



# Spire Capital Master Fund Information Memorandum

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Issuer:

Spire Capital Pty Ltd

ACN 141 096 120 AFSL 344365

Level 30, Governor Macquarie Tower,

1 Farer Place, Sydney NSW 2000

SYDNEY NSW 2000

Issue date: 11 April 2019



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## 1. Important Information

- 1.1 The Spire Capital Master Fund (**Fund**) is an unregistered and unlisted managed investment scheme. Spire Capital Pty Ltd (ACN 141 096 120) (Australian Financial Services Licence Number 344365) is the trustee of the Fund and the issuer of this Information Memorandum (**Trustee** or **Issuer**).
- 1.2 The Fund is an unregistered unit trust that invests in a range of assets through segregated unit trusts. There will be multiple classes of units in the Trust (each a **Series**) and each Series will provide investors exposure to the assets held by an interposed unit trust (each a **Series Sub-Trust**) where the Fund makes an investment in the Series Sub-Trust. Investors obtain exposure to the investment by investing into the corresponding class of unit for Series in the Fund.
- 1.3 The Fund may have a separate investment strategy for each Series. Each Series will have a term sheet (**Term Sheet**) and that Term Sheet will contain specific terms applicable to the relevant Series.
- 1.4 The terms of your investment are set out in the following key documents:
- (a) this document (Information Memorandum);
  - (b) the trust deed of the Fund as amended from time to time (**Trust Deed**); and
  - (c) the Term Sheet for each Series and the application form which accompanying the Term Sheet (**Subscription Document**),
- (together, the **Transaction Documents**). These Transaction Documents must be read carefully before making a decision to invest in the Fund or any Series. Copies of the Transaction Documents will be provided to you upon request.
- 1.5 It is only after the point in time when you agree to the Transaction Documents, we receive cleared funds into our nominated account, and the Trustee, in its absolute discretion, accepts your offer to invest, that the Trustee will issue units in a Series to you. If the Trustee rejects your offer to invest, your application will be returned to you without interest. Any investment in a Series is subject to allocation which means that the Trustee reserves the right to return your funds or a portion of your funds. For specific details on the unit price of your investment in a Series and fees associated with your investment, refer to the Term Sheet for the relevant Series.
- 1.6 This Information Memorandum:
- (a) outlines of the general terms for the offer your investment according to the Term Sheet;
  - (b) describe the general risks associated with an investment in a Series of the Fund;
  - (c) provide general taxation information; and
  - (d) introduce the Issuer and its key personnel.
- 1.7 This Information Memorandum and the Term Sheet are important documents that should be read before making a decision to invest in any Series. In particular, you should read these documents carefully and:
- (a) assess whether the investment is appropriate for you before making a decision to acquire the units;

- (b) evaluate the taxation implications of investing in the units; and
  - (c) consult your own professional migration, legal, tax and accounting advisers before making an investment decision.
- 1.8 The information contained in this document is general information only. This document does not (and is not intended to) contain any recommendations, statements of opinion or advice. In any event, the information in this document does not consider any individual person's objectives, financial situation or particular needs.
- 1.9 No person guarantees any specific rate of return; that you will make a positive return on your investment; or the return of any amount invested.
- 1.10 This document is not a product disclosure statement under the Corporations Act and has been prepared for use by Wholesale Clients only, as defined in section 761G and 761GA of the Corporations Act. This document is not required to be and has not been lodged with ASIC under the Corporations Act. The Funds are not required to be, and are not, registered as managed investment schemes under the Corporations Act 2001. Accordingly, this Information Memorandum is not required to, and does not include, all of the information that would be required to be included in a product disclosure statement. Nor is an applicant provided with the protections afforded to an investor in a managed investment scheme that has been registered under the Corporations Act.
- 1.11 Furthermore, this Information Memorandum does not purport to provide all of the information the recipient may require in order to evaluate an investment in the Funds. Recipients should make their own enquiries and evaluations they consider appropriate to verify the information contained in the Information Memorandum and to determine the suitability of an investment in the Funds (including regarding their personal investment objectives, financial situation, and particular needs) and should seek all necessary financial, legal, tax and investment advice.
- 1.12 This document is not an offer or invitation in any place in which, or to any person to whom, it would not be lawful to make that offer or invitation. The distribution of this document outside Australia may be restricted by the laws of places where it is distributed and therefore persons into whose possession this document comes should seek advice on and observe those restrictions.
- 1.13 This Information Memorandum does not constitute a direct or indirect offer of securities in the US or to any US Person as defined in Regulation S under the US Securities Act of 1933 as amended ("US Securities Act"). The Trustee may vary its position and offers may be accepted on merit at the Trustee's discretion. The units have not been, and will not be, registered under the US Securities Act unless otherwise determined by the Trustee and may not be offered or sold in the US to, or for, the account of any US Person (as defined under the US Securities Act) except in a transaction that is exempt from the registration requirements of the US Securities Act and applicable US state securities laws.
- 1.14 Capitalised terms not defined in this Information Memorandum have the meaning given to them in the Trust Deed.

## 2. About the Fund

<b>Trustee</b>	Spire Capital Pty Ltd
<b>Fund</b>	Spire Capital Master Fund is an unregistered and unlisted managed investment scheme that invests in a range of assets through segregated unit trusts.
<b>Trust Deed</b>	Trust Deed dated 11 March 2019
<b>Trustee of Series Sub Trusts</b>	Spire Investments Pty Ltd
<b>Class of Interests</b>	The Fund is a multi-class trust with each class of Units corresponding to a separate underlying investment held in a Series Sub-Trust.
<b>Sub-Trusts</b>	Each Series will have a separate sub-trust which is established
<b>Fees</b>	Trustee Fees and other fees depend on the Class of Units issued and are set out in each Series Term Sheet.
<b>Administrator</b>	Unity Fund Services Pty Ltd
<b>Registry</b>	One Registry Services Pty Limited
<b>Custodian</b>	One Managed Investment Funds Limited
<b>Investors</b>	<p>Wholesale Investors Only who meet one of the following:</p> <ul style="list-style-type: none"> <li>(a) professional investors (defined below) and wholly owned subsidiaries of professional investors;</li> <li>(b) those who invest at least A\$500,000 at one time;</li> <li>(c) the financial product or service is provided for use in connection with a business that is not a small business (that is, companies that employ more than 20 people or 100 people if they are a manufacturer);</li> <li>(d) the financial product or service is not provided for use in connection with a business and the person who acquires the product gives the provider of the product, before the provision of the product, a copy of a certificate given within the preceding 2 years by a qualified accountant that states that the person: <ul style="list-style-type: none"> <li>(i) has net assets (which may include the net assets of a company or trust controlled by the person) of at least A\$2.5 million; or</li> <li>(ii) has a gross income for each of the last two financial years of at least A\$250,000 (which may include the gross income of a company or trust controlled by the person) ;</li> </ul> </li> </ul>

	<p>(e) the financial product is acquired by a company or trust controlled by a person who meets the requirements of (d)(i) and (ii) above ; and</p> <p>(f) related bodies corporate of wholesale clients .</p> <p><b>Professional Investors</b></p> <p>A professional investor is a person who falls within one of the categories below:</p> <p>(a) a person who holds an Australian Financial Services Licence (AFS Licensee);</p> <p>(b) an APRA regulated body other than an entity covered by paragraph (d) below (disregarding the net assets test);</p> <p>(c) a body registered under the Financial Corporations Act 1974 (Cth) (although this legislation has been repealed);</p> <p>(d) a person who is the trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme (as defined in the Superannuation Industry (Supervision) Act 1993 (Cth)) that has net assets of at least A\$10 million;</p> <p>(e) a person who has or controls gross assets of at least A\$10 million (including any assets held by associates or under a trust that the person manages) ;</p> <p>(f) an exempt public authority;</p> <p>(g) a listed entity or related body corporate of a listed entity;</p> <p>(h) a body corporate (or unincorporated body) who carries on a business of investment in financial products, interest in land or other investments, and, for those purposes, invests funds received (directly or indirectly) following an offer or invitation to the public (as defined); or</p> <p>(i) foreign entities that would fall within one of these categories.</p>
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### **3. Risks**

- 3.1 The Issuer has identified the general key risks below which should be considered before choosing to invest in any Series. This is not a comprehensive summary of all of the risks related to an investment in the Series. Each Term Sheet will detail risks specific to the relevant Series. Each Investor should read the Transaction Documents in full before deciding whether to invest and consult their financial adviser, investment broker or other professional advisers.

#### **Concentration Risk**

- 3.2 Generally the more diversified the portfolio of the Fund's investments the lower the impact of an adverse movement in the value of any particular investment. Inversely, investing in single asset exposure concentrates the impact of an adverse movement on the value of that investment (i.e. there is no diversification or spreading of the relevant risk across multiple assets). During the Initial Investment stage Investors are not being exposed to a diversified portfolio by investing in the Fund. Investors should consider their own level of diversification (and seek professional advice on point) in respect of all assets they hold across their personal portfolio.

#### **Asset Value Risk**

- 3.3 The value ascribed to assets held by the relevant Sub-Trusts into which the Trustee invests will be influenced by a number of factors, including: supply and demand; general market conditions; and the ability to attract and maintain viable commercial arrangements. Asset values may fall in the event that the underlying assumptions on which asset valuations have been made change in the future. As changes in valuations of investment assets are recorded in the Investor's income statement, any decrease in value may have a negative impact on the income statement.

#### **Long-term Investment Risk**

- 3.4 This investment will be realised over a longer terms than other types of investments. There is no guarantee that the economic and financial environment for the Fund's investments will stay the same as it is now. Any adverse changes to the economy may result in a lower return than expected.

#### **Past Performance Risk**

- 3.5 While the Trustee and its advisers have strong, highly-experienced Boards and management teams with proven track records, past performance is not a guarantee of future performance.

#### **Market Trend Risk**

- 3.6 Investments in assets are based on projections and assumptions about the future. While the Trustee and its advisers will conduct in-depth due diligence on assets, outside market factors can significantly impact the performance of the investment, making it difficult to accurately evaluate the investment's future performance.

#### **Barriers to Success Risk**

- 3.7 While the Fund and its advisers will consider all barriers to success in their investment decision, there is no guarantee that all barriers will be accurately foreseen. Economic factors such as government regulation, interest rates, and recession are examples of unpredictable barriers to success that create risk in the investment.

### **Liquidity Risk**

- 3.8 Investors are required to remain in the Fund for the Investment Period. Redemptions of Units during the Investment Period will be at the sole discretion of the Trustee. The Trustee does not guarantee it will be able to satisfy Redemption Requests prior to the winding up of the Fund.

### **Key Person Risk**

- 3.9 The Trustee has a small management team and is thus highly dependent on the skill and commitment of the small number of individuals. Whilst these key individuals will generally be incentivised to remain and perform throughout the time they are with the Trustee, their departure from the Fund may adversely affect the performance of the Fund's investment.

### **Conflict of Interest Risk**

- 3.10 The Trustee may, from time to time, engage affiliates and/or associates in their professional advisory capacity. In such circumstances, these parties may provide advice to the Trustee without taking on the liability of the Fund. The parties in their capacity as advisers may receive fees for providing services including, but not limited to, accounting, legal, human resources and/or strategic advice. The amount of these fees and payment terms will be negotiated at arm's length and will be deducted from the returns of the Fund or paid directly by the Trustee.

### **Legal & Counterparty Risk**

- 3.11 The Trustee may, in the ordinary course of business, be involved in possible litigation and disputes. A material or costly dispute or litigation may adversely affect the income or capital value of the Fund. Also, the Fund has and may enter into contractual arrangements in respect of its activities with counterparties. Should counterparty fail to perform under these contracts, the Fund may be adversely affected.



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## 4. Taxation

- 4.1 The following is a general outline of certain Australian taxation consequences for investors that acquire Units in the Fund. This section assumes that you hold your investment in the Fund on capital account and that you are not considered to be carrying on a business of investing, trading in investments or investing for the purpose of profit making by sale.
- 4.2 The tax consequences may depend, in part, on the circumstances of the individual investor.
- 4.3 This section does not take into account the specific taxation circumstances of each individual investor and accordingly, should not be regarded as tax advice. Prospective investors should seek their own independent tax advice which takes into account their own circumstances.
- 4.4 The following has been prepared on the assumption that:
- (a) all investors in the Fund will hold the Units on capital account and not on revenue account;
  - (b) the Fund qualifies as a managed investment trust ("MIT") and a withholding MIT within the meaning of section 995-1 of the *Income Tax Assessment Act 1997* and has elected into the Attribution Managed Investment Trust ("AMIT") regime;
  - (c) the Fund made an irrevocable "capital election" to apply the CGT provisions as the primary code for the taxation of gains and losses of qualifying assets (primarily shares, non-share equity in a company, units in a unit trust, land and rights or options to acquire or dispose of the above, unless excluded because they are debt interests or are otherwise a relevant financial arrangement); and
  - (d) the Fund is not a public trading trust under Division 6C of the *Income Tax Assessment Act 1936* ("1936 Act").
- 4.5 Investors should be aware that the ultimate interpretation of taxation law rests with the Courts and that the law, and the way the Commissioner of Taxation ("Commissioner") and state and territory revenue authorities administer the law, may change at any time.
- 4.6 The expected tax implications of investing in the Fund described above may change as a result of changes in the taxation laws and interpretation of them by the Courts and/or the Australian Tax Office.
- 4.7 Accordingly, it is recommended that investors seek their own professional advice, specific to their own circumstances, of the taxation implications of investing in the Fund.

### Australian Taxation Treatment of the Fund

- 4.8 The Fund is an Australian resident trust for Australian tax purposes. Therefore, the Fund is required to determine its net income (taxable income) for the year of income. It is intended that investors will be attributed all of the Fund's distributable income and the Fund will not be a public trading trust such that the Fund should be treated as a flow through trust for tax purposes. This means that the net income of the Fund should be taxed solely in the hands of the investors.
- 4.9 Investors should be taxed on their share of the Fund's net taxable income and the trustee should not be subject to Australian income tax on the Fund's net income. The rate of tax depends on the type of income derived by the Fund and the tax profile of the investor. In the case where the Fund makes a loss for Australian tax purposes, the Fund cannot distribute the tax loss to investors. However, subject to the Fund meeting certain conditions, the tax loss may be carried forward by the Fund for offset against taxable income of the Fund in subsequent years.

## **Tax File Number (TFN) and Australian Business Number (ABN) withholding**

- 4.10 It is not compulsory for an investor to quote their TFN or ABN to the Trustee when acquiring Units. If an investor is making this investment in the course of a business or enterprise, the investor may quote an ABN instead of a TFN. Failure by an investor to quote an ABN or TFN or claim an exemption may cause the Trustee to withhold tax at the top marginal rate plus the Medicare Levy plus the temporary budget repair levy, which is currently 47% on distributions of income to the investor. The investor may be able to claim a credit in their annual tax return for any TFN or ABN tax withheld.

## **Australian Taxation of Australian Resident Investors**

### ***Distributions***

- 4.11 Each Australian resident investor will be subject to taxation on a share of the net taxable income of the Fund in proportion to their share of the distributable income of the Fund. Generally, an Australian resident investor's entitlement (share) of the net income of a trust for a year of income, including amounts that are received in a subsequent year of income or which are reinvested, forms part of their assessable income for that year.
- 4.12 The tax consequences for investors of receiving distributions from the Fund depend on the components of the distributable income which investors have become entitled.
- 4.13 To assist investors determine their Australian tax liability each year, investors who become entitled to a distribution from the Fund in respect of a financial year will receive an annual tax statement detailing all relevant taxation information concerning distributions, including any capital gains, franked dividends, franking credits, foreign income tax offset (*FITO's*) entitlements and returns of capital.
- 4.14 Where the distributed capital gain includes a discount capital gain component, (i.e., where the Fund was entitled to apply the 50% CGT discount to a particular capital gain), each investor must:
- (a) gross-up the discount capital gain by a factor of two - effectively reversing the application of the 50% discount at the level of the Fund;
  - (b) apply against the capital gain any available carry forward or current capital losses of the investor; and
  - (c) where the disposal of an investment that has been held by a Fund for more than 12 months gives rise to a capital gain, investors that are superannuation funds, individuals and trusts may apply the appropriate CGT discount to the remaining net capital gain. Very broadly, under these rules, the percentage of the net capital gain included in the investor's assessable income is reduced by 33.33% for superannuation funds and 50% for individuals and trusts. The CGT discount is not available to companies.
- 4.15 Distributions from the Fund may include franked distributions. Subject to the application of anti-avoidance provisions (such as the dividend imputation holding period and related payment rules), such franked distributions generally entitle Australian resident investors to obtain a tax offset (the franking credit) that is available to offset against their income tax liability. Franked distributions and franking credits are included in an investor's assessable income. If the franking credits exceed the tax payable on an investor's taxable income, the excess credits may be refundable to the investor if the investor is a resident individual or complying superannuation fund. Excess franking credits may generate tax losses if the investor is a corporate entity.

- 4.16 If the Fund distributes non-assessable amounts to investors, the distributions should generally reduce the cost base of the investor's Units in the Fund for CGT purposes. This results in either an increased capital gain, or a reduced capital loss, upon the subsequent disposal of the investor's Units in the Fund. Should the cost base be reduced to below zero, the amount in excess of the cost base should be a capital gain that is to be included in the investor's taxable income. An investor may be entitled to the CGT discount in respect of this gain (of 50% for trusts and individuals or 33.33% for superannuation funds) on any net capital gain, if the Units in the Fund have been held for at least 12 months from the date of acquisition. Companies are not entitled to CGT discounts on their capital gains.

### ***Disposal of Units by Australian Resident Investors***

- 4.17 If an Australian resident investor transfers or redeems their Units in the Fund, this will constitute a disposal for tax purposes.
- 4.18 Where an investor holds their Units in the Fund on capital account, a capital gain or loss on the disposal may arise. Proceeds on disposal may include a component of distributable income. If the investor is an individual or a complying superannuation fund they may be entitled to the CGT discount. This concession means that a portion of any capital gain made on the sale is exempt from income tax, where the investor has held those Units in the Fund for more than 12 months. For individuals and trusts the percentage of the capital gain exempted is 50% and for complying superannuation funds that percentage is 33.33%. No CGT discount is available to corporate investors.
- 4.19 Any capital losses arising from the disposal of the investment may be used to offset other capital gains the investor may have derived. Net capital losses may be carried forward for offset against capital gains of subsequent years but may not be offset against ordinary income.

### **Australian Taxation of Non-Resident Investors**

#### ***Distributions***

- 4.20 Any foreign source income derived by the Fund would generally not be subject to Australian withholding tax when distributed by the Fund to non-resident investors.
- 4.21 The Trustee will withhold tax from distributions of the Fund's Australian sourced net income paid to a non-resident investor during the income year (if any). The various components of the net income of the Fund which will be regarded as having an Australian source may include Australian sourced rent, dividends and Australian sourced gains.
- 4.22 The rate of withholding tax on distributions (including deemed payments) will depend on the type of income and the country of tax residence of the investor and any applicable double taxation agreement/ exchange of information agreement. Non-resident investors should seek their own independent tax advice before investing, taking into account their particular circumstances and the provisions of any relevant double taxation agreement/ exchange of information agreement between Australia and their country of residence for taxation purposes.

### ***Disposal of Units by Non-Resident Investors***

- 4.23 Non-resident investors holding their Units on capital account should not be subject to Australian tax on the disposal of Units in the Fund unless the Units are held by the investor in carrying on a business through a permanent establishment in Australia or the investor, together with its associates, hold directly or indirectly an interest of at least 10% in an Australian land rich entity. The CGT discount should not be available in respect of any such gain made on the disposal of their Units. Australian tax may apply in certain circumstances if the non-resident holds their units on revenue account.

- 4.24 If the Fund distributes non-assessable amounts to investors, the distributions should generally reduce the cost base of the investor's Units in the Fund for CGT purposes. This may result in either an increased capital gain, or a reduced capital loss, upon the subsequent disposal of the investor's Units in the Fund.
- 4.25 We recommend that non-resident investors seek their own independent tax advice in relation to the tax consequences of the disposal of their units.

#### **Taxation of financial arrangements**

- 4.26 The taxation of financial arrangements (*TOFA*) regime broadly contain rules that cover tax timing treatments for financial arrangements. There are a number of exclusions from TOFA. Investors should seek their own advice as to the possible application of the TOFA regime to their investment in a unit.

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## **5. About the Issuer and its Key Personnel**

### **About Spire Capital**

- 5.1 The Trustee is a privately held investment management business with approximately A\$600 million in Assets Under Management as at January 2019.
- 5.2 The Trustee focuses on providing their family office and advisor directed HNW clients with access to global investment opportunities, which have previously only been available to institutional investors. The Trustee provides this access via partnerships formed with best of breed global Investment Managers.
- 5.3 The Trustee's current thematic offerings are US Real Estate Private Equity and Private Debt strategies and Global Small Caps. US multifamily apartments are a major asset class in which Spire clients are invested, with current exposure to approximately 80 assets providing 28,000 "for rent" apartment units across the US.
- 5.4 The Trustee's management team has collectively over 60 years of experience gained through working at senior positions with leading firms in the financial services industry. Biographies of the key staff are set out below.

### **Matthew Cook F Fin**

- 5.5 Matthew has over 29 years experience in the Australian property industry in property & facilities management, valuation, agency and funds management.
- 5.6 Prior to founding Spire Capital, Matthew held senior positions with leading firms including Knight Frank and Savills.
- 5.7 Matthew was also formerly a Managing Director and major shareholder of Pact Property, which provided property and facilities management services to a large portfolio of commercial properties owned by institutional & private investors.
- 5.8 Matthew has a Bachelor of Business (Land Economy) and a Graduate Diploma in Applied Finance & Investment. He is a Fellow of the Financial Services Institute of Australasia (FINSIA).

### **Dale Holmes B.Ec**

- 5.9 Dale has over 20 years of financial services experience having commenced his financial services career in 1989 with AXA and has had senior roles more recently as General Manager MLC Alliances (2000-2004) and before that with Ipac as Practice Manager (1995-2000).
- 5.10 Over the period of a decade at Ipac and MLC, Dale was integrally involved with their Investment teams in the development of investment communications for advisers and clients including assisting in simple communication of portfolio construction and implementation.
- 5.11 Prior to joining Spire Capital, Dale was also the former and founding CEO of the Greater Western Sydney Giants AFL team, and prior to that he was the GM of the Australian Football League in NSW/ACT and a member of the AFL National Executive team.
- 5.12 Dale joined Spire Capital in March 2012 as a equal partner with a principal focus being developing the business strategy, building distribution and investor relations capabilities for the firm.

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## 6. Additional Information

### Complaints

- 6.1 If you have any complaints, please notify the Trustee. We can usually resolve complaints over the phone. If we can't or you're not satisfied with the outcome please write to us. The Trustee's contact details are as follows:

Address: Spire Capital Pty Ltd

Level 30 Governor Macquarie Tower

1 Farrer Place Sydney NSW 2000

Phone: +61 2 9047 8800

Email: [info@spirecapital.com.au](mailto:info@spirecapital.com.au)

- 6.2 If you're not satisfied with our decision you can get further advice from the Financial Ombudsman Service by calling 1300 780 808 or by emailing [info@fos.org.au](mailto:info@fos.org.au).

### Privacy

- 6.3 You must ensure that all personal information which you provide in connection with your Subscription Document is true and correct in every detail, and should your personal details change it is your responsibility to ensure that you promptly advise the Trustee of the changes in writing. If you do not provide personal information when requested, your Subscription Document may not be processed or the Trustee and their delegates will not be able to administer or manage your investment.

### Collection of your personal information by the Trustee of the Fund:

- 6.4 If you apply for units in the Fund, the Trustee will collect personal information you provide in connection with your Subscription Document and your investment (including in your completed Subscription Document and, where you invest through an IDPS, from the IDPS Operator).
- 6.5 The Trustee collects your personal information for the purposes of facilitating, administering and managing your Subscription Document and investment, and to comply with Australian taxation laws and other laws and regulations. The Trustee and its related entities may also use your personal information to provide you with information about future investment opportunities, unless you choose to opt out from receiving such information (in your Subscription Document or otherwise).
- 6.6 The Trustee may disclose your personal information amongst to its related bodies corporate and to the other parties referred to in this Information Memorandum for the purposes of facilitating, administering and managing your investment, to third party service providers who provide services to the Trustee in connection with your investment and to competent regulators or as otherwise required or authorised by law. If you are a US person, certain of your personal information will be disclosed to US regulatory authorities, in order to comply with FATCA.
- 6.7 The Trustee of the Fund will each handle your personal information in accordance with its privacy policy which details how you can access, correct or complain about the handling of your personal information, and how the Trustee will respond to your requests or complaints. The Trustee's privacy policy can be found at [www.spirecapital.com.au](http://www.spirecapital.com.au)

## FATCA

- 6.8 FATCA is a US law, effective 1 July 2014, which impacts investors worldwide. FATCA attempts to minimise US income tax avoidance by US persons investing in assets outside the US, including through their investments in Foreign Financial Institutions. FATCA requires reporting of US persons' direct and indirect ownership of non-US accounts and non-US entities to the US Internal Revenue Service (*IRS*).
- 6.9 The Trustee is required to provide information about the following investors to the ATO:
- (a) Investors identified as US citizens or tax residents (information about corporations and trusts with US substantial owners or controlling persons will also be reported);
  - (b) Investors who do not confirm their FATCA status; and
  - (c) certain financial institutions that do not meet their FATCA obligations (Non-participating Foreign Financial Institutions).

## AML/CTF Information

- 6.10 In accordance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (*AML/CTF Act*), the Trustee is required to identify, and verify the identity of, new investors (and in certain circumstances, existing investors). In order to do this, we must collect certain information (and documentation) from each investor. If you do not provide this information to us, we will not process your Subscription Document and in these circumstances, will not be liable to you for any resulting loss. The Trustee may be required to collect further information from you in accordance with its ongoing customer due diligence obligations under the AML/CTF Act.
- 6.11 The Trustee is obliged under the AML/CTF Act to take and maintain copies of any information/documentation collected from you and, in certain circumstances, may be required to disclose said information to the Australian Transaction Reports and Analysis Centre (*AUSTRAC*) or other government bodies. The Trustee may be prohibited from informing you of such disclosure. Aside from disclosures permitted or required under the AML/CTF Act, we will keep your information confidential in accordance with relevant legislation.
- 6.12 By applying for units in the Fund, you are acknowledging that the Trustee may, in its absolute discretion, not issue units to you, cancel any units previously issued to you, and delay, block or freeze any transaction or redeem any unit issued to you if we believe it necessary in order to comply with our AML/CTF legislative obligations. In these circumstances, we will not be liable to you for any resulting loss.

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## **7. Directory**

### **Trustee and Issuer**

Spire Capital Pty Ltd ABN 21 141 096 120

AFSL 344365

Address: Level 30 Governor Macquarie Tower,  
1 Farrer Place Sydney NSW 2000 Australia

Telephone: +61 2 9047 8800

Email: [info@spirecapital.com.au](mailto:info@spirecapital.com.au)

### **Administrator**

Unity Fund Services Pty Ltd

Level 8, 25 Bligh Street

SYDNEY NSW 2000

Telephone: +61 2 8277 0070

### **Registry**

One Registry Services Pty Limited

Level 11, 20 Hunter Street

SYDNEY NSW 2000

Telephone: +61 2 8188 1510

Email: [spire@oneregistryservices.com.au](mailto:spire@oneregistryservices.com.au)

### **Custodian**

One Managed Investment Funds Limited

Level 11, 20 Hunter Street

SYDNEY NSW 2000

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**Private and confidential**

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1 Farrer Place  
SYDNEY NSW 2000

31 May 2019

Dear Sirs/Madams

**Spire Capital Master Fund - Tax Summary letter**

The taxation comments provided in **Appendix 1** of this letter, have been prepared to be included in an Information Memorandum ("IM") for the offer of units in Spire Capital Master Fund ("Fund") issued on 11 April 2019.

The comments are intended to provide a general summary of the likely Australian income tax, stamp duty and Goods and Services Tax ("GST") implications for Australian tax resident investors in the Fund ("Investors"). It does not attempt to address all of the taxation and stamp duty consequences relevant to the Investors. Different taxation and stamp duty implications may apply for different Investors depending on their particular circumstances. The comments in this summary are not, and are not intended to be, taxation and stamp duty advice to any particular Investor. Accordingly, it is recommended that each Investor seek their own professional taxation and stamp duty advice.

The comments provided assume that Investors hold their investment in the Fund on capital account. Investors who do not hold their investment in the Fund on capital account should obtain their own advice (e.g. Investors who carry on a business of trading in units in trusts or who acquire their units in the Fund for the purpose of profit making by sale of those units).

The comments do not provide any information in relation to the tax implications for Investors under the tax laws of countries other than Australia.

**General tax reform**

Our income tax advice is based on current taxation law as at the date our advice is provided. You will appreciate that the tax law is frequently being changed, both prospectively and retrospectively. A number of key tax reform measures have been implemented, a number of other key reforms have been deferred and the status of some key reforms remains unclear at this stage.



Unless special arrangements are made, this advice will not be updated to take account of subsequent changes to the tax legislation, case law, rulings and determinations issued by the Australian Commissioner of Taxation or other practices of taxation authorities. It is your responsibility to take further advice, if you are to rely on our advice at a later date.

We are, of course, unable to give any guarantee that our interpretation will ultimately be sustained in the event of challenge by the Australian Commissioner of Taxation.

### **Third party**

These comments are made specifically in response to the request for taxation advice from Spire Capital Pty Ltd ATF Spire Capital Master Fund. Accordingly, neither the firm nor any member or employee of the firm undertakes responsibility in any way whatsoever to any person or company other than Spire Capital Pty Ltd ATF Spire Capital Master Fund for any errors or omissions in the advice given, however caused.

### **FSRA warning**

KPMG's Tax practice is not licensed to provide financial product advice under the Corporations Act and taxation is only one of the matters that must be considered when making a decision on a financial product. You should consider taking advice from an Australian Financial Services Licence holder before making any decision on a financial product.

Yours faithfully

*Peter Madden*

Peter Madden  
Partner

Enclosure: Appendix 1

## **Appendix 1**

### **1 Taxation**

- 1.1** The following is a general outline of certain Australian taxation consequences for investors that acquire units in the Fund. This section assumes that each investor hold their investment in the Fund on capital account and that they are not considered to be carrying on a business of investing, trading in investments or investing for the purpose of profit making by sale.
- 1.2** The tax consequences may depend, in part, on the circumstances of the individual investor.
- 1.3** This letter does not take into account the specific taxation circumstances of each individual investor and accordingly, should not be regarded as tax advice. Prospective investors should seek their own independent tax advice which takes into account their own circumstances.
- 1.4** The following has been prepared on the assumption that:
- (a) the Fund qualifies as a managed investment trust (“MIT”) and a withholding MIT within the meaning of *section 995-1 of the Income Tax Assessment Act 1997* and has elected into the Attribution Managed Investment Trust (“AMIT”) regime (see below);
  - (b) the Fund made an irrevocable “capital election” to apply the Capital Gains Tax (“CGT”) provisions as the primary code for the taxation of gains and losses of qualifying assets; and
  - (c) the Fund is not a public trading trust pursuant to *Division 6C of the Income Tax Assessment Act 1936*.
- 1.5** Investors should be aware that the ultimate interpretation of taxation law rests with the Courts and that the law, and the way the Australian Taxation Office (“ATO”) and state and territory revenue authorities administer the law, may change at any time.
- 1.6** The expected tax implications of investing in the Fund described above may change as a result of changes in the taxation laws and interpretation of them by the Courts and/or the ATO.
- 1.7** Accordingly, it is recommended that investors seek their own professional advice, specific to their own circumstances, of the taxation implications of investing in the Fund.

## **2 Attribution Managed Investment Trust**

- 2.1** The AMIT regime will apply to the Fund if the Fund satisfies the relevant eligibility requirements and the trustee of the Fund makes an irrevocable election for the Fund to be subject to the AMIT regime.
- 2.2** Some of the key features of the AMIT regime include:
- (a) Allocation of taxable income to investors based on ‘attribution’ rather than present entitlement to the ‘income’ of the trust;
  - (b) Clarification of the treatment of under and over distributions; and
  - (c) CGT cost base reductions and uplifts may arise where taxable income attributed is either less than or greater than the cash distribution for an income year (respectively).
- 2.3** Attributed trust income or gains may include taxable assessable income, exempt income, non-assessable non-exempt income and tax offsets. The attributed amounts will retain their character on a ‘flow through’ basis, and investors will be taxed on their attributed amounts even where no cash distribution has been received.

## **3 Australian Taxation Treatment of the Fund**

- 3.1** The Fund should not generally be subject to tax in respect of Australian income and capital gains derived provided the investors are attributed all of the net income of Fund for each income year.
- 3.2** Australian income tax should therefore be borne by the investors at their respective tax rates. That is, from a tax perspective, the Fund should be treated as a ‘flow-through’ entity.
- 3.3** However, where the Fund is in a tax loss position in a particular year, the loss is retained in the Fund and is not distributable to the investors. The tax loss can be carried forward by the Fund and used to offset taxable income in a future year (subject to satisfaction of certain loss integrity tests).

## **4 Australian Taxation of Australian resident investors**

### **Attribution of income**

- 4.1** Resident and non-resident investors who are attributed trust income or gains from the Fund will receive an AMIT Member Annual statement (AMMA statement) detailing relevant taxation information for a financial year, including interest, foreign source income, foreign income tax offset (“FITOs”) entitlements, as well as potentially capital gains, franked dividends, franking credits, and any cost base adjustments.

- 4.2** It is expected that the Fund will mainly derive foreign source income which may be subject to foreign tax. In such a case, the amounts attributed to the resident investor may have been subjected to foreign tax. Where certain conditions are satisfied, resident investors in the Fund may be entitled to a FITO for their share of the foreign tax paid, which can be used as an offset against their Australian tax liabilities for the relevant year.
- 4.3** FITOs are non-refundable and not able to be carried forward. Consequently, any FITOs that have not been attributed to the resident investors by the Fund in an income year will be forfeited.
- 4.4** The amount that a resident investor may claim as a FITO is limited to the greater of \$1,000 and the amount calculated as the “FITO cap”. Where the resident investor’s share of foreign tax paid exceeds the greater of \$1,000 and the “FITO cap”, the excess cannot be claimed as a FITO. As FITOs are non-refundable and not able to be carried forward, the excess will be forfeited by the resident investors.
- 4.5** Where a resident investor is attributed a capital gain that includes a discount capital gain (i.e., where the Fund was entitled to apply the 50% CGT discount to a particular capital gain), each resident investor:
- (a) must gross-up the discount capital gain by a factor of two - effectively reversing the application of the 50% discount at the level of the Fund;
  - (b) may apply against the capital gain any available carry forward or current capital losses of the resident investor (the resident investor may choose the order which the capital losses are applied); and
  - (c) resident investors that are superannuation funds, individuals and trusts may apply the appropriate CGT discount to the remaining net capital gain. Very broadly, under these rules, the percentage of the net capital gain included in the resident investor’s assessable income is reduced by 33.33% for superannuation funds and 50% for individuals and trusts. The CGT discount is not available to companies.

#### **Disposal of units by Australian resident investors**

- 4.6** Under Australian tax law, units in a unit trust are considered CGT assets. Each unit in the Fund is a CGT asset, and the resident investor’s cost base (or reduced cost base) of units in the Fund will generally be equal to the amount that the resident investor paid to acquire the unit (including certain non-deductible incidental costs such as brokerage and advisor fees), as adjusted under the AMIT rules (see below).

- 4.7** Under the AMIT regime, resident investors are required to adjust their unit's cost base (and reduced cost base) annually to take into account any differences between their attributed amounts and the actual cash received. Any cost base adjustments will be disclosed on each resident investor's AMMA statement for each income year. Where the cost base of a resident investor's units is reduced to nil, any further net decreases to the cost base may result in a capital gain equal to that excess.
- 4.8** A disposal of units by a resident investor will give rise to a capital gain if the sale proceeds exceed the cost base of the units. Conversely, a capital loss will result if the reduced cost base of the units exceeds the sale proceeds.
- 4.9** If the resident investor is an individual, trust or a complying superannuation fund, they may be entitled to the CGT discount in the event a capital gain arises.
- 4.10** Under the CGT discount, a portion of any capital gain made on the sale is not taxed, where the resident investor has held those units in the Fund for at least 12 months (excluding the date of acquisition and disposal). For individuals and trusts the percentage of the capital gain exempted is 50% and for complying superannuation funds that percentage is 33.33%. No CGT discount is available to corporate investors.
- 4.11** Generally, any capital losses arising from the disposal of the investment may be used to offset other capital gains the resident investor may have derived. Net capital losses may be carried forward for offset against capital gains of subsequent years but may not be offset against ordinary income, subject to satisfaction of loss integrity rules.

**Tax File Number ("TFN") and Australian Business Number ("ABN") withholding**

- 4.12** Resident investors may elect to notify the trustee of their TFN or a relevant exemption from withholding tax with respect to attributed income of the Fund. If a resident investor is making this investment in the course of a business or enterprise, the resident investor may quote an ABN instead of a TFN.
- 4.13** In the event that the trustee is not so notified, tax will be automatically deducted at the top marginal rate plus the Medicare Levy, which is currently 47% on attributed income of the resident investor. The trustee is required to withhold and remit to the ATO until it has been provided with the TFN, ABN or exemption notification in respect of the resident investor.
- 4.14** The resident investor may be able to claim a credit in their income tax return for any tax withheld by the trustee.

## **5 Australian Taxation of Non-Resident investors**

### **Attribution of income**

- 5.1** We understand that the Fund will predominately invest in real estate assets located in the US. Such income should generally be considered foreign source income for Australian tax purposes. Any foreign source income derived by the Fund would generally not be subject to Australian withholding tax when attributed by the Fund to non-resident investors.
- 5.2** The trustee should generally withhold tax from any Australian source income attributed to a non-resident investor during the income year.
- 5.3** The rate of withholding tax on attributed income will depend on the type of income and the country of tax residence of the investor and any applicable double taxation agreement / exchange of information agreement. Non-resident investors should seek their own independent tax advice before investing, taking into account their particular circumstances.

### **Disposal of Units by Non-Resident investors**

- 5.4** Non-resident investors should not be subject to Australian tax on the disposal of units in the Fund unless the units are held by the investor in carrying on a business through a permanent establishment in Australia or the investor, together with its associates, hold directly or indirectly an interest of at least 10% in an Australian “land rich” entity (this is not expected to be the case given the investment profile of the Fund). The CGT discount should not be available in respect of any such gain made on the disposal of their units. Australian tax may apply in certain circumstances if the non-resident holds their units on revenue account.
- 5.5** We recommend that non-resident investors seek their own independent tax advice in relation to the tax consequences of the disposal of their units.

## **6 GST and Stamp Duty**

- 6.1** The acquisition of units in Fund by investors should not be subject to GST. The payment of attributed income from the Fund to investors should not be subject to GST. The disposal of units in the Fund by investors should not be subject to GST.
- 6.2** The Fund itself may not be entitled to recover all GST it incurs on issuances of units and on acquisitions. The extent of the GST recovery will depend upon the exact nature of the operations of the Fund.
- 6.3** No stamp duty implications should arise for investors in respect of their acquisition of units in the Fund.

## **7 Foreign Account Tax Compliance Act**

- 7.1** The Foreign Account Tax Compliance Act (“FATCA”) was enacted by the United States of America (“US”) in 2010. FATCA is aimed at improving compliance with US taxation laws by imposing on certain non-US financial institutions reporting obligations in respect of US citizen or US tax-resident Account Holders. On 28 April 2014, Australia and the US signed an intergovernmental agreement (“IGA”) to implement FATCA.
- 7.2** Broadly, under FATCA, the Fund is required to:
- (a) Register with the United States Internal Revenue Service (“IRS”);
  - (b) Collect and review information of certain investors (US residents, US tax residents or certain US-controlled entities) that are Reportable Accounts; and
  - (c) Lodge an annual FATCA report to the ATO (who passes this information to the IRS). In limited circumstances, failure to comply with FATCA obligations may result in the Fund being subject to a 30% US withholding tax on payment of income from certain US sources. Accordingly the Fund may request certain information from investors to enable the Fund to comply with its FATCA obligations.
- 7.3** The Fund will provide information about its FATCA status where required so that FATCA withholding is not applied to the relevant US income or gross proceeds.
- 7.4** If the Fund suffers any amount of FATCA withholding and is unable to obtain a refund for the amounts withheld, the trustee will not be required to compensate Investors for any such withholding and the effect of the amounts withheld will be reflected in the returns of the Fund.

## **8 Common Reporting Standard**

- 8.1** The Common Reporting Standard (“CRS”) is a standardised set of rules developed by the OECD for the collection, reporting and exchange of financial account information maintained by certain financial institutions that are held by foreign tax residents.
- 8.2** Australia has implemented the CRS, with effect from 1 July 2017, by signing the CRS Multilateral Competent Authority Agreement and by enacting provisions within its domestic legislation. Therefore, Reporting Australian Financial Institutions will be subject to due diligence procedures and reporting in respect of its account holders. Reporting is made to the ATO, which may then exchange this information with tax authorities in foreign jurisdictions where the account holder is a resident.



- 8.3** The information required to be provided under the CRS includes a foreign tax resident's name, address, jurisdiction of residence, taxpayer identification number, and date of birth, along with account numbers, payments made during the year and the account balance or value at year end (where the account is closed at year end, the closure must be reported).
- 8.4** It is expected that the Fund will be required to comply with the CRS. In this regard, Investors may be required to provide certification of tax residency. Penalties may apply if an Investor provides a false certification, and Investors may not be able to continue holdings units in the Fund if the appropriate certification is not provided.
- 8.5** The Fund will report information on certain investors to the ATO, which will in turn report this information to relevant foreign tax authorities in other participating jurisdictions. The trustee will also provide information about the Fund's CRS status when requested by other financial institutions. Unlike FATCA, there is no withholding that is applicable under CRS.
- 8.6** The Fund and the trustee will not be liable for any loss that an investor may suffer as a result of the Fund's compliance with CRS.