

# Premium Income Fund

NSX Release: 3 June 2013



## **Proceeds Payment Deed – Resolution 4 and Resolution 5 of the Notice of Meeting and Explanatory Memorandum dated 6 May 2013**

Wellington Capital Limited as responsible entity of the Premium Income Fund has advised the market and all Unitholders today that a Supplementary Explanatory Memorandum dated 1 June 2013 has been despatched to all Unitholders.

The purpose of the Supplementary Explanatory Memorandum is to provide Unitholders with additional information in relation to the resolutions set out in the Notice of Meeting and Explanatory Memorandum dated 6 May 2013, which has come to the attention of Wellington Capital Limited as responsible entity of the Premium Income Fund in relation to the five resolutions set out in the Notice of Meeting and Explanatory Memorandum. **Both documents should be read together.**

Resolutions 4 and 5 of the Notice of Meeting and Explanatory Memorandum dated 6 May 2013 seek approval of a Proceeds Payment Deed.

A copy of the Proceeds Payment Deed, the subject of Resolutions 4 and 5, is attached.

Unitholders who require a copy of the Proceeds Payment Deed to be sent by mail should contact the Wellington Hotline on 1300 854 885 (+617 3231 0000 outside Australia) or by email to [investorrelations@newpif.com.au](mailto:investorrelations@newpif.com.au)

### **Your vote is important**

Unitholders who are unable to attend the meeting in person should ensure that their Proxy Form is received by the Fund's registry at least 48 hours before the meeting date.

**Unitholders are encouraged to vote by completing and returning their Proxy Form in the reply paid envelope provided, by fax or by email as follows:**

**Armstrong Registry Services**

**Reply Paid 897**

**Brisbane Qld 4001**

**Fax: 1300 884 893**

**Email: [pif@armstrongregistries.com.au](mailto:pif@armstrongregistries.com.au)**

If you lodge more than one Proxy Form, the last Proxy Form lodged by you will automatically revoke the earlier Proxy Form. If you attend the meeting in person and have lodged a Proxy Form, the Proxy Form will be suspended.

### **For further information please contact:**

Jenny Hutson  
Managing Director  
Wellington Capital Limited  
as responsible entity of the Premium Income Fund  
ACN 114 248 458 AFSL 291 562

Phone: 1300 854 885

Email: [investorrelations@newpif.com.au](mailto:investorrelations@newpif.com.au)



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## Proceeds payment deed

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Wellington Capital Limited ACN 114 248 458 as responsible entity of the  
Premium Income Fund ARSN 090 687 577

Asset Resolution Limited ACN 159 827 871

Perpetual Nominees Limited ACN 000 733 700

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# Proceeds payment deed

Dated \_\_\_\_\_

## Parties

<b>Wellington</b>	<b>Wellington Capital Limited ACN 114 248 458 as responsible entity of the Premium Income Fund ARSN 090 687 577</b>  of Level 22, 307 Queen Street, Brisbane, Queensland 4000
<b>ARL</b>	<b>Asset Resolution Limited ACN 159 827 871</b>  of Level 23, 123 Eagle Street, Brisbane, Queensland, 4000
<b>Perpetual</b>	<b>Perpetual Nominees Limited ACN 000 733 700</b>  of Level 12, 123 Pitt Street, Sydney, New South Wales, 2000

## Background

- A The parties entered into the First Security Assignment and Sale Deed pursuant to which the benefit of certain claims were assigned or intended to be assigned to ARL from Completion of that Deed, including the Class Action and the ASIC Compensation Claim.
- B Under clause 7.6 of the First Security Assignment and Sale Deed ARL undertook to pay any compensation received from one of the Claims (namely the ASIC Compensation Claim) to the unitholders in the Fund as at 15 October 2008, promptly upon receipt.
- C The parties have agreed that the Proceeds of any other claims (PIF Claims instituted by Wellington) are to be assigned to ARL and that ARL must pay any such Proceeds arising from the PIF Claims in a similar manner, namely to the unitholders of the Fund as at 15 October 2008, promptly upon receipt.

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this document terms defined in the Third Sale Agreement have the same meanings when used in this document, and:

Term	Definition
<b>Conditions Precedent</b>	means:  (a) the passing of an ordinary resolution (on terms

Term	Definition
	acceptable to Wellington) by the unitholders in the Fund, approving the transactions contemplated by the terms of the Third Security Assignment and Sale Deed;
	(b) the passing of two special resolutions (on terms acceptable to Wellington) by the unitholders in the Fund as at 15 October 2008 and entitled to vote at the Unitholders meeting and by separate special resolution those who were not Unitholders as at 15 October 2008 and are entitled to vote at the unitholders' meeting, approving the payment proposed by clause 3 of this document; and
<b>Class Action</b>	(c) completion of the Third Security and Sale Deed. means proceedings NSD 324 of 2009 in the Federal Court of Australia.
<b>First Security and Sale Deed</b>	means the document entitled 'Security Assignment and Sale Deed' entered into by the parties to this document and dated 4 September 2012.
<b>PIF Claims</b>	means the claims Wellington has or may have against one or more of the Respondents for loss and damage caused to the Fund by the conduct of one or more of the Respondents in the period 1 January 2006 to March 2009, inclusive.
<b>Proceeds</b>	means any sum or sums received by Wellington or Perpetual following a determination of the PIF Claims by a court of competent jurisdiction. The term includes any sum received by Wellington or Perpetual as a consequence of settlement of the PIF Claims. The term excludes the amount of any legal costs or any monies due under any litigation funding agreement incurred by or entered into by Perpetual or Wellington if they are required by any such litigation funding agreement (or if they otherwise determine that it is appropriate) to deduct or pay any such costs from any amount which would otherwise constitute part of any such proceeds.
<b>Respondents</b>	means Andrea Jane Waters, KPMG (a firm) and the persons listed in Schedule B to the Statement of Claim in Federal Court of Australia proceedings NSD 324 of 2009.
<b>Third Security and Sale Deed</b>	means the document entitled 'Security assignment and sale deed' entered into by the parties to this document and dated on or about the date of this document.

## **1.2 Interpretation**

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (i) a reference to 'month' means calendar month.

## **2 Payment of proceeds of the PIF Claims**

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Subject to Wellington giving ARL notice of satisfaction of the Conditions Precedent, ARL undertakes and agrees in favour of Wellington and Perpetual to pay any Proceeds of the PIF Claims, promptly upon receipt, to the unitholders of the Fund as at 15 October 2008 and to report to Wellington upon having done so. Wellington shall make available to ARL the Unitholder records to assist ARL to carry out this obligation, promptly upon request.

## **3 Limitation of liability**

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### **3.1 Wellington's limitation of liability**

- (a) Each party acknowledges that Wellington enters into this document and incurs the obligations in this document solely in its capacity as responsible entity of the Fund and in no other capacity.
- (b) A liability of Wellington arising under or in connection with this document is limited to and can be enforced against Wellington only to the extent to which it can be satisfied out of any property of the Fund out of which Wellington is actually indemnified for the liability. Subject to this clause this limitation of Wellington's liability applies despite any other provision of this document and extends to all liabilities and obligations of

Wellington in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

- (c) Subject to clause 3.1(d), the Purchaser may not sue Wellington in any capacity other than as the responsible entity for the Fund, including seeking the appointment of a receiver (except in relation to property of the Fund), a liquidator, an administrator or any similar person to Wellington or prove in any liquidation, administration or arrangement of or affecting Wellington (except in relation to property of the Fund).
- (d) The provisions of clauses 3.1(a) and 3.1(b) shall not apply:
  - (i) in the case of and to the extent of fraud, negligence or breach of trust on the part of Wellington; or
  - (ii) to any obligation or liability of Wellington to the extent that it is not satisfied because under a Security or by operation of law there is a reduction in the extent of Wellington's indemnification out of the assets of the Fund, as a result of Wellington's own fraud, negligence or breach of trust.
- (e) No attorney, agent or receiver appointed in accordance with this document has authority to act on behalf of Wellington in a way which exposes Wellington to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of Wellington for the purposes of this clause.
- (f) Except to the extent that Wellington's right of indemnity out of the assets of the Fund is limited, restricted or lost by reason of fraud, negligence or breach of trust, the parties to this document waive their rights and release Wellington from any personal liability whatsoever, in respect of any loss or damage:
  - (i) which it may suffer as a result of any:
    - (A) breach by Wellington of its duties under this document; or
    - (B) non performance by Wellington of its obligations under this document; and
  - (ii) which cannot be paid or satisfied out of the assets out of which Wellington is entitled to be indemnified in respect of any liability incurred by it as responsible entity of the Fund.
- (g) Wellington is not obliged to do or refrain from doing anything under this document (including incur any liability) unless Wellington's liability is limited in the same manner as set out in this clause.

### **3.2 Perpetual's limitation of liability**

- (a) Perpetual acts only as agent of Wellington. Perpetual can only act in accordance with the terms of the agreement under which it is appointed as Wellington's agent and is not liable under any circumstances to any party under this document. This limitation of the Perpetual's liability applies despite any other provision of this document and extends to all liabilities and obligations of Perpetual in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (b) Perpetual is not obliged to do or refrain from doing anything under this document (including, without limitation, incur any liability) unless the Perpetual's liability is limited in the same manner as set out in clause 3.2(a).

- (c) No attorney, agent, receiver or receiver and manager appointed in accordance with this document has authority to act on behalf of Perpetual in a way which exposes Perpetual to any liability.
- (d) If, whether by the express provisions of this document or by implication of law, Perpetual makes or is taken to have made any representation or warranty then, except for the representations and warranties that can only be within Perpetual's actual corporate knowledge, those representations and warranties are taken to have been made by Wellington.

## **4 General**

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### **4.1 Amendments**

This document may only be amended by written agreement between all parties.

### **4.2 Assignment**

A party may only assign this document or a right under this document with the written consent of each other party whose consent may not be unreasonably withheld.

### **4.3 Counterparts**

This document may be signed in any number of counterparts. All counterparts together make one instrument.

### **4.4 No merger**

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

### **4.5 Entire agreement**

- (a) This document supersedes all previous agreements about its subject matter. This document embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this document.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.

### **4.6 Further assurances**

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

### **4.7 No waiver**

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.



- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

#### **4.8 Governing law and jurisdiction**

- (a) Queensland law governs this document.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

#### **4.9 Severability**

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

#### **4.10 Delivery**

Each party intends to be bound by this document when that party executes this document.

### **5 Notice**

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#### **5.1 Method of giving notice**

A notice, consent or communication under this document is only effective if it is:

- (a) in writing in English, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
  - (i) delivered by hand to that person's address;
  - (ii) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas; or
  - (iii) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.

## 5.2 When is notice given

A notice, consent or communication given under clause 5.1 is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax	(a) that day, if delivered by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.
Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Day after posting, if sent to or from a place outside Australia.

## 5.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

### ARL

<b>Name</b>	Wayne Jenvey
<b>Address</b>	Level 23, 123 Eagle Street, Brisbane, Queensland 4000
<b>Fax</b>	1300 368 717
<b>Telephone</b>	07 3020 2801

### Wellington

<b>Name</b>	Jenny Hutson
<b>Address</b>	Level 22, 307 Queen Street, Brisbane, Queensland 4000
<b>Fax</b>	07 3009 9893
<b>Telephone</b>	07 3009 9888

### Perpetual

<b>Name</b>	Jenny Hutson
<b>Address</b>	Level 22, 307 Queen Street, Brisbane, Queensland 4000
<b>Fax</b>	07 3009 9893
<b>Telephone</b>	07 3009 9888

## Execution

EXECUTED as a deed

Signed sealed and delivered pursuant to s 127  
*Corporations Act 2001* (Cth)  
by Wellington Capital Limited ACN 114 248 458 as  
responsible entity of the Premium Income Fund  
ARSN 090 687 577 on     /     /2012 by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary

Signed sealed and delivered pursuant to s 127  
*Corporations Act 2001* (Cth)  
by Asset Resolution Limited ACN 159 827 871  
on     /     /2012 by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary

Signed in my presence for and on behalf of Perpetual Nominees Limited (A.B.N. 37 000 733 700) under the Power of Attorney dated 31 March 2009 (Registration No. 712560963) by its Attorneys

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[Signature of Attorney]

-----  
[Full name of Attorney]

-----  
[Title of Attorney]

and

-----  
[Signature of Attorney]

-----  
[Full name of Attorney]

-----  
[Title of Attorney]

who are personally known to me and each of whom declare that they have received no notice of revocation of the Power of Attorney under which this document is signed

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[Signature of Witness]

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[Full name of Witness]