

**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  
(ADMINISTRATORS APPOINTED)  
ACN 077 208 461 IN ITS CAPACITY AS  
RESPONSIBLE ENTITY OF THE LM FIRST  
MORTGAGE INCOME FUND**

**AND**

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

**Intervener: AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION**

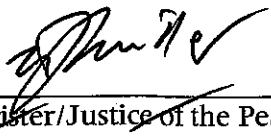
**STEPHEN CHARLES RUSSELL** of Level 21, 300 Queen Street, Brisbane in the State  
of Queensland, solicitor, states on oath:

1. I am a solicitor of this Honourable Court and Managing Partner of Russells,  
the Solicitors for the First Respondent ("LMIM").

2. I refer to my affidavit sworn 6 May, 2013. I am instructed, and I believe,  
that yesterday evening the administrators resolved, on behalf of LMIM to wind up the  
LM First Mortgage Income Fund. Now produced and shown to me and marked

**PAGE 1**

  
Signed

  
Solicitor/Barrister/Justice of the Peace

**AFFIDAVIT OF STEPHEN CHARLES RUSSELL**

Filed on behalf of the First Respondent

Form 46 Rule 431

**RUSSELLS**  
Level 21  
300 Queen Street  
**BRISBANE 4000**  
Phone: 07 3004 8888  
Fax: 07 3004 8899

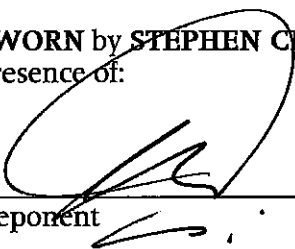
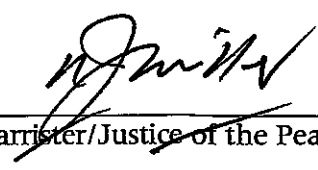
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"SCR16" is a bundle of copies of documents, comprising the notices in respect of the winding-up of the Fund.

3. All the facts and circumstances deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

SWORN by **STEPHEN CHARLES RUSSELL** on 7 May, 2013 at Brisbane in the presence of:

  
\_\_\_\_\_  
Deponent  
\_\_\_\_\_  
Solicitor/Barrister/Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND  
VICKI PATRICIA BRUCE

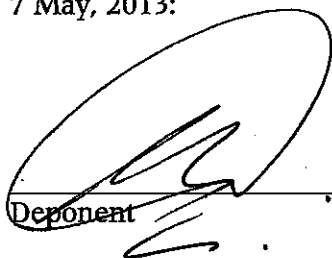
AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED  
(ADMINISTRATORS APPOINTED)  
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 MANAGED INVESTMENT FUND ARSN  
089 343 288

Exhibit "SCR16" to the Affidavit of STEPHEN CHARLES RUSSELL sworn  
7 May, 2013:

  
Deponent  
Solicitor/Barrister/Justice of the Peace

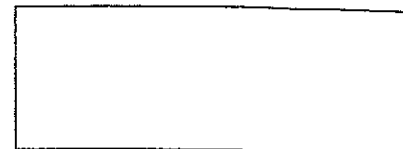
CERTIFICATE OF EXHIBIT

Filed on behalf of the First Respondent

Form 47 Rule 435

Russells  
Level 21  
300 Queen Street  
BRISBANE 4000  
Phone: 07 3004 8888  
Fax: 07 3004 8899

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# Notification of commencement or completion of winding up of a registered scheme

**Form 5138**  
Corporations Act 2001  
601NA, 601NB, 601NC, 601ND, 601NE  
Regulation 5C.9.01

If there is insufficient space in any section of the form, you may attach an annexure and submit as part of this lodgement

## Lodgement details

Who should ASIC contact if there is a query about this form?

Name

FTI Consulting

ASIC registered agent number (if applicable)

Company/entity name

FTI Consulting

ACN/ABN/ARBN/ARSN

49 160 397 811

Telephone number

(07) 3225 4900

Postal address

GPO Box 3127

Brisbane QLD 4001

Email address (optional)

## Scheme details

Name of registered scheme

LM First Mortgage Income Fund

ARSN

089 343 288

Name of responsible entity

LM Investment Management Ltd (Administrators  
Appointed)

ACN

077 208 461

## Details of winding up

Tick one box

☒ Commencement

☐ Completion

If winding up completed, attach to this form in an annexure a copy of the scheme's audited financial report & auditor's report, prepared for the period since the date of the last financial report & completion of winding up

Tick boxes that apply

☐ The winding up is required by the  
scheme's constitution

Date of commencement

[ ] [ ] / [ ] [ ] / [ ] [ ]  
[D] [D] [M] [M] [Y] [Y]

Date of completion

[ ] [ ] / [ ] [ ] / [ ] [ ]  
[D] [D] [M] [M] [Y] [Y]

☐ By a direction of the members under  
an extraordinary resolution

Date of commencement

[ ] [ ] / [ ] [ ] / [ ] [ ]  
[D] [D] [M] [M] [Y] [Y]

Date of completion

[ ] [ ] / [ ] [ ] / [ ] [ ]  
[D] [D] [M] [M] [Y] [Y]

☒ Scheme's purpose is accomplished  
or cannot be accomplished

Date of commencement

0 6 / 0 5 / 1 3  
[D] [D] [M] [M] [Y] [Y]

Date of completion

[ ] [ ] / [ ] [ ] / [ ] [ ]  
[D] [D] [M] [M] [Y] [Y]

## Continued... Details of winding up

☐ An order was made by the Court

Date of court order

☐ ☐ / ☐ ☐ / ☐ ☐  
[D] [D] [M] [M] [Y] [Y]

Date of completion

☐ ☐ / ☐ ☐ / ☐ ☐  
[D] [D] [M] [M] [Y] [Y]

### Court

☐ Federal Court of Australia (give state or territory registry)

☐ Family Court of Australia (give state or territory registry)

☐ Supreme Court of (give state or territory)

State or territory

Proceeding-matter number

Year

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## Details of applicant (other than a creditor) for court order

Family name

Given name

or

Firm name

ACN/ABN

Office, unit, level

Suburb/City

State/Territory

Postcode

Country (if not Australia)

## Signature

This form must be signed by a director or secretary of the responsible entity.

I certify that the information in this form is true and complete.

Name of person signing

Capacity

Signature

Date signed

☐ ☐ / ☐ ☐ / ☐ ☐  
[D] [D] [M] [M] [Y] [Y]

## Lodgement

Send completed and signed forms to:

Australian Securities and Investments Commission,  
PO Box 4000, Gippsland Mail Centre VIC 3841.

### For more information

Web [www.asic.gov.au](http://www.asic.gov.au)

Need help? [www.asic.gov.au/question](http://www.asic.gov.au/question)

Telephone 1300 300 630

# Guide:

## Notification of commencement or completion of winding up of a registered scheme

**Form 5138**  
Corporations Act 2001  
601NA, 601NB, 601NC, 601ND, 601NE  
Regulation 5C.9.01

This guide does not form part of the form. It is included by ASIC to assist you in completing and lodging the Form 5138.

### Signature

This form must be signed by a director or secretary of the responsible entity.

### Lodgement period

- 14 days from the commencement of winding up; and
- 14 days from the completion of the winding up.

### Lodgement fee

\$36 if lodged within the prescribed lodging period. Late lodging fees will apply thereafter. 1 month \$70  
More than 1 month \$292  
A receipt will not be issued unless requested.

### Other forms to be completed

A Form 5138 is required to be lodged both upon commencement and at completion of winding up.

**s601NC** If the winding up is because the scheme's purpose has been accomplished or cannot be accomplished, the responsible entity must give notice in writing to the members of the scheme and ASIC, explaining the proposal to wind up the scheme, including explaining how the scheme's purpose has been accomplished or why that purpose cannot be accomplished. (ASIC record this letter as a Form 5118. There is no printed version of this form available to complete.)

The notice should also include information of the members' rights to take action under Div 1 of Part 2G.4 of the Corporations Act 2001 for the calling of a members' meeting to consider the proposed winding up of the scheme and vote on any extraordinary resolution members propose about the winding up of the scheme. The notice must inform the members that the responsible entity is permitted to wind up the scheme unless a meeting is called to consider the proposed winding up of the scheme within 28 days of the responsible entity giving the notice to the members.

**s601ND** If the winding up is due to an issue of a Court Order, an office copy of the Court Order must be lodged within one (1) month of the order being made together with the cover sheet Form 105.

### Additional information

This form is required to be lodged under Regulation 5C.9.01 telling ASIC that the winding up of the scheme has commenced, or been completed, whichever is the case:

- a) by the scheme's constitution (section 601NA)
- b) at the directions of members under an extraordinary resolution (section 601NB)
- c) because the scheme's purpose has been accomplished or cannot be accomplished (section 601NC)
- d) is ordered by the Court (section 601ND)

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## How to provide additional information

### Annexures

If there is insufficient space in any section of the form, you may submit annexures as part of this lodgement.

To make any annexure conform to the regulations, you must

1. use A4 size paper of white or light pastel colour with a margin of at least 10mm on all sides
2. show the company name and ACN
3. number the pages consecutively
4. print or type in BLOCK letters in dark blue or black ink so that the document is clearly legible when photocopied
5. mark the annexure with an identifying letter or symbol eg a,b,c or 1,2,3 etc.
6. endorse the annexure with the words:  
This annexure (mark) of (number) pages referred to in form (form number and title)
7. sign and date the annexure

The annexure must be signed by the same person(s) who signed the form.

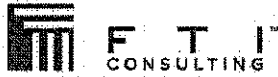
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## Lodgement

Send completed and signed forms to:  
Australian Securities and Investments Commission,  
PO Box 4000, Gippsland Mail Centre VIC 3841.

### For more information

Web [www.asic.gov.au](http://www.asic.gov.au)  
Need help? [www.asic.gov.au/question](http://www.asic.gov.au/question)  
Telephone 1300 300 630



6 May 2013

Our Ref: RCL\_8974r14.docx

**CIRCULAR TO INVESTORS IN THE LM FIRST MORTGAGE INCOME FUND**

Dear Sir/Madam

**RE: LM Investment Management Limited (Administrators Appointed) ACN 077 208 461  
as the Responsible Entity of the LM First Mortgage Income Fund ("FMIF")**

I refer to the appointment of John Park and I as joint and several administrators to LM Investment Management Limited (Administrators Appointed) ("LM") on 19 March 2013. Since its establishment, LM has monitored and evaluated the performance of FMIF against its investment strategy and objectives. The objective of the FMIF was to provide investors with income from a diversified pool of registered first mortgage assets of Australian real estate.

We note the following:

- a) Due to the affects of the global financial crisis on the property sector and the credit sectors FMIF was closed and redemptions suspended in March 2009;
- b) From the date of its closure, FMIF has conducted an orderly sale of assets to create the liquidity required for FMIF to pay its debts and liabilities;
- c) Since the date of its closure FMIF has been unable to transact any new investments in assets;
- d) The orderly sale of assets has led to diminished diversity within FMIF for investors;
- e) FMIF ceased to declare investor income from January 2011;
- f) Existing assets within FMIF are in default. Default costs, including the capitalisation of interest, means assets have little to no headroom and should be sold;
- g) Without new investment, FMIF cannot achieve its objectives; and
- h) As per FMIF strategy communicated to investors in December, 2012, the final step of selling all remaining assets of FMIF is being undertaken with investors receiving periodic capital distributions as a result.

Against this background, we believe that the objective of FMIF is unsustainable and its objectives can no longer be achieved.

**FTI Consulting (Australia) Pty Limited**  
ABN 49 160 397 811 | ACN 160 397 811  
22 Market Street | Brisbane QLD 4000 | Australia  
Postal Address | GPO Box 3127 | Brisbane QLD 4001 | Australia  
+61.(0)7.3225.4900 main | +61.(0)7.3225.4999 fax | [fticonsulting-asia.com](http://fticonsulting-asia.com)

Liability limited by a scheme approved under Professional Standards Legislation

## STRATEGY

The FMIF is currently in a gradual wind-up phase. It is proposed that the orderly realisation of its assets over the next 24 months in order to maximise investor value and continue the process of returning capital to investors.

The team from FTI Consulting have, over the last 7 weeks, worked through the FMIF assets in a structured manner seeking to:

- Address asset deterioration issues;
- Identifying options to maximise value;
- Identifying asset sale or value "quick wins";
- Develop asset strategic plans
- Identify and quantify risk assets; and
- Develop defined process steps for action and monitoring.

From this, FTI Consulting established the next steps in working through the FMIF portfolio including:

- Completion of strategic plans and financial assessments;
- Progress the identified "quick wins"; and
- Progress with rezoning of identified assets.

The overall objectives of FTI Consulting are working to include:

- Maximise the returns to investors from asset divestments;
- Identify and secure opportunities to minimise costs;
- Provide for the full repayment of Deutsche Bank facility in June 2014 (facility maturing); and
- Provide a regular distribution of capital to investors as the fund is wound down.

## WIND-UP NOTICE

LM Investment Management Limited (Administrators Appointed) ACN 077 208 461, AFS Licence Number 220281 (LM) as responsible entity of FMIF, considers that the purpose of FMIF cannot be accomplished. LM has therefore attached a Notice under Section 601NC of the Corporations Act, 2001 of a proposal to wind-up FMIF. Please read this Notice, in conjunction with this letter, in order to understand the wind-up proposal and your rights as an investor.

Through the overall management of the voluntary administrators and the existing retained management of LM, the voluntary administrators will continue the existing strategy of LM to actively realise all remaining assets of FMIF and endeavour to recover loan monies. All surplus monies will be promptly returned to investors. This wind-up notice both ratifies and formalises the current strategy

## **ESTABLISHMENT OF AN INVESTORS' ADVISORY COMMITTEE**

The administrators' propose to establish an Investors' Advisory Committee ("IAC") comprising up to seven investor representatives and one representative from LM/administrators. The investor representatives will be appointed by LM after consultation with investors and financial advisers in FMIF.

The IAC's role will be to review the FMIF strategy (as updated by the administrators from time to time) and provide recommendations and suggestions to the administrators on that strategy. It is also proposed any compromise in relation to the amount owing to FMIF under any loan (including where an asset is sold which will result in a loss on the outstanding balance of the original loan advance) will be discussed with the IAC before any final decision is made. This will provide members with a representative committee which would consult with the administrators throughout the wind up process. It is proposed where possible meetings will be conducted by phone to minimise costs.

## **INVESTOR FORUM TO BE HELD IMMEDIATELY AFTER 30 MAY 2013 MEETING**

A meeting of members of FMIF is scheduled for **11am on Thursday 30 May 2013** to consider a proposal to appoint Trilogy Funds Management Limited as the responsible entity of FMIF in place of LM. The meeting is to be held at Institute of Chartered Accountants, Level 32, Central Plaza One, 345 Queen Street, Brisbane, Queensland.

We propose that an Investor Forum will be held at the same location immediately after the conclusion of that meeting. The purpose of the Forum is to discuss the wind up of FMIF including, in particular, the composition of the IAC. There will also be an opportunity for you to ask any questions and make any comments about those issues.

If you would like to nominate a person to be a member of the IAC please contact the administrators via one of the below options.

Should you have any queries with regards to the above or wish to nominate a member of the IAC, please contact us as follows:

On one of the following numbers:

Australia Toll Free – 1800 062 919  
New Zealand Toll Free – 0800 142 919  
International +61 7 5584 4500; or

Or by email at [mail@LMAustralia.com](mailto:mail@LMAustralia.com) .

6 May 2013  
Page 4

Regular updates will be provided on the administrators dedicated website  
[www.lminvestmentadministration.com](http://www.lminvestmentadministration.com).

Yours faithfully  
**FTI Consulting**



**Ginette Muller**  
**Voluntary Administrator**

\*Attach.



## **NOTICE UNDER SECTION 601NC OF THE CORPORATIONS ACT, 2001 OF A PROPOSAL TO WIND-UP**

LM Investment Management Limited (Administrators Appointed) ACN 077 208 461, AFS Licence Number 220281 (LM) is the responsible entity of the LM First Mortgage Income Fund ARSN 089 343 288 in this notice called FMIF.

As the Responsible Entity (RE) of FMIF, LM considers that the purpose of FMIF cannot be accomplished. LM therefore gives this notice to investors of FMIF pursuant to section 601NC of the Corporations Act, 2001.

### **EXPLANATION OF PROPOSAL**

The purpose of FMIF was to:

- (a) provide regular income distributions;
- (b) provide limited liquidity; and
- (c) have a diversified pool of first registered mortgage assets;

for investors.

LM considers for the following reasons these purposes can no longer be accomplished within FMIF:

- (a) Due to the affects of the global financial crisis on the property sector and the credit sectors FMIF was closed and redemptions suspended in March 2009;
- (b) From the date of its closure, FMIF has conducted an orderly sale of assets to create the liquidity required for FMIF to pay its debts and liabilities;
- (c) Since the date of its closure FMIF has been unable to transact any new investments in assets;
- (d) The orderly sale of assets has led to diminished diversity within FMIF for investors;
- (e) FMIF ceased to declare investor income from January 2011;
- (f) Existing assets within FMIF are in default. Default costs, including the capitalisation of interest, means assets have little to no headroom and should be sold;
- (g) Without new investment, FMIF cannot achieve its objectives; and
- (h) As per FMIF strategy communicated to investors in December, 2012, the final step of selling all remaining assets of FMIF is being undertaken with investors receiving periodic capital distributions as a result

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Liability limited by a scheme approved under Professional Standards Legislation

## **RIGHTS OF INVESTORS**

Investors in FMIF have the right under Division 1 of Part 2G.4 of the Corporations Act 2001 (Cth) to call for an investors' meeting to consider the proposed winding-up of FMIF and to vote on any extraordinary resolution investors propose about the winding-up of FMIF.

Investors may request LM to call an investors' meeting. Alternatively, investors may call an investors' meeting.

### **LM calling a meeting on the request of investors**

Under section 252B of the Corporations Act, LM must call and arrange to hold a meeting of investors to consider and vote on any extraordinary resolution the investors propose about the winding up of their fund on the request of:

- (a) investors with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 investors who are entitled to vote on the resolution.

The request must be in writing, state any extraordinary resolution to be proposed at the meeting, and be signed by the investors proposing to move the extraordinary resolution.

The request may be accompanied by a statement about the proposed extraordinary resolution provided by the investors making the request. Separate copies of a document setting out the request and statement (if any) may be used for signing by investors if the wording of the request and statement (if any) is identical in each way.

### **Calling of meeting by investors**

Under section 252D of the Corporations Act, investors with at least 5% of the votes that may be cast at a meeting of investors may at their own cost call and arrange to hold a meeting of investors to consider and vote on any extraordinary resolution the investors propose about the winding up of their fund.

The investors calling the meeting must pay the expenses of calling and holding the meeting. The meeting must be called in the same way, so far as possible, in which meetings of the FMIF's investors may be called by LM as the RE.

### **Extraordinary resolution**

An extraordinary resolution is a resolution of which notice (as set out in paragraph 252J(c) of the Corporations Act) has been given and that has been passed by at least 50% of the total votes that may be cast by investors entitled to vote on the resolution (including investors who are not present in person or by proxy).

## **WHAT MUST YOU DO**

If you want FMIF to be wound up, then you do not need to do anything.

If you do not want FMIF to be wound up, then you may request a meeting of investors be held as outlined above. Unless LM receives sufficient requests from investors calling for a meeting then 28 days from the date this notice is given to investors, LM can commence the winding up of FMIF.

## **IF NO MEETING IS CALLED**

LM, as the RE of FMIF, is permitted to commence the winding up of FMIF unless a meeting is called to consider the proposed winding up of the fund within 28 days of LM giving this notice to investors.

## **IMPACT OF WINDING UP OF FMIF**

Winding up FMIF will entail the orderly realisation of the assets of FMIF over the next 24 months and accounting to investors for the net proceeds.

It is not possible to estimate the amount of return to investors or timing of any payment, as it will depend on the outcome of the realisation process. There may be tax consequences of the winding-up of FMIF and any distributions to investors. You should discuss these consequences with your tax advisor.

## **ESTABLISHMENT OF AN INVESTORS ADVISORY COMMITTEE**

A meeting of members of FMIF is scheduled for 11am on **Thursday 30 May 2013** to consider a proposal to appoint Trilogy Funds Management Limited as the responsible entity of FMIF in place of LM. The meeting is to be held at Institute of Chartered Accountants, Level 32, Central Plaza One, 345 Queen Street, Brisbane, Queensland.

We propose that an Investor Forum will be held at the same location immediately after the conclusion of that meeting. The purpose of the Forum is to discuss the wind up of the Fund including, in particular, the composition of the IAC. There will also be an opportunity for you to ask any questions and make any comments about those issues.

If you would like to nominate a person to be a member of the IAC please contact the administrators via one of the below options.

6 May 2013

Page 4

Should you have any queries with regards to the above or wish to nominate a member of the IAC, please contact us as follows:

On one of the following numbers:

Australia Toll Free – 1800 062 919  
New Zealand Toll Free – 0800 142 919  
International +61 7 5584 4500; or

Or by email at [mail@LMaustralia.com](mailto:mail@LMaustralia.com) .

Regular updates will be provided on the administrators dedicated website [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com) .

Yours faithfully  
**FTI Consulting**



**Ginette Muller**  
Voluntary Administrator



**John Park**  
Voluntary Administrator