

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants:

**RAYMOND EDWARD BRUCE AND
VICKI PATRICIA BRUCE**

AND

First Respondents:

**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**

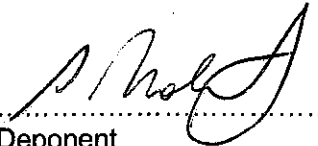
Intervener:


**AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

AFFIDAVIT

I, **SHANE BRUCE ROBERTS** of Level 13, 175 Eagle Street, Brisbane in the State of Queensland, state on oath:

1. I am a Partner of the firm Holman Webb Lawyers Brisbane and the solicitor for Mr Simon Litster of Ikeda House B, 120-5 Yamate-cho, Naka-ku, Yokohama, Japan 231-0862 who is an investor in the LM Managed Performance Fund ("MPF") and the LM Currency Protected Australian Income Fund ("CPAIF") and a Partner of Magellan Tresidder Tuohy Ltd, a financial planning company that advises over 200 individual investors in the LM funds accounting for approximately A\$30million worth of investment in the MPF, CPAIF and the LM First Mortgage Income Fund ("MIF").
2. I make this affidavit, except where otherwise stated, from my own personal knowledge or from information I have obtained from my review of documents referred to herein.


Deponent


Justice of the Peace/Solicitor

AFFIDAVIT

Filed on behalf of the First Respondent

Holman Webb Lawyers Brisbane

Level 13, 175 Eagle Street

Brisbane Qld 4001

Tel: 07 3235 0100

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3. I am this day informed by Mr Simon Litster and do verily believe to be true that:

(a) Mr Litster is an investor in the following LM funds:

(i) Total Investment in MPF = A\$550,209 made up as follows:

- Account 100254168 value A\$159,464
- Account 100272863 value A\$142,745
- Account 100279090 value GBP165,350 (approx A\$248,000)

(ii) Total Investment in CPAIF held via FPIL Bond 511056 = A\$398,700 made up as follows:

- 62485 units of CPAIF in GBP current value GBP69,242 (approx A\$103,850)
- 101807 units of CPAIF in CAD current value C\$72,574 (approx A\$70,000)
- 178253 units of Trilogy Wholesale FMIF (was LM WFMIF) current value A\$224,851

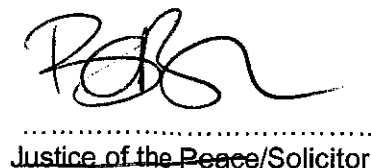
(b) It is extremely difficult for him to contact his investor clients in respect of these proceedings at such late notice as they are located all over the world and the directors and advisors of his firm, Magellan Tresidder Tuohy Ltd, are located in Japan, Singapore, the United Kingdom and the United States. Further:

- (i) Monday, 6 May 2013 was a public holiday in the United Kingdom; and
- (ii) It is Golden Week in Japan from 29 April to 6 May when most Japanese companies close down and people go away.

(c) Mr Litster has, in the last 24 hours, been able to get in contact with the following investor clients who are investors in the MIF:

- (i) Timothy O'Donnell living in Japan. Investor ID 128260 and Account number 100251958 who is an investor in the MIF in the sum of approximately AUD\$30,000.00;
- (ii) Talawyn Silverwood of Sumikawa living in Japan. Investor ID 116659 MIF account no 100139393 who is an investor in the MIF in the sum of approximately AUD\$50,000.00; and
- (iii) Anita Byrnes of 3/83 Birriga Road, Bellevue Hill, New South Wales, Australia who is an investor in the MIF in the sum of approximately \$10,000.00.


Deponent


Justice of the Peace/Solicitor

- (d) Mr Litster has, in the last 24 hours, been able to get in contact with the following investor clients who are investors in the CPAIF, which is a feeder fund into the MIF:
- (i) Gareth Rees and Mariette Rees-Magielsen living Moscow. Investor ID 128253 Account no 100251925 who are investors in the CPAIF in the sum of approximately AUD\$95,000.00.
- (e) Each of the investors referred in paragraph 4(c) and 4(d) above have told Mr Litster and instructed him / his firm Magellan Tresidder Tuohy Ltd to inform the Court that they:
- (i) want the opportunity to consider whether MIF and CPAIF should continue with the orderly wind down of asset sales under the administration of the appointed Administrators, John Park and Ginette Muller, in conjunction with other fund members;
 - (ii) do not want the fund to have Trilogy appointed as a RE;
 - (iii) do not wish the fund to have a receiver appointed;
 - (iv) want to be given sufficient time to properly hear and consider what the Administrators propose in terms of a strategy to deal with the funds; and
 - (v) want to be given the right to vote at a meeting of fund members whenever an appropriate meeting can be scheduled.

All the facts and circumstances above deposed to be 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 **SHANE BRUCE ROBERTS** on 7 May 2013 at Brisbane in the presence of:


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Deponent

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Justice of the Peace/Solicitor


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Deponent


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Justice of the Peace/Solicitor