

TO THE MEMBERS OF THE ICPAIF

TAKE NOTICE that Said Jahani (**Mr Jahani**) as receiver and manager of the assets, undertaking, rights and interest of LM Investment Management Limited (in liquidation) (receivers and managers appointed) ACN 077 208 461 (**LMIM**) in its capacity as the responsible entity of the ICPAIF, has applied to the Supreme Court of Queensland for a direction that he is justified in entering into and performing, and in causing LMIM in its capacity as the responsible entity of the ICPAIF to enter into and perform, a Deed of Settlement and Release as varied by a Deed of Variation (**Deed of Settlement**) in settlement of Supreme Court of Queensland proceeding 13534 of 2016 (**Feeder Fund Proceeding**).

The Feeder Fund Proceeding was commenced by David Whyte, as the person appointed pursuant to section 601NF of the *Corporations Act* 2001 (Cth) to take responsibility for ensuring the LM First Mortgage Income Fund ARSN 089 343 288 (receiver appointed) (**FMIF**) is wound up in accordance with its constitution and as receiver of the property of the FMIF (**Mr Whyte**), seeking relief which:

- (a) would permit Mr Whyte and/or LMIM to withhold further distributions to the CPAIF, the ICPAIF and the LM Wholesale First Mortgage Income Fund ARSN 099 857 511 (**WFMIF**) to the extent of the value of redemptions that were allowed in their favour at a time when redemptions were suspended other than in circumstances of hardship, namely between 11 May 2009 and 31 January 2013. Mr Whyte alleges that these redemptions had been allowed by LMIM without power under the constitution and/or in breach of trust. Relief is also sought to authorise Mr Whyte to reinstate those redeemed units to the CPAIF, the ICPAIF and the WFMIF;
- (b) would authorise Mr Whyte to cancel the further units issued to each of the CPAIF, the WFMIF and the ICPAIF between 1 July 2011 and 1 November 2012 as the purported reinvestment of income distributions, at a time when there was no Distributable Income of the FMIF. Mr Whyte alleges that these distributions were without power and in breach of trust; and
- (c) would provide for adjustments for consequential overpayment or underpayment of capital distributions made in February and June 2013.

The Feeder Fund Proceeding is defended by Mr Jahani (so far as the CPAIF and the ICPAIF are concerned) and Trilogy Funds Management Limited as responsible entity of the WFMIF (**Trilogy**) (so far as the WFMIF is concerned). Each disputes that LMIM as responsible entity of the FMIF is entitled to any of the relief sought in the Feeder Fund Proceeding.

On 4, 5 and 20 November 2018, Mr Jahani participated in a mediation of the Feeder Fund Proceeding that was also attended by representatives of Mr Whyte and Trilogy.

The mediation was successful, and Mr Jahani, Mr Whyte and Trilogy have agreed terms of settlement that are documented in the Deed of Settlement. Those terms are subject to a number of conditions precedent, including that the Supreme Court of Queensland make the direction referred to in the first paragraph above.

Mr Jahani's originating application for the direction referred to in the first paragraph above, in Supreme Court of Queensland proceeding 1031 of 2019, is set down to be heard by the Supreme Court of Queensland at Brisbane on 2 May at 10:00 am.

Copies of the court documents in respect of Mr Jahani's originating application, including a copy of the Deed of Settlement, will be made available on the member portal located at <https://gt.creditors.accountants/> (**Portal**). Court documents will be made available progressively, as and when they are filed in the Court.

When you visit the Member Portal for the first time, you will be required to create a user profile comprising a username and password. You will be prompted to use your unique verification code when creating your profile, which has been provided to you in a version of this notice sent to your personal postal or email address, or to your financial advisor.

Please keep your username and password safe, as you will be required to enter them in the Member Portal each time you visit. Once you have logged in to the Member Portal, please visit the 'Documents' tab to access the documents filed in respect of the originating application.

Any member who reasonably requires a hard copy of the originating application and supporting material should call or email Elizabeth Singleton of HWL Ebsworth on 07 3169 4915 or esingleton@hwle.com.au.

Dated: 20 March 2019

Said Jahani

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