'David Whyte', written over a horizontal line.

.....

David Whyte, Court-Appointed Receiver
26 April 2024

TO THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVER APPOINTED) (“FMIF”)

This is an important notice. You should read it carefully and in full.

This document gives notice of two applications:

1. An application in Supreme Court of Queensland Proceeding No. 3383 of 2013 for directions to finalise the winding up of the FMIF, brought by Mr David Whyte as the receiver of the property of the FMIF and the person appointed pursuant to section 601NF(1) of the *Corporations Act 2001* (Cth) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution (the **finalisation application**); and
2. An application in Supreme Court of Queensland Proceeding No. 3508 of 2015 by Mr John Richard Park, the liquidator of LM Investment Management Limited (in liquidation) (receivers and managers appointed) ACN 077 208 461 (“**LMIM**”), for determination of his remuneration and approval of his expenses to be paid from the property of the FMIF (the **liquidator remuneration application**).

The finalisation application and the liquidator remuneration application will both be heard by the Supreme Court in Brisbane on **27 May 2024** at 10.00am. Further details regarding your rights to appear at and participate in the hearing are set out at the end of this Notice.

Mr Whyte’s application for authority to make a final distribution to members of the FMIF

Mr Whyte is seeking orders granting him authority to make a further and final distribution of all of the remaining property of the FMIF to members. Mr Whyte will be permitted to withhold from that distribution only an amount, to be determined by the Court at the hearing of the finalisation application, necessary to meet unpaid or anticipated final expenses of the FMIF.

To ensure prompt receipt of their entitlement to the final distribution, all members should ensure that their contact details and bank account details are current.

Any payments that are unclaimed or undistributed, or that are returned in circumstances where Mr Whyte does not have up to date payment details, will not be retained by Mr Whyte, but will instead be remitted to ASIC as unclaimed monies.

It will remain possible for members to apply to ASIC to recover any unclaimed monies to which they were entitled, however, the consideration and determination of any claim to recover unclaimed monies from ASIC will be ASIC’s sole responsibility. Mr Whyte will have no further involvement or responsibility in that process.

Mr Whyte’s application for approval of his remuneration to be paid from the FMIF

The orders sought in the finalisation application also include orders relating to Mr Whyte’s further remuneration from 1 May 2022 through to the conclusion of the winding up of the FMIF.

Mr Park's application for approval of his remuneration and expenses to be paid from the FMIF

Mr Park, as the liquidator of LMIM, the responsible entity of the FMIF, has applied to the Supreme Court of Queensland for:

1. the determination of his remuneration as liquidator of the Second Applicant:-
 - (a) for the period from 1 December 2021 to 31 January 2024, in the sum of \$132,482.90 (including GST); and
 - (b) for the period 1 February 2024 to the date for finalisation of the winding up of the FMIF, in the sum or sums up to the amount of \$55,000 (including GST);
2. an order permitting him to be paid that remuneration of \$132,482.90 (including GST) and a sum or sums up to the amount of \$55,000 (including GST) from the scheme property of the FMIF;
3. an order that pursuant to the orders of Justice Jackson made on 17 December 2015, as varied on 18 July 2018, the Court approve the claim by Mr Park for payment of the sum of \$451,342.18 from the property of the FMIF being for legal costs and interest charges and expenses the Liquidator has incurred in connection with LMIM acting as responsible entity for the FMIF;
4. an order that Mr Whyte shall pay the sum of \$451,342.18 from the property of the FMIF to the applicants (or as they may direct in writing);
5. an order that the applicants' costs of this Application, as agreed by the applicants and Mr Whyte or otherwise assessed, be paid on the indemnity basis from the property of the FMIF;
6. such further or other orders as this Honourable Court deems fit.

Mr Whyte's application for discharge and release from claims

Mr Whyte is seeking orders granting him, BDO, its partners, employees and agents a discharge and release from any and all claims against him whatsoever and howsoever arising in connection with his appointments under section 601NF of the Act in respect of the FMIF.

If this release and discharge is granted by the Court, it will take effect immediately upon payment of the final distribution. The effect will be that no member of the FMIF, or any other party, will be permitted to bring a claim against Mr Whyte for his work under his appointments in relation to the winding up of the FMIF.

Other orders sought by Mr Whyte in the finalisation application

The further orders sought in the finalisation application include the following:

1. That LMIM is not required to prepare or have audited final accounts of the FMIF, other than as required under ASIC Instrument 24-0114, issued on 1 March 2024. In the alternative, that such an audit be limited to the period from the start of the financial year in which the winding up is concluded, to the conclusion of the winding up.
2. That Mr Whyte is justified in causing LMIM to discontinue Supreme Court proceedings 11560/16, which claimed damages against LMIM, in circumstances where LMIM has no remaining assets, and where there is no longer any need to rely on the clear accounts rule as a defence to a claim by LMIM against the FMIF.

3. That Mr Whyte is justified in paying cash income distributions recorded in the “*Distributions Payable*” (20400) ledger of the FMIF for the November and December 2010 distribution periods, to the members entitled to those distributions.
4. That Mr Whyte is justified in seeking to pay other outstanding amounts recorded in the “*Distributions Payable*” (20400), the “*Investor Funds Payable (Redemptions)*” (20401) and the “*Returned Investor Payments*” (20003) liability ledgers of the FMIF, but otherwise taking no further steps in relation to those liabilities apart from assessing claims received from members, and paying claims which are determined to be valid.
5. That Mr Whyte is justified in taking no further steps in relation to the amounts recorded in the “*Trade - Settlements Payable / Receivable*” (20040) and “*Other Payables*” (20001) liability ledgers of the FMIF.

Procedural matters

The finalisation application and the liquidator remuneration application (the **Applications**) will both be heard by the Court on **27 May 2024** at 10.00am.

Directions have already been made for the conduct of both applications by the Court on 18 April 2024.

In relation to the finalisation application:

1. Any member of the FMIF is entitled to appear and be heard on the finalisation application, if they wish. If you wish to do so, you must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act 2001* which are in Schedule 1A of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Cowen Schwarz Marschke, the solicitors for Mr Whyte, at their office at Level 8, 300 George Street, Brisbane, QLD 4000, or by email to dschwarz@csmlawyers.com.au and anase@csmlawyers.com.au.
2. Copies of all court documents, including the directions made by the Court on 18 April 2024 and any further affidavit or submission filed in the finalisation application, will be available on the website www.lmfmf.com.
3. Any member who reasonably requires a hard copy of any of the Applications and supporting material should call BDO on +61 7 3237 5999.
4. Members will not be sent any further email or correspondence notifying them of either of the Applications.

In relation to the liquidator remuneration application:

1. If you intend to appear at the hearing of the liquidator remuneration application, you will need to file and serve your Notice of Appearance, any material on which you intend to rely at the hearing, and a short statement summarising any grounds on which you oppose the relief sought in any of the Applications, by 13 May 2024.
2. The members of the FMIF are not respondents to the application but any member is entitled to be heard in the application if they wish. Any member who wishes to appear and to make submissions at the hearing of the application must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act 2001* which are in Chapter 23 of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Russells, the solicitors for John



Richard Park as liquidator of LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ACN 007 208 461 the Responsible Entity of the LM First Mortgage Income Fund ARSN 089 343 288, at their office at Level 18, 300 Queen Street, Brisbane, QLD 4000. Tel. +61 7 3004 8888 Fax +61 1 3004 8899 E-mail: service@russells.au.

3. Copies of the application and other court documents filed in the relation to the liquidator remuneration application will be available on the website www.lminvestmentadministration.com.
4. Any member who reasonably requires a hardcopy of the application and other court documents should call Russells Lawyers on +61 7 3004 8888.

This notice is given pursuant to an order of the Supreme Court of Queensland made on 18 April 2024, which will constitute service on you of the finalisation application and the liquidator remuneration application.

David Whyte
Court appointed Receiver of FMIF

John Park
Liquidator of LMIM

Dated: 24 April 2024

7 August 2014

TO INVESTORS

Dear Member

**LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVERS AND MANAGERS APPOINTED)
(RECEIVER APPOINTED) ("THE FUND")**

I attach the unaudited accounts for the Fund for the year ended 30 June 2013 and half year ended 31 December 2013.

During the reporting periods the following insolvency events have taken place:

- John Park and Ginette Muller of FTI Consulting were appointed as Administrators of the Fund's Responsible Entity, LM Investment Management Ltd (In Liquidation) ("LMIM") on 19 March 2013. They were subsequently appointed as Liquidators of LMIM on 1 August 2013.
- Joseph Hayes and Anthony Connelly of McGrathNicol were appointed as Receivers and Managers of the Fund on 11 July 2013 by the secured creditor, Deutsche Bank.
- I was appointed Receiver over the assets of the Fund and as person responsible for ensuring the Fund is wound up pursuant to the terms of its constitution by the Supreme Court of Queensland on 8 August 2013.

The accounts have been prepared in conjunction with the service provider, LM Administration Pty Ltd's (In Liquidation) staff and consultants and by collating the records maintained by the Fund, the service provider and receipts and payments and other records of FTI and McGrathNicol.

The accounts have been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The accounts have been reviewed by the BDO audit team. However, their work does not constitute a full audit and therefore, the accounts are provided on an unaudited basis.

Should members require further information, please contact BDO on the details provided below.

BDO
GPO Box 457
Brisbane QLD 4001



Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Or

Email: joanne.garcia@bdo.com.au
Phone: +61 7 3237 5849

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

David Whyte
Court Appointed Receiver

Disclaimer:

The 30 June 2013 and 31 December 2013 financial statements were compiled by BDO Business Recovery & Insolvency QLD) Pty Ltd however we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**

ABN: 66 482 247 488

Report for the year ended 30 June 2013 and
half-year ended 31 December 2013

Disclaimer

The 30 June 2013 and 31 December 2013 financial statements were compiled by BDO Business Recovery & Insolvency (QLD) Pty Ltd but we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**

ABN: 66 482 247 488

Report for the year ended 30 June 2013 and half-year ended 31 December 2013

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The Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) is LM Investment Management Limited (ABN 68 077 208 461) (in Liquidation) (Receivers and Managers Appointed).

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF COMPREHENSIVE INCOME

For the year ended 30 June 2013 and half-year ended 31 December 2013

	Note	31 December 2013 \$	30 June 2013 \$	30 June 2012 \$
Income				
Interest revenue - mortgage loans		32,901	155,173	31,608,319
Interest revenue - cash assets		65,997	220,092	420,812
Realised foreign exchange gain on investor funds		3,307	49,913	69,271
Realised gain on foreign exchange contracts		57,297	-	-
Unrealised foreign exchange gain on foreign exchange contracts		-	129,192	-
Derecognition of advisor commission liability	14	-	4,762,674	-
		<u>159,502</u>	<u>5,317,044</u>	<u>32,098,402</u>
Expenses				
Management fees	10	606,195	4,519,156	9,103,864
Finance costs	4(a)	1,829,589	5,013,661	8,593,798
Custodian fees	10	47,508	49,107	77,904
Advisor commissions	14	-	-	2,165,236
Impairment losses on mortgage loans	7	240,007	186,553,576	99,144,122
Impairment losses on interest receivable	11	43,436	980,936	-
Unrealised foreign exchange losses on investor fund		941,952	805,947	167,394
Unrealised foreign exchange loss on foreign exchange contracts		-	-	145,432
Realised loss on foreign exchange contracts		-	263,566	36,203
Other expenses	4(b)	5,628,107	5,167,395	1,280,026
Total expenses excluding distributions to unitholders		<u>9,336,794</u>	<u>203,353,344</u>	<u>120,713,979</u>
Net (loss) before distributions to unitholders		(9,177,292)	(198,036,300)	(88,615,577)
Distributions paid/payable to unitholders		(348)	(2,710,288)	(17,024,389)
Net (loss) after distributions to unitholders		<u>(9,177,640)</u>	<u>(200,746,588)</u>	<u>(105,639,966)</u>
Other comprehensive income		-	-	-
Net (loss) after distributions to unitholders		(9,177,640)	(200,746,588)	(105,639,966)
Income tax expense				
Changes in net assets attributable to unitholders after income tax expense		<u>(9,177,640)</u>	<u>(200,746,588)</u>	<u>(105,639,966)</u>

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF FINANCIAL POSITION

As at 30 June 2013 and 31 December 2013

	Note	31 December 2013 \$	30 June 2013 \$	30 June 2012 \$
ASSETS				
Cash and cash equivalents	12(a)	2,045,959	9,055,002	8,123,428
Receivables	11	443,288	225,943	1,279,828
Loans & Receivables	7	78,209,130	99,877,471	334,573,501
TOTAL ASSETS		80,698,377	109,158,416	343,976,757
LIABILITIES				
Management fee payable	10	0	0	2,470,000
Financial assets at fair value through profit or loss		0	0	129,192
Payables	8	6,578,584	5,278,291	7,980,824
Interest bearing loans and borrowings	9	4,000,000	25,500,000	39,610,078
Distributions payable		1,379,917	1,381,435	4,806,035
Total liabilities excluding net assets attributable to unitholders		11,958,501	32,159,726	54,996,129
NET ASSETS		68,739,876	76,998,690	288,980,628
Represented by:				
Net assets attributable to unitholders		68,739,876	76,998,690	288,980,628
(calculated in accordance with IFRS)				

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS
For the year ended 30 June 2013 and half-year ended 31 December 2013

	31 December 2013 \$	30 June 2013 \$	30 June 2012 \$
TOTAL			
Opening balance	76,998,690	288,980,628	382,187,323
Units issued during the year	0	11,750	3,012,163
Units redeemed during the year	(24,305)	(15,651,157)	(6,666,198)
Units issued on reinvestment of distributions	0	3,618,159	15,959,774
Changes in net assets attributable to unitholders	(9,177,640)	(200,746,588)	(105,639,966)
Foreign exchange (gain)/loss on investor funds	943,131	785,898	127,532
Closing Balance	68,739,876	76,998,690	288,980,628

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF CASH FLOWS

For the year ended 30 June 2013 and half-year ended 31 December 2013

	Note	31 December 2013 \$	30 June 2013 \$	30 June 2012 \$
Cash flows from operating activities				
Interest and distributions received		123,294	252,273	404,955
Management fees paid		(606,195)	(4,519,156)	(5,180,443)
Other operating expenses		(4,418,758)	(6,607,297)	(759,450)
Other income received		3,307	(213,653)	-
GST and withholding tax (paid)/received		(217,345)	1,053,885	-
Finance costs paid	4(a)	(1,829,589)	(5,013,661)	(8,143,798)
Net cash inflow/(outflow) from operating activities	12(b)	<u>(6,945,286)</u>	<u>(15,047,609)</u>	<u>(13,678,736)</u>
Cash flows from investing activities				
Payments for secured mortgage loans		(7,543,788)	(6,306,405)	(16,924,379)
Receipts from settled mortgage loans		29,005,024	54,571,851	46,822,765
Net cash inflow/(outflow) from investing activities		<u>21,461,236</u>	<u>48,265,446</u>	<u>29,898,386</u>
Cash flows from financing activities				
Repayment of facility		(21,500,000)	(14,110,078)	(22,789,710)
Cash paid on realisation of foreign exchange contracts		-	-	(69,271)
Receipts from the issue of units		-	-	2,312,382
Distributions paid		(1,868)	(6,135,409)	(2,424,725)
Payment for redemption of units		(23,125)	(12,040,776)	(3,600,345)
Net cash inflow/(outflow) from financing activities		<u>(21,524,993)</u>	<u>(32,286,263)</u>	<u>(26,571,669)</u>
Net increase/(decrease) in cash and cash equivalents		(7,009,044)	931,574	(10,352,019)
Cash and cash equivalents at beginning of year		9,055,002	8,123,428	18,475,447
Cash and cash equivalents at end of year	12(a)	<u>2,045,959</u>	<u>9,055,002</u>	<u>8,123,428</u>

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

1. CORPORATE INFORMATION

During the period March 2013 to August 2013, a series of insolvency events occurred in respect of both the Fund and the Responsible Entity for the Fund, these are detailed in the table below:

Date	Appointment
19 March 2013	John Park and Ginette Muller of FTI Consulting appointed as Administrators of LM Investment Management Ltd ("LMIM") being the Responsible Entity for the Fund.
11 July 2013	Joseph Hayes and Anthony Connelly of McGrathNicol appointed as Receivers and Managers of LMIM as the Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) ('LMFMIF', 'Scheme' or the 'Fund') by Deutsche Bank.
1 August 2013	John Park and Ginette Muller of FTI Consulting appointed as liquidators of LMIM.
8 August 2013	David Whyte of BDO appointed by the Court as Receiver of the assets of the Fund and as the person responsible for ensuring the Fund is wound up in accordance with its Constitution.

The Scheme is an Australian registered Scheme, constituted on 13 April 1999.

2. BASIS OF PREPARATION AND ACCOUNTING POLICIES

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all periods presented, unless otherwise stated in the following text.

(a) Basis of accounting

This financial report has been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The financial report has also been prepared on a historical cost basis, except for financial assets and financial liabilities held at fair value through profit or loss, that have been measured at fair value.

The Statement of financial position is presented in decreasing order of liquidity and does not distinguish between current and non-current items. The amount expected to be recovered or settled within twelve months in relation to the balances cannot be reliably determined.

The financial report is presented in Australian Dollars (\$).

Statement of compliance

The financial statements have been prepared in accordance with the recognition and measurement requirements of the Australian Accounting Standards as issued by the Australian Accounting Standards Board and International Financial Reporting Standards as issued by the International Accounting Standards Board.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

2. BASIS OF PREPARATION AND ACCOUNTING POLICIES

(a) Basis of accounting (Continued)

Status of investment in fund

During the 2009 year, the Responsible Entity closed the Scheme to new investors and suspended withdrawals subject to certain exceptions. Redemptions were suspended at this time, per the Constitution, as the Responsible Entity considered the suspension of the withdrawals to be in the best interest of the members of the Scheme.

The Scheme is now in the process of being formally wound up with redemptions and hardship provisions remaining suspended.

At the time the fund closed, there were 55 loan assets with 28 repaid as at 30 June 2012. Since this time, a further 7 loan assets have been repaid.

Liquidation Basis

Previous financial statements have been prepared on a going concern basis.

The financial statements for the periods ended 30 June 2013 and 31 December 2013 have not been prepared on a going concern basis due to the appointment of Administrators to the Responsible Entity for the Fund on 19 March 2013 and subsequently Liquidators on 1 August 2013 and the appointment of Receivers and Managers and Court Appointed Receiver and person responsible for ensuring it is wound up in accordance with its Constitution as detailed in note 1. Accordingly, the financial statements for those periods have been prepared on a liquidation basis.

(b) New accounting standards and interpretations

Australian Accounting Standards and Interpretations that have recently been issued or amended but are not yet effective have not been adopted by the Scheme for the reporting period. The impact of these standards and interpretations that are not expected to have a material impact on the Scheme have not been included.

(c) Significant accounting judgements, estimates and assumptions

In the process of applying accounting policies, judgements and estimations have been made which have had an impact on the amounts recognised in the accounts. The key estimated and assumptions that have a significant risk of causing material adjustment to the carrying amounts of certain assets and liabilities within the next annual reporting period are:

Allowance for impairment loss on loans and receivables

The Scheme determines whether loans are impaired on an ongoing basis. Individually assessed provisions are raised where there is objective evidence of impairment, where the Scheme does not expect to receive all of the cash flows contractually due. Individually assessed provisions are made against individual facilities.

(d) Cash and cash equivalents

Cash and cash equivalents includes cash in hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts. For the purposes of the Statement of cash flows, cash and cash equivalents as defined above, net of outstanding bank overdrafts.

(e) Distribution income

Distribution income is recognised when the Scheme's right to receive income is established.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(f) Interest income

Interest income is recognised as the interest accrues using the effective interest rate method, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial instrument to the net carrying amount of the financial asset. Interest ceases to be recognised when a loan is in default and the principal is impaired.

(g) Default management fees

Income from default management fees is recognised in line with the executed agreement with the borrower when an event of default occurs.

(h) Changes in the fair value of investments

Gains or losses on investments held for trading are calculated as the difference between the fair value at sale, or at year end, and the fair value at the previous valuation point. This includes both realised and unrealised gains and losses.

(i) Fees, commissions and other expenses

Except where included in the effective interest calculation (for financial instruments carried at amortised cost), fees and commissions are recognised on an accrual basis. Audit and compliance fees are included with 'other expenses' and are recorded on an accrual basis.

(j) Finance costs

Interest on borrowings is recognised in the statement of comprehensive income in the period to which it relates. Issue costs associated with borrowings are capitalised and amortised over the term of the borrowing to which they relate using the effective interest method.

(k) Financial instruments

Financial instruments in the scope of *AASB 139 Financial Instruments* are classified as either financial assets or financial liabilities at fair value through profit or loss, loans and receivables, held-to-maturity investments, available-for-sale investments or other financial liabilities as appropriate.

When financial assets are recognised initially, they are measured at fair value, plus, in the case of investments not at fair value through profit or loss, directly attributable transactions costs. The Scheme determines the classification of its financial assets at initial recognition.

All regular way purchases and sales of financial assets are recognised on the trade date ie. the date that the Scheme commits to purchase the asset. Regular way purchases or sales are purchases or sales of financial assets under contracts that require delivery of the assets within the period established generally by regulation or convention in the marketplace.

i. Loans and receivables

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are initially measured at fair value including transaction costs directly attributable to the financial asset. After initial recognition, loans and receivables are carried at amortised cost using the effective interest method. Gains and losses are recognised in profit or loss when receivables are derecognised or impaired, as well as through the amortisation process.

Loans and receivables are assessed for impairment at each reporting period. An allowance is made for credit losses when there is objective evidence that the Scheme will not be able to collect the loans and receivables. Impairment losses are written off when identified. Losses expected as a result of future events are not recognised. If a provision

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

for impairment has been recognised in relation to the loan, writeoffs for bad debts are made against the provision. If no provision for impairment has previously been recognised, writeoffs for bad debts are recognised as an expense in the statement of comprehensive income.

A provision is made of loans in arrears where the collectability of the debts is considered doubtful by estimation of expected losses in relation to loan portfolios where specific identification is impracticable.

The components of impaired assets are as follows:

“Loans in arrears” are loans and advances for which there is reasonable doubt that the Scheme will be able to collect all amounts of principal and interest in accordance with the terms of the agreement.

“Assets acquired through the enforcement of security” are assets acquired in full or partial settlement of a loan or similar facility through the enforcement of security arrangements.

When it is determined that interest is not recoverable on certain impaired loans, the interest is suspended and not brought into income. Should the analysis of the collectability subsequently change the interest will be brought into income at the time it is determined to be collectable.

(l) Payables

Payables are carried at amortised costs and represent liabilities for goods and services provided to the Scheme prior to the end of the financial year and half year that are unpaid and arise when the Scheme becomes obliged to make future payments in respect of the purchases of these goods and services.

The distribution amount payable to investors as at the reporting date is recognised separately on the statement of financial position as unitholders are presently entitled to the distributable income as at 30 June 2013 and 31 December 2013 under the Scheme’s constitution.

(m) Increase/decrease in net assets attributable to unitholders

Non-distributable income is transferred directly to net assets attributable to unitholders and may consist of unrealised changes in the net fair value of investments, accrued income not yet assessable, expenses accrued for which are not yet deductible, net capital losses and tax free or tax deferred income. Net capital gains on the realisation of any investments (including any adjustments for tax deferred income previously taken directly to net assets attributable to unitholders) and accrued income not yet assessable will be included in the determination of distributable income in the same year in which it becomes assessable for tax. Excess and undistributed income is also transferred directly to net assets attributable to unitholders.

(n) Distributions

The Trustees for the LM Managed Performance Fund have put both the Receivers and Managers and the Court Appointed Receiver on notice of a potential claim against the Fund. In addition, the Receivers and Managers appointed to the Bellpac matter have put the Court Appointed Receiver on notice not to distribute funds until the proceedings are resolved.

The secured creditor is not in a position to release its security due to the potential claim against the Fund. Until the matters detailed above are resolved and funds released to the Court Appointed Receiver, distributions to investors cannot commence.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(o) Goods and services tax (GST)

The GST incurred on the costs of various services provided to the Responsible Entity by third parties such as audit fees, custodial services and investment management fees have been passed onto the Scheme. The Scheme qualifies for Reduced Input Tax Credits (RITC's) at a rate of 75%.

Investment management fees, custodial fees and other expenses have been recognised in the statement of comprehensive income net of the amount of GST recoverable from the Australian Taxation Office (ATO). Accounts payable are inclusive of GST. The net amount of GST recoverable from the ATO is included in the statement of cashflows on a gross basis.

The GST component of cash flows arising from investing and financing activities recoverable or payable to the ATO is classified as an operating cash flow.

(p) Applications and redemptions

Applications received for units in the Scheme are recorded when units are issued in the Scheme. Redemptions from the Scheme are recorded when the cancellation of units redeemed occurs. Unit redemption prices are determined by reference to the net assets of the Scheme divided by the number of units on issue.

Applications received in foreign currency denominations are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Foreign currency denominated unitholder funds are translated into the Schemes functional currency at balance date, using the spot rate prevailing at that date. Gains and losses arising from foreign exchange translation are recorded in the Statement of Comprehensive Income in the period in which they arise.

(q) Taxation

Under current legislation, the Scheme is not subject to income tax provided the distributable income of the Scheme is fully distributed either by way of cash or reinvestment (ie. unitholders are presently entitled to the income of the Scheme).

(r) Interest-bearing loans and borrowings

All loans and borrowings are initially recognised at cost, being the fair value of the consideration received net of issue costs associated with the borrowing. After initial recognition, interest-bearing loans and borrowings are subsequently measured at amortised cost using the effective interest method. Amortised cost is calculated by taking into account any issue costs, and any discount or premium on settlement.

(s) Derivative financial instruments

The Scheme uses derivative financial instruments such as forward currency contracts to hedge its risks associated with foreign currency fluctuations. Derivatives are recognised at fair value on the date on which a derivative contract is entered into and are subsequently re-measured at their fair value. All derivatives are carried as assets when fair value is positive and as liabilities when fair value is negative.

Any gains or losses arising from changes in the fair value of derivatives, except for those that qualify as cash flow hedges, are taken directly to net profit or loss for the year.

The fair value of forward currency contracts is calculated by reference to valuations provided by the financial institutions with which the forward contracts are held.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(t) Foreign currency translations

The Scheme's transactions in foreign currencies comprise applications and withdrawals of foreign currency unitholder funds and payment of distributions. Transactions in foreign currencies are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Monetary assets and liability denominated in foreign currencies and retranslated at the rate of exchange prevailing at the balance sheet date, and exchange rate gains and losses recognised in the statement of comprehensive income.

(u) Determination of fair value

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

The fair value for financial instruments not traded in an active market is determined using appropriate valuation techniques. Valuation techniques include: using recent arm's length market transactions; reference to the current market value of another instrument that is substantially the same; discounted cashflow analysis and option pricing models making as much use of available and supportable market data as possible.

(v) Estimated net asset amount per unit available to investors

The estimated amount of net assets available to investors are subject to the uncertainties indicated in Note 7 of this financial report.

The net assets of the fund and number of units on issue at the end of each of the periods is detailed in the table below:

	31 December 2013	30 June 2013	30 June 2012
Estimated net amount of assets available to investors as at the period end (\$)	68,739,876	76,998,690	288,980,628
Total investor units (# of units)	478,473,011	477,554,184	488,787,330
Estimated net asset amount per unit available to investors as at the period end (cents in the dollar)	14.4	16.1	59.1

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

3. INCOME AND DISTRIBUTIONS TO UNITHOLDERS**(a) Distributions to unitholders**

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Distributions paid/reinvested	348	2,710,289	12,218,354
Distributions payable	-	-	4,806,035
	<u>348</u>	<u>2,710,289</u>	<u>17,024,389</u>

Distributions payable relates to distributions that were required to be paid under the Scheme's Constitution. These distributions relate to the period prior to the suspension of the distributions in January 2011.

In addition to these interest distributions, capital distributions were also paid to investors in February and June 2013. Capital distributions are reflected through redemption of units and a decrease in the unit price.

(b) Distributions paid

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Class A	327	31,986	-
Class B	-	2,678,303	16,904,211
Class C	21	-	120,178
	<u>348</u>	<u>2,710,289</u>	<u>17,024,389</u>

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

4. EXPENSES

(a) Finance costs

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Interest on bank loans	1,829,589	4,719,566	8,143,798
Facility fees	-	294,095	450,000
	<u>1,829,589</u>	<u>5,013,661</u>	<u>8,593,798</u>

(b) Other expenses

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
LM Administration Pty Ltd (in Liquidation) ("LMA") operational costs	1,947,361	1,442,586	-
Receivers and Managers' fees and outlays (McGrathNicol)	765,329	-	-
Legal fees	432,818	502,928	523,012
LMA Liquidator fees and outlays (David Clout & Associates)	173,175	-	-
Audit fees	-	230,736	559,905
Other expenses	57,706	741,079	197,109
Court Appointed Receiver's fees & outlays (BDO) *	470,974	-	-
Court Appointed Receiver's legal fees (BDO)	234,515	-	-
LMIM's legal fees (FTI)	175,375	750,636	-
LMIM's Administrators and Liquidators fees and outlays (FTI) **	1,370,854	1,499,430	-
	<u>5,628,107</u>	<u>5,167,395</u>	<u>1,280,026</u>

* Denotes expenses which are subject to approval by the court.

** Denotes expenses which are subject to approval by the Receivers and Managers or the court.

LMA operational costs relate to services provided by LMA pursuant to a services agreement. This includes wages and salaries, insurance, rent and utilities.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

5. AUDITOR'S REMUNERATION

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Audit and review of the financial reports	-	203,544	534,258
Other regulatory audit services	-	27,192	25,647
	-	<u>230,736</u>	<u>559,905</u>

The fees charged in the financial year 2013 relate to work undertaken to finalise the 30 June 2012 audited accounts, the preparation of draft accounts for 31 December 2012 and planning work for 30 June 2013 accounts as requested by FTI Consulting.

These expenses have been included within 'Other expenses' in the Statement of Comprehensive Income.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

6. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

Movements in the net assets attributable to unitholders during the year were as follows:

Net assets attributable to unitholders

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Class A			
Opening balance	245,673,002	252,760,731	254,832,731
Units issued during the year	-	-	-
Units redeemed during the year	(858)	(7,087,729)	(2,072,000)
Units issued upon reinvestment of distributions	-	-	-
Closing balance	245,672,144	245,673,002	252,760,731
Class B			
Opening balance	220,219,758	224,862,439	210,391,005
Units issued during the year	-	11,750	3,004,384
Units redeemed during the year	(23,447)	(8,272,590)	(4,497,306)
Units issued upon reinvestment of distributions	-	3,618,159	15,964,356
Closing balance	220,196,311	220,219,758	224,862,439
Class C			
Opening balance	10,170,587	9,675,527	9,635,388
Units issued during the year	-	-	-
Units redeemed during the year	-	(290,838)	(47,739)
Units issued upon reinvestment of distributions	-	-	-
Foreign exchange (gain)/loss on investor funds	943,131	785,898	87,878
Closing balance	11,113,718	10,170,587	9,675,527
Cumulative movement in changes in net assets attributable to unitholders	(408,242,297)	(399,064,657)	(198,318,069)
Net assets attributable to unitholders	68,739,876	76,998,690	288,980,628

Class A

Class A consists of unitholders who are entitled to receive the declared distribution rate. There are a number of subclasses attached to class A. These consist of the following products with varying terms:

- 1) Flexi Account investment option
- 2) Fixed Term investment option
- 3) LM Savings Plan investment option

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

6. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS (Continued)

Class B

Class B consists of related Scheme unitholders.

Class C

Class C consists of unitholders who have invested in foreign currencies and are entitled to receive the declared distribution rate.

Subject to the comments relating to the status of the Scheme in note 2, all unitholders are entitled to receive distributions as declared from time to time and are entitled to one vote per unit at unitholders' meetings. As the Scheme is being wound up, all unitholders rank after creditors and are equally entitled to the proceeds of the winding up procedure.

7. LOANS AND RECEIVABLES

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Secured mortgage loans	355,344,509	402,183,769	467,528,292
Secured mortgage loans (2 nd priority)	15,900,037	13,276,963	13,310,672
Provision for impairment	(333,208,829)	(342,614,380)	(146,265,463)
Net loans and advances	<u>78,209,130</u>	<u>99,877,471</u>	<u>334,573,501</u>

Loans and receivables are initially measured at the fair value including transaction costs and subsequently measured at amortised cost after initial recognition. Loans and Receivables are assessed for impairment at each reporting date. Where impairment indicators exist, the recoverable amount of the loan will be determined and compared to its carrying amount to determine whether any impairment losses exists. Impairment losses are recognised when the recoverable amount under the individual loan is less than the carrying amount of that loan.

Material uncertainty regarding recoverability of Loans and Receivables

For loans in default, an impairment indicator arises which requires the recoverable amount of that loan to be determined. The recoverable amount for each individual loan in default has been determined from independent valuations of the assets forming the security for the loans. The valuations are based on current market conditions and provide for appropriate exposure to the market and an orderly realisation of assets forming the security for the loans.

In determining the recoverable amounts, there are uncertainties involved in assessing the market values and the ability to realise those market values, particularly where the market is not active. Consequently, it is likely that there may be differences between the amounts at which the Loans and Receivables are recorded at in the financial statements for the periods ended 30 June 2013 and 31 December 2013, and the amounts that are actually realised. Such differences may be material. Accordingly, there is a material uncertainty regarding recoverability of Loans and Receivables.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

7. LOANS AND RECEIVABLES (Continued)

(a) Aggregate amounts receivable from related parties

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Director and director-related entities – secured	-	6,072,342	8,209,841
Related managed investment schemes – secured	-	1,310,838	1,708,151
Related managed investment schemes – unsecured	-	-	-
	-	7,383,180	9,917,992

(b) Provisions for impairment

The impairment loss expense relating to loans and receivables comprises:

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Opening balance	315,583,261	146,265,463	76,425,453
Impairment losses provided for during the period	240,007	186,553,576	99,144,122
Impairment losses realised for during the period	(22,787,852)	(17,235,778)	(29,304,112)
Closing balance	293,035,416	315,583,261	146,265,463
Total provision for impairment	293,035,416	315,583,261	146,265,463

Changes to operating profit/(loss) before tax for impairment losses on loans and receivables comprises:

Specific provision	(22,547,845)	169,317,798	69,840,010
Impairment losses recognised directly in Statement of comprehensive income	22,787,852	17,235,778	29,304,112
	240,007	186,553,576	99,144,122

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

7. LOANS AND RECEIVABLES (Continued)

(c) Movement in default loans

Movement in default loans

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Gross default loans opening balance	415,460,732	457,610,299	481,037,628
New and increased default loans	5,730,747	(43,605,801)	67,271,669
Balances written off	(22,787,852)	(17,235,778)	(29,304,112)
Returned to performing or repaid	(27,159,081)	(68,519,590)	(61,394,886)
Gross default loans closing balance	371,244,546	415,460,732	457,610,299
Specific provision	(293,035,416)	(315,083,261)	(146,256,463)
Net default loans	78,209,130	99,877,471	311,344,836

8. PAYABLES

Payables are carried at cost and represent liabilities for goods and services provided to the Fund prior to the period end but have not yet been paid.

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Loan management fee payable	-	-	2,073,206
Accounts payable	6,578,584	5,278,291	5,907,618
	6,578,584	5,278,291	7,980,824

9. INTEREST BEARING LOANS AND BORROWINGS

Interest bearing loans and borrowings relates to facilities with external providers. In July 2010, the RE entered into a new facility with an external financier, Deutsche Bank. Deutsche Bank holds a fixed and floating charge over the assets of the Fund.

As indicated in Note 1, McGrathNicol were appointed as Receivers and Managers of the Fund by Deutsche Bank as a result of a default of the finance facility by the Fund for this secured loan.

There has been a progressive sell down of the assets of the Fund which has enabled \$14.1M of the loan to be repaid during the 2013 financial year and \$21.5M between July and December 2013. The facility was repaid in full in January 2014.

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Secured bank loan	4,000,000	25,500,000	39,610,078

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

9. INTEREST BEARING LOANS AND BORROWINGS (Continued)

As mentioned in the Court Appointed Receiver's reports to investors, whilst the secured creditor has been repaid in full, the Receivers and Managers appointed by the secured creditor have advised that they are not yet in a position to retire until the potential claim by KordaMentha as the new trustee of the LM Managed Performance Fund is resolved.

KordaMentha, acting as trustee of the MPF has put the Court Appointed Receiver and the Receivers and Managers appointed by the secured creditor on notice of a potential claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("LMIM") and/or the Fund in relation to potential breaches of trust.

10. RELATED PARTIES

Responsible Entity ('RE')

The RE for the Fund is LM Investment Management Ltd (in Liquidation) ('LMIM'). The transactions recorded relate to fees and expenses incurred in accordance with the Constitution.

Administration and funds management services are provided to the Scheme on behalf of the RE by LM Administration Pty Ltd (In Liquidation) ('LMA'), an associate of the RE. LMA is paid a management fee directly from the Scheme.

Custodian

The Custodian of the Fund is The Trust Company (PTAL) Ltd.

Balance with related parties (Receivable)

This relates to two loans within the Fund portfolio, both of which have been finalised between 1 July 2012 and 31 December 2013.

Balance with related parties (Payable)

The transaction with LM Administration Pty Ltd (In Liquidation) relates to fees incurred in accordance with the service agreement.

The Transaction with O'Sullivan Capital Management Ltd is in respect of marketing services provided in New Zealand by the former director John O'Sullivan.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

10. RELATED PARTIES (Continued)

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
<i><u>RE remuneration received or due & receivable</u></i>			
Management fees for the year or half-year paid or payable directly to LM Administration	606,195	4,519,156	9,103,864
Expenses including administration expenses incurred by the RE and its associated entities, which are reimbursed in accordance with the provisions of the Constitution	-	189,983	28,983
Expenses including administration expenses incurred by the RE and its associated entities, which are not reimbursed	-	-	38,524
Custodian's fees paid by the Scheme	47,508	49,107	77,904
<i><u>Balance with related parties (Receivable net of impairment)</u></i>			
Australian International Investments Pty Ltd	-	6,072,342	8,209,841
LM Managed Performance Fund	-	1,310,838	1,708,151
<i><u>Balance with related parties (payable)</u></i>			
LM Administration	-	-	2,470,000
O'Sullivan Capital Management Ltd	160,071	160,071	109,157
<i><u>FTI Consulting</u></i>			
LMIM's legal fees (FTI)	175,375	750,636	-
LMIM's Administrators and Liquidators fees and outlays (FTI) *	1,370,854	1,499,430	-

* Denotes expenses which are subject to approval by the court

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013****11. RECEIVABLES**

Receivables consist of the interest on the loans for the period from the 18th of the month, when the interest is run until the end of the month and GST which is due at 30 June 2013 and 31 December 2013.

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Mortgage interest receivable	43,238	926,444	972,381
Penalty interest receivable	198	54,492	181,131
Total interest receivable	43,436	980,936	1,153,512
Provision for interest impairment	(43,436)	(980,936)	-
GST receivable	443,288	225,943	120,451
Other	-	-	5,865
	<u>443,288</u>	<u>225,943</u>	<u>1,279,828</u>

During the year, the penalty interest receivable was capitalised onto the secured mortgage loan balance. See Note 7 and Note 13.

12. CASH AND CASH EQUIVALENTS**(a) Reconciliation of cash and cash equivalents**

For the purposes of the Statement of Financial Position, the cash and cash equivalents comprise of cash at bank and in hand.

The cash at bank earns interest at floating rates based on the daily bank deposit rates. The cash at bank figure includes monies held in foreign exchange margin accounts and not available for use.

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Cash at bank	<u>2,045,959</u>	<u>9,055,002</u>	<u>8,123,428</u>

As at 31 December 2013, \$272,483 and as at 30 June 2013, \$271,402 (2012: \$420,812) of cash at bank was held in foreign exchange margin accounts and was not available for use by the Scheme.

The Scheme's borrowing agreement requires the Scheme to hold a minimum cash balance of \$6 million across two bank accounts, one of which is a restricted account. This restriction is applicable as at 30 June 2013 and 31 December 2013, however the facility was paid out in January 2014 and this restriction no longer applies.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2013 and half-year ended 31 December 2013

12. CASH AND CASH EQUIVALENTS (Continued)**(b) Reconciliation of change in net assets attributable to unitholders to net cash flows from operating activities**

	31 December 2013	30 June 2013	30 June 2012
	\$	\$	\$
Change in net assets attributable to unitholders	(9,177,640)	(200,746,588)	(105,639,966)
<i>Adjustments for:</i>			
Non-cash impairment expense	240,007	186,553,576	98,845,139
Non-cash interest income	(32,901)	(122,992)	(31,526,951)
Non-cash management fees	-	-	(4,228,333)
Distribution to unitholders	348	2,710,288	16,533,426
(Gains)/loss on foreign exchange contracts	-	-	(145,432)
(Gains)/loss on investor funds	941,952	805,947	(167,394)
(Increase)/decrease in interest receivable	(217,345)		(97,225)
(increase)/decrease in other receivables	-	1,053,885	11,731,431
Increase/(decrease) in payables	1,300,293	(5,301,725)	717,585
<i>Net cash flows from/(used in) operating activities</i>	(6,945,286)	(15,047,609)	(13,678,736)

13. INTEREST REVENUE

Interest revenue relates to interest received on funds held in the bank accounts and interest charged on the loans.

Interest on loans is suspended and not brought to account when it is considered that the amounts are not ultimately recoverable from the sale proceeds of the property.

For the purposes of these accounts, the interest remains within the income section and the impairment losses for the period increased.

14. CONTINGENT LIABILITY**Advisor Commissions**

The Fund has historically recognised a liability for advisor commissions paid to advisors from the Fund. The agreements providing for these advisor commissions appear to have been entered into between the Responsible Entity in its own legal capacity rather than as trustee and Responsible Entity for the Fund. It also appears that conditions existed in the period from 1 July 2010 such that advisor commissions may not have been payable in accordance with the Fund Constitution from Fund property. The liability for advisor commissions as at 30 June 2012 of \$4,762,674 has therefore been derecognised as a liability of the Fund during the year ended 30 June 2013.

Accordingly, the Fund has disclosed a contingent liability of \$4,762,674 as at 30 June 2013 to the Responsible Entity for this amount.

The contingent liability relates to advisor commissions to brokers of the Fund that were referable to the period 1 July 2010 to 30 November 2013. The Responsible Entity has sought to disclaim the advisor commission arrangements.