



# AFSL CONFLICTS POLICY

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## 1 Introduction

La Trobe Financial Asset Management Limited (**La Trobe Financial**), as the holder of an Australian Financial Services Licence (**AFSL**), has an obligation to manage actual and potential conflicts of interest in its own operations and in the management of the funds identified in the Annexure to this Policy (each a **Fund** and collectively, the **Funds**).

This obligation derives from a number of sources, including those set out in the *Corporations Act 2001* (Cth) (**the Act**):

### Section 912A(1)(a)

This section imposes an obligation on the holder of an AFSL to do all things necessary to ensure that the financial services are provided efficiently, honestly and fairly.

### Section 912A(1)(aa)

This section specifically requires LFAM to have in place adequate arrangements for the identification and management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by LFAM as the licensee in the provision of financial services as part of its financial services business.

This means that LFAM needs to have in place adequate and documented arrangements that identify conflict of interest situations and describe how those situations are to be managed.

Management can be achieved through three basic procedures controlling conflicts, where appropriate; disclosing conflicts, and in some cases avoiding conflicts altogether.

### Section 601FC(1)(c)

This imposes an obligation on the responsible entity of a managed investment scheme to act in the best interests of the members of the Funds and if there is a conflict between the members' interests and its own interests, to give priority to the members' interests.

### Section 601FC(1)(d)

This section imposes an obligation on the responsible entity of a managed investment scheme to treat members who hold interests in the same class equally and members who hold interests in different classes fairly.

## 2 La Trobe Financial Services Pty Limited

La Trobe Financial Services Pty Limited (the **Investment Manager**) performs a number of roles in the La Trobe Financial Group. One role is to manage the assets of each Fund on behalf of La Trobe Financial as the responsible entity. The Investment Manager is also an authorised representative under La Trobe Financial's AFSL. Generally, La Trobe Financial will be liable for actions that the Investment Manager takes as manager and authorised representative.

## 3 Ethical Business Practices

The obligation to manage conflicts of interest also arises from general principles of good ethical business practice to ensure the integrity of decision making, that quality of service is not compromised and fairness towards all customers.

## 4 ASIC's Regulatory Guide 181

ASIC's approach to compliance with the section 912A(1)(aa) obligation to manage conflicts of interest is outlined in ASIC's Regulatory Guide 181 – Licensing: Managing Conflicts of Interest.

ASIC confirms in the Regulatory Guide that the AFSL holder is responsible for implementing adequate conflicts management arrangements, but notes that what constitute adequate conflicts management arrangements will depend on the nature, scale and complexity of the licensee's business. In many cases, a licensee may be able to comply with the law's requirements in a number of different ways:

ASIC notes:

[RG 181.13] Adequate conflicts management arrangements help minimise the potential adverse impact of conflicts of interest on clients. Conflicts management arrangements thereby help promote consumer protection and maintain market integrity. Without adequate conflicts management arrangements, licensees whose interests conflict with those of the client are more likely to take advantage of that client in a way that may harm that client and may diminish confidence in the licensee or the market.

ASIC defines "conflicts of interest" as:

[RG 181.15] Circumstances where some or all of the interests of people (clients) to whom a licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representatives. This includes actual, apparent and potential conflicts of interest.

There can be conflicts of interest between individuals' personal interests and their duty to the organisation and to customers and conflicts between competing duties.

ASIC also notes that:

[RG 181.19] [m]any licensees are also bound by common law obligations that affect their management of conflicts of interest. For example, many licensees have fiduciary obligations to their clients to whom they provide advice or for whom they act in a trustee capacity. These obligations operate in addition to the statutory requirements and should be taken into account when formulating conflicts management arrangements.

This is relevant to LFAM, as some of its Authorised Representatives are solicitors, who have fiduciary obligations to their clients.

From ASIC's point of view [RG 181.20], there are three (3) mechanisms for managing conflicts of interest:

- controlling conflicts of interest;
- avoiding conflicts of interest; and
- disclosing conflicts of interest.

To control conflicts of interest, ASIC observes ERG 181.28] that a licensee must:

- identify the conflicts of interest relating to their business;
- assess and evaluate those conflicts; and
- implement an appropriate response to those conflicts.

Other key aspects of ASIC's Regulatory Guide are:

- the conflicts management arrangements must be in writing;
- the arrangements must be designed or tailored according to the nature, scale and complexity of the licensee's business;
- the arrangements must be implemented and maintained;

- the arrangements must be approved and endorsed by senior management and overseen by a specific person or persons who take responsibility for their implementation, reviewing and updating;
- the internal structures and reporting lines must enable the licensee to manage conflicts of interest effectively; and
- appropriate disclosures must be made to the public in general and clients in particular concerning the conflicts management policy.

## 5 The Common Law Position

The statutory provisions of the Act reflect the longstanding common law principles in relation to conflicts of interest.

The common law requires that a trustee or person in a fiduciary relationship, in relation to beneficiaries, must act with honesty, integrity and fairness. La Trobe Financial must always act in the best interests of members, and it has a duty not to act in conflict with members' interests.

The common law duty not to act in conflict with members' interests can be broken down into two parts

- the conflict rule; and
- the profit rule.

The object of the first rule is to preclude La Trobe Financial from being swayed by consideration of its own interests.

The object of the second rule is to preclude La Trobe Financial from actually misusing its position for its own advantage.

A fiduciary relationship exists as a result of trust and confidence, where one person trusts another. The relationship carries with it a range of obligations based on honesty, integrity and fairness. Members put their trust in La Trobe Financial to provide them with accurate and relevant information about the Credit Fund, to assist them in investing in the Credit Fund, and to keep them informed of developments in relation to the Credit Fund. La Trobe Financial complies with the disclosure benchmarks as set out in RG 45 — Mortgage Schemes: Improving disclosure for retail investors and the continuing disclosure requirements as set out in RG 198 — Unlisted disclosing entities: Continuous disclosure obligations.

## 6 Managing Conflicts of Interest

Both actual and potential conflicts of interest must be adequately managed through:

- disclosure – which must be timely, prominent, specific and meaningful;
- control – which must be effective; and
- avoidance – where certain activities must be banned.

The means by which conflicts of interest are controlled must consider:

- the potential seriousness of the conflict;
- the likelihood that quality and integrity will be impaired;
- the extent to which quality and integrity will be impaired;
- the adverse impact on the business if conflict is not appropriately managed; and
- the need to disclose the conflict of interest to the relevant client(s).

## 7 The La Trobe Financial Group

ASIC requires that the arrangements be designed or tailored according to the nature, scale and complexity of the licensee's business.

It is relevant, therefore, to consider the following aspects of the La Trobe Financial Group in general and the operation of La Trobe Financial and the Funds in particular, in determining the requirements that a conflicts management arrangement needs to meet:

- a) The La Trobe Financial Group has grown its business operations in the last three years, and encompasses the following platforms:
  - the Group obtains funding from a variety of sources and then lends those funds out to a wide variety of client borrowers.; and
  - the Group manages alternative investments through the La Trobe Global Asset Management (**LGAM**) strategy.
- b) The nature of the operations of the La Trobe Australian Credit Fund (**Credit Fund**), La Trobe US Private Credit Fund (**USPCF**) is the same as for the La Trobe Financial Group as a whole, except that the Credit Fund and USPCF's operations are conducted within the legislative framework of Chapter 5C and Chapter 7 of the Act, and its Constitutions. The nature of the operations of La Trobe Private Credit Fund (**LPCF**) is also similar as it principally invests into the Credit Fund and USPCF, except that the operation of LPCF is also conducted within the ASX Listing Rules.
- c) La Trobe Financial has three managed investment schemes (i.e. the Funds). The investment manager for each of the schemes is La Trobe Financial Services Pty Limited. The operations of La Trobe Financial are to be contrasted with many large financial institutions that are financial conglomerates offering a wide range of products and services through separate subsidiaries and companies that often conduct businesses, and use employees, in different capacities. These types of arrangement often lead to an increased potential for conflicts between the duties owed to different clients or between their own interests and business units and those of their clients.
- d) Neither La Trobe Financial nor its Authorised Representatives provide personal financial product advice. None of La Trobe Financial's Authorised Representatives, other than the Investment Manager, are authorised to provide any financial product advice. This reduces the opportunity and potential for conflicts of interest.
- e) La Trobe Financial's remuneration structures do not provide for any "soft dollar" arrangements, thus reducing the opportunity and potential for conflicts of interest. Furthermore, the commission structure for the 12 Month Term Account, 2 Year Account and the Select Investment Account is the same, namely 0.5% p.a. of the amount invested. There is no incentive to "push" one option over another, although a potential conflict remains between these options and the Classic Notice Account and 4 Year Account (no commission), and the 90 Day Notice Account and 6 Month Notice Account (up to 0.10%).
- f) La Trobe Financial is privately owned, which reduces, although does not eliminate, the potential for conflicts of interest. Private ownership reduces the number of "stakeholders" and therefore the range of potential interests that have to be considered and monitored in the context of conflicts of interest.
- g) Some Authorised Representatives are solicitors who already have a pre-existing fiduciary obligation to investor clients, and in this context, are monitored by the various State based Law Institutes, Societies and regulatory bodies. All Authorised Representatives are subject to Compliance surveillance by the Risk & Governance Division.

## 7.1 Areas of potential conflict of interest at La Trobe Financial

The starting point for this discussion is to re-iterate La Trobe Financial's statutory obligations to act in the best interests of the members of each of the Funds and to treat members who hold interests in the same class equally and members who hold interests in different classes fairly. It must also act efficiently honestly and fairly as required under section 912A of the Act. The areas of potential conflict need to be considered against these primary statutory obligations.

The best interests of members of the Fund can be summarised as the expectation to obtain the disclosed investment return, paying the disclosed fees and charges, with the disclosed security of investment. The best interests of members of each of the Funds may come into conflict with:

- La Trobe Financial as the responsible entity of each of the Funds;
- La Trobe Financial Services Pty Limited (the Investment Manager) as manager of each of the Funds or in its other roles
- within the La Trobe Financial Group;
- The shareholders of La Trobe Financial;
- The directors of La Trobe Financial;
- Other entities within the La Trobe Financial Group;
- Other members and directors of the La Trobe Financial Group;
- Employees of the La Trobe Financial Group;
- Authorised Representatives of La Trobe Financial;
- Financial Advisers;
- Finance Brokers; and/or
- Borrowers from the Credit Fund.

Having regard to the very focused operations of La Trobe Financial and each of the Funds, the areas where the interests of a member of one or more of the Funds may be compromised by a conflict of interest are:

- Investment returns;
- Fees and charges;
- Security of investment;
- Priority of investment;

The allocation and transfer of investments between the a Fund and the Group's other funding sources, and also between a Fund's investment options (where investment options are provided for in the Fund); and/or Non-disclosure generally.

## **7.2 Convergence (Rather Than Conflict) of Interest**

To counter-balance a discussion in relation to conflict of interest, it is useful to focus on the convergence of interest between the best interests of members of each of the Funds and various other parties.

From an economic point of view, all parties are better off if each of the Funds delivers to its members the disclosed benefits. It is in the interests of La Trobe Financial and the Funds to deliver the best possible returns to members, consistent with the disclosed fees and charges and the disclosed security and risks of investment.

Therefore, if La Trobe Financial delivers the investment features contained in the Product Disclosure Statement (if applicable to the Fund) and the corresponding Supplementary Product Disclosure Statements for Select Investment Account investments (if applicable to the Fund), there should be a convergence, rather than a conflict of interest.

## **7.3 Checks and Balances**

La Trobe Financial has a range of checks and balances in place to minimise the potential for conflicts of interest:

- No director, employee or officer of, or entity within, the La Trobe Financial Group is permitted to borrow from each of the Funds, so no conflict of interest arises.
- All staff, contractors, suppliers and consultants have access to our whistleblower program 'Your Call' which is completely confidential and to be used to report dishonest or unethical activity.
- Many Authorised Representatives are under a pre-existing fiduciary obligation to investor clients.

- Chapter 9 of the Funds' Compliance Plan deals with the functional separation of La Trobe Financial Group activities, the use of related service providers and trading on inside information. In particular, the Deputy Chief Risk & Assurance Officer is required to certify that related party investments took place on exactly equal terms to other Fund members and no preference was granted to related party investors, in any given mortgage investment.
- Compliance with the disclosures in the Product Disclosure Statement and Supplementary Product Disclosure (if applicable to the Fund).
- Statements are monitored regularly through the Compliance Checklist process.
- The regular surveillance visits by the Risk & Governance Division to Authorised Representatives which covers the topic of conflict of interest in addition to training and education memoranda provided to all Authorised Representatives.
- All staff of La Trobe Financial are required to sign a declaration of secrecy and code of conduct and acknowledgement in relation to insider trading.
- There are appropriate internal structures and reporting lines that enable the effective management of conflicts of interest. There is a separation of responsibilities between investment, borrowing, compliance and assurance.
- La Trobe Financial Authorised Representatives, other than the Investment Manager, do not provide personal financial advice.
- All staff are required to disclose gifts in accordance with La Trobe Financial's Gift, Benefit & Hospitality Reporting Policy.
- Staff who are related to one another are required to sign a declaration to abide by La Trobe Financial's "Related Employees" policy.
- The interests of directors, staff, La Trobe Financial and related entities in each of the Funds are disclosed in the Product Disclosure Statement and the Fund's Financial Statements.
- La Trobe Financial maintains an internal dispute resolution process and is a member of an ASIC approved industry external dispute resolution scheme.

## 7.4 Who is responsible for the monitoring of conflicts of interest?

Monitoring conflicts of interest comes within the jurisdiction of the Chief Risk Officer, and the associated responsibilities are outlined in Chapter 9 of the Compliance Plan for the Funds.

Compliance with the conflicts of interest requirements is certified by the Chief Risk Officer.

## 7.5 Examples of potential conflicts of interest

### 7.5.1 La Trobe Financial or a related party seeks to purchase a property from a defaulting borrower at the lowest possible price.

Clearly, this would be a conflict of interest between La Trobe Financial and the investing member. However, there are a number of checks and balances that would minimise the risks in this situation.

First, La Trobe Financial is required to obtain an appropriate independent valuation of the property and the property will generally be sold at auction, thereby achieving the best possible market price with a transparent sales process.

Secondly, the borrower has an interest in achieving the best possible price to minimise the potential shortfall and La Trobe Financial could be liable to the borrower in breach of its duties as a mortgagee in possession for any losses sustained by the borrower.

Thirdly, La Trobe Financial prohibits the purchase of any mortgagee in possession properties by staff or at their direction. This has been a standing instruction since the commencement of the Credit Fund. Detailed information about mortgagee in possession files is considered confidential and is limited to staff in La Trobe Financial's Mortgage Help Department.



**7.5.2 La Trobe Financial or a related party are borrowers from the Credit Fund**

No director, employee or officer of, or entity within, the La Trobe Financial Group is permitted to borrow from any of the Funds, so no conflict of interest arises. Authorised Representatives (with the exception of La Trobe Financial Services Pty Limited) may borrow from a Fund, but their loan applications are assessed in the normal course of business, with the usual sign-offs required for the given loan amount. Any potential conflict of interest is therefore managed.

**7.5.3 The Investment Manager "cherry picks" the best loans for investment away from Credit Fund or for a particular investment option within the Credit Fund**

Investments may fall within the investment parameters of more than one investment option of one or more of the Funds or one or more investment pools for the broader La Trobe Financial Group. The fees and other economic benefits that the La Trobe Financial Group derives from the investment can vary depending on how the investment is allocated and its return.

The Investment Manager must comply with La Trobe Financial's documented allocation policies which govern the allocation of investments between the Funds and other investment pools, and also the allocation of assets between investment options within the Funds.

Furthermore, the Investment Manager is monitored pursuant to the provisions of the Compliance Plan and the terms of the Investment Management Agreement which are structured to ensure that the loan is made on the same terms as other loans and funded from the most appropriate source (i.e. in accordance with the La Trobe Financial Group's allocation policies). No director, employee or officer of the La Trobe Financial Group can invest in a loan unless the investment opportunity has been circulated to external investors for a period of two (2) business days.

**7.5.4 D. Staff receive gifts or benefits to induce them to approve loans that should not otherwise be approved**

La Trobe Financial has a Gift, Benefit & Hospitality Reporting Policy that monitors gifts and benefits below a certain threshold and prohibits gifts and benefits being retained by staff above that threshold without approval from the Chief Risk Officer.

**8 Specific Obligations and Accountabilities - Related Party Transactions****8.1 Related Party Transactions**

*Capitalised terms are defined on pages 6 to 7 of the Group Conflicts Policy.*

Under the Corporations Act, specific requirements apply to public companies and Responsible Entities in relation to Related Party Transactions.

As a public company and a Responsible Entity, La Trobe Financial Asset Management Limited must not give a financial benefit to a Related Party without the approval of the members of that entity or the relevant Scheme (as applicable) unless the giving of that benefit falls into one of the exceptions allowed under the Corporations Act (listed below).

A Responsible Entity must also act honestly, act in the best interest of members of the registered Scheme and treat all Scheme members within a class of members equally, and all classes of members fairly.

Transactions that are carried out under an existing agreement, which itself has been approved in accordance with the Corporations Act (under the Related Party Transaction provisions) and this Policy, do not require further approval unless the transaction is outside the terms of the original agreement.

**8.2 Exceptions**

The Corporations Act contains a list of exceptions where member approval is not required to provide a financial benefit to a Related Party. The exceptions are:

- transactions are conducted at arm's length and on commercial terms;
- the benefit is remuneration to a Related Party acting as an officer or employee and the benefit is reasonable in the circumstances;
- the benefit is a payment of expenses incurred or to be incurred, or reimbursement for expenses incurred, by the Related Party in performing duties as an officer or Staff of La Trobe Financial and the benefit is reasonable in the circumstances;
- the benefit is given to a Related Party in their capacity as an officer of a La Trobe Financial entity and the benefit is an indemnity, exemption or insurance premium in respect of a liability incurred as an officer of a La Trobe Financial entity that is reasonable in the circumstances;
- the benefit is given to a Related Party in their capacity as an officer of a La Trobe Financial entity and the benefit is the making of a payment in respect of legal costs incurred by the officer in defending an action for a liability incurred as officer of the Regulated Entity that is reasonable in the circumstances and not captured by the prohibitions in section 199A of the Corporations Act;
- the benefit is given to a Related Party as a member of a Scheme and giving the benefit does not discriminate unfairly against the other members of the Scheme; or
- a financial benefit is given under a Court Order.

### 8.3 Dealing with Related Party Transactions

As a general rule, transactions between Related Parties should be conducted at arm's length and on commercial terms and which are consistent with the conduct of similar transactions with unrelated third parties. All transactions should be structured to address any Conflicts between the transacting parties.

Where La Trobe Financial proposes to enter into a Related Party Transaction, the following procedure applies:

- 1) Details of the proposed transaction must be disclosed to the Chief Risk Officer and the General Counsel. The disclosure must include the following:
  - a) details of the proposed transaction;
  - b) details of the parties to the transaction and how they are related;
  - c) whether, in the proponent's view, an exception to the member approval obligation applies;
  - d) how the arm's length nature of the transaction may be proven (if relevant);
  - e) what member approval may be required; and
  - f) what steps must be taken to obtain that member approval.
- 2) The Chief Risk Officer and the General Counsel will consider the information provided to determine whether and how to proceed with the proposed transaction, and may confer with the relevant La Trobe Financial board or board committee, as appropriate, and may take external legal advice, in reaching this determination.
- 3) Where the Related Party Transaction is considered not to be at 'arm's length' and is not subject to any of the allowed exceptions, the Chief Risk Officer and the General Counsel will manage the transaction to ensure that, if proceeded with, the transaction is carried out in compliance with the requirements of the Corporations Act. This may include calling a meeting of members of the entity or the Scheme to approve the Related Party Transaction.
- 4) Where the Chief Risk Officer and the General Counsel believe the transaction is permitted, it should be submitted to the relevant La Trobe Financial board for approval. Once approved by the relevant La Trobe Financial board, the transaction can be carried out in accordance with normal operational procedures.

Where the Related Party Transaction involves a director or a Relative of a director, the director must not vote on the transaction and must not be present when the board is considering the transaction.

Every Related Party Transaction must be fully and clearly documented. Any relevant information including proposals, advice, board papers and due diligence materials should be retained. The

documentation should also include a clear statement about the basis on which the parties are transacting and the authorisation process where relevant.

## 8.4 Arm's Length

There is no definition of "arm's length" in the Corporations Act. ASIC Regulatory Guide RG 76 (Related Party Transactions) suggests that the phrase refers to a relationship between parties where neither bears the other any special duty or obligation, they are unrelated, uninfluenced and each act in their own interests.

When considering whether the arm's length exception applies, consideration must be given to the following factors:

- how the terms of the overall transaction compare with those of any comparable transactions on an arm's length basis;
- the nature and content of the bargaining process, including whether protocols for the management of Conflicts have been used;
- the impact of the transaction on the entity or Scheme;
- any other options available to the entity; and
- any expert advice received by the entity.

There may be other factors that are also relevant and should be considered.

### 8.4.1 Disclosing to investors and clients about Related Party Transactions

Information about Related Party Transactions must be disclosed to Scheme members as required by law.

ASIC Regulatory Guide RG 76 (Related Party Transactions) provides that the description in the disclosure should address:

- the value of the financial benefit;
- the nature of the relationship between the Related Parties;
- whether the arrangement is on arm's length terms; is reasonable in terms of remuneration; whether a Chapter 2E exception applies; or if ASIC have granted relief;
- whether member approval for the transaction has been sought and, if so, when;
- the risks associated with the Related Party arrangement; and
- the policies and procedures that La Trobe Financial has in place for entering into Related Party Transactions, including how compliance with these policies and procedures is monitored.

Disclosures relating to the Scheme are subject to separate policies and procedures overseen by the Asset Management and Legal & Compliance teams.