

## **Risk Factors**

### **1. Risks if the Extraordinary Resolution is Not Passed**

***The Issuer will likely be in default on the Notes and may be in default on substantially all of its other existing indebtedness.***

If the Extraordinary Resolution is not passed in the Consent Solicitation, the Issuer will likely not be able to pay the interest accruing on the Notes from 15 May 2016 onwards, including on the Interest Payment Date occurring on 15 November 2016. Any such non-payment of interest will (after the applicable grace period of five business days) constitute an Event of Default under the Notes. The occurrence of any such default may also trigger cross default and/or cross acceleration clauses in the Issuer's loan agreements relating to a substantial amount of the Issuer's other indebtedness that may allow the senior creditors to accelerate repayment on such other indebtedness, and enforce on the Issuer's assets that constitute those creditors' security for their respective indebtedness. It is unclear whether Noteholders will be able to recover any or all of their investments in the Notes in such circumstances.

As mentioned above, secured creditors may enforce / foreclose on the assets over which security interests have been granted. Noteholders and other unsecured creditors may also commence litigation against the Issuer and the Trust's subsidiaries, which may adversely affect the Issuer's ability to meet its obligations under the Notes, and which could also materially and adversely affect the Trust's business, financial condition, results of operations and prospects. Judgments obtained against the Issuer and the Trust's subsidiaries from such litigation could also be enforced against the unsecured assets of the Issuer and the Trust's subsidiaries.

The Issuer would also, in all likelihood, be unable to pay the Trust's debts as they fall due, and hence the Trust may be deemed to be insolvent and not able to continue as a going concern. In addition to the abovementioned risks of default, acceleration, enforcement and litigation, the Issuer would also be susceptible to issuances of statutory demands from the Trust's creditors, as well as winding up proceedings being taken out against the Trust by those creditors.

***Noteholders may not realise any recovery as a consequence of the acceleration of the Notes.***

Notwithstanding the acceleration of the Notes and the demand made on the Issuer to make payment of all amounts due under the Notes, it is likely that the Issuer would not be able to make such payment. Consequently, if the Trust were to be wound up, there are likely to be various consequences that would make it more likely for Noteholders to recover less than what Noteholders would have recovered if the Extraordinary Resolution had been passed.

For example, if customers of the Group begin to terminate contracts with the Group that are in effect, the Issuer would likely be subject to various liquidated damages, the Issuer would find it more difficult to collect its accounts receivables, and the Trust's contingent liabilities would likely crystallise. In addition, it would be difficult to sell the Trust's assets at commercially reasonable prices and terms.

Any winding up proceedings would also create a new class of creditors that do not currently exist, including financial advisory, banking, liquidation, accounting, legal and other professionals that would be involved in any winding up proceedings.

In addition, winding up proceedings may take a substantial time period to complete before payments to the creditors (if any) are declared, and there is no assurance that Noteholders would be able to recover in a reasonable time period all amounts, or a reasonable amount due to Noteholders, or at all.

***The possible returns to Noteholders resulting from the winding up of the Trust and its subsidiaries is likely to be significantly less than the Proposal.***

Any of the Trust's creditors may institute winding up proceedings to recover the debts owed to them. Other than the Noteholders, the Issuer's largest creditors are (i) the HSH syndicate (comprising HSH Nordbank AG,

Singapore Branch and DBS Bank Ltd) (the “**HSH Syndicate**”), (ii) the BNP syndicate (comprising BNP Paribas, ING Bank NV, Singapore Branch, The Bank of Nova Scotia Asia Limited, The Hongkong and Shanghai Banking Corporation Limited and Sumitomo Mitsui Trust Bank Limited, Singapore Branch) (the “**BNP Syndicate**”), and (iii) Commerzbank AG, Singapore Branch, all of whom have granted various loans and other financings that are secured over various vessels and other assets of the Trust and its subsidiaries. See “Appendix D – Company Information Memorandum – Restructuring and Material Indebtedness” for a summary of such security. These secured lenders may foreclose upon the security and sell or otherwise deal with such secured assets in accordance with the terms of the security documents governing such security. Any sale of such assets in these circumstances is likely to be at a lower amount than the amount a seller would have obtained were such sale to take place in circumstances where such seller is not in financial difficulties. Therefore, it is unlikely for there to be significant surplus funds available for distribution to unsecured creditors (including Noteholders) in a winding up of the Trust and its subsidiaries that would enable such creditors (including Noteholders) to recover in full all amounts owing to such creditors (including Noteholders).

The Issuer has not performed a liquidation analysis to compare the financial effects to Noteholders of the Proposal against the possible returns to Noteholders resulting from the winding up of the Trust and its subsidiaries. Therefore, no comparison of the terms of the Proposal against a winding up of the Trust and its subsidiaries is available. The only analysis the Issuer has made is to compare the assets and liabilities of the Trust on its consolidated balance sheet as of 30 June 2016. Based on such limited analysis, and an assumption of an estimated distressed liquidation asset value of approximately US\$100 million, Noteholders are not likely to recover any amount, and are likely to lose all of their investment in the Notes, upon the winding up of the Trust.

## **2. Risks if the Extraordinary Resolution is Passed**

***The Extraordinary Resolution is binding on all Noteholders, including the waiver of all claims against the Issuer.***

If passed, the Extraordinary Resolution will be binding on all Noteholders, even if a Noteholder did not vote for the Extraordinary Resolution. This includes all claims against the Issuer resulting from any breach of or Event of Default under the Notes Trust Deed and the Notes, which will be waived if the Extraordinary Resolution is passed.

***The effect of the Extraordinary Resolution may be limited or voidable if a winding up application is made subsequent to the consummation of the Consent Solicitation.***

It is possible that creditors of the Trust or its subsidiaries could commence winding up proceedings against the Trust or its subsidiaries after consummation of the Consent Solicitation, which could result in the consequences described below.

Singapore insolvency law allows the liquidator of a debtor to void and seek a “claw-back” of transactions entered into by the debtor under certain circumstances during specified periods prior to a winding up of the debtor (i.e. transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against the debtor).

- *Transaction at an undervalue* - Where a transaction is entered into by the debtor with another person where the consideration received by the debtor is significantly less than the value of the transaction. To be voidable, the undervalue transaction must be entered into within five years from the date of the winding up application.
- *Unfair preference* - Where a transaction is entered into by the debtor with one of its creditors which has the effect of putting that creditor in a position which, in the event of the debtor’s liquidation, will be better than the position that creditor would have been in if that transaction was not effected. To be voidable, the debtor must be shown to have been influenced by the desire to give the unfair preference, the debtor must be insolvent at the time of the unfair preference or insolvent as a consequence of the unfair preference, and the unfair preference must be given within six months from the date of the

winding up application (two years if the recipient is an “associate” as defined by the applicable statutes).

Therefore, on the application of the liquidator or any creditor or contributory of the Trust in a winding up proceedings, a Singapore court may, if it is satisfied that the affairs of the Trust have been conducted in a manner which gave rise to an undervalue transaction or an unfair preference, and that it is just and equitable to do so, order the Notes Trustee and/or the Noteholders to pay to the liquidator of the Trust the whole or part of any payments or consideration received, and an unravelling of the said transaction so as to restore the position that the Trust would have been in had it not entered into the said transaction.

A floating charge on the undertaking or property of the debtor created within six months of the commencement of a winding up of the debtor shall, unless it is proved that the debtor immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the debtor at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 5 per cent. per annum.

One of the consequences of a successful Consent Solicitation is the amendment of the Notes Trust Deed and the Notes and the issue of new Units as payment for the partial redemption of the Notes. We cannot assure you that the amendments contemplated by the Consent Solicitation will not be deemed by a Singapore court to be a voidable transaction as highlighted above in the event of a subsequent winding up of the Trust.

***The Issuer expects to be highly leveraged for the next several years and may not be able to generate sufficient cash flows to meet its debt service obligations, including payments under the Notes.***

The Trust is highly leveraged and has significant short-term liquidity requirements. As of 30 June 2016, the Trust had approximately US\$342.4 million of current borrowings and US\$12.3 million in non-current borrowings. If the Trust successfully implements its restructuring pursuant to the Proposal, the Trust will continue to have substantial indebtedness and expects to reclassify the outstanding principal amount of the bank borrowings from current borrowings to non-current borrowings. In addition, the Issuer may incur additional bank borrowings.

This substantial indebtedness will have important consequences for the Trust’s creditors and the Unitholders. The Trust will require substantial cash flow to meet its obligations under the restructured indebtedness, including the Notes. The Trust’s substantial indebtedness could adversely affect its results of operations and could have important consequences for Noteholders and for the Trust, including but not limited to:

- limiting the Trust’s ability to obtain necessary financing in the future for working capital, capital expenditures, debt service requirements or other purposes;
- requiring a substantial portion of the Trust’s cash flow from operations to be used for payments on its debt and therefore reducing its ability to reinvest its cash flow from operations in its business;
- limiting the Trust’s flexibility in planning for, or reacting to changes in its business and its ability to take advantage of future business opportunities;
- placing the Trust at a competitive disadvantage to certain of its competitors with less indebtedness or greater resources; and
- limiting the Trust’s ability to react to changing market conditions, changes in the shipping industry or economic downturns.

The occurrence of any one of these events could have a material adverse effect on the Trust’s business, financial condition, results of operations, prospects, and its ability to satisfy its obligations under the Notes and any of its other indebtedness.

The Issuer's ability to service its debt will depend on its future performance, which, in turn, depends on the successful implementation of its strategy and on financial, competitive, regulatory, technical and other factors, general economic conditions, demand and selling prices for the Trust's services, costs of fuel and other factors, many of which are beyond the Issuer's control. The Trust may not be able to generate sufficient cash flow from operations and future sources of capital may not be available to the Trust in an amount sufficient to enable it to service its indebtedness, including the Notes, or to fund its other liquidity needs.

If the Trust is unable to generate sufficient cash flow and capital resources to satisfy its debt obligations or other liquidity needs, it may have to undertake alternative financing plans, which may not be available on commercially reasonable terms or at all. Therefore, the Trust could face substantial liquidity problems and might be required to dispose of material assets to meet its debt service and other obligations. The Issuer's credit facilities contain restrictions on the Issuer's ability to dispose of the Trust's assets and the use of the proceeds of such disposition. The Issuer may not be able to consummate any dispositions or the proceeds from such disposition may not be adequate to meet any debt service obligations then due.

Claims of existing secured creditors of the Trust will have priority with respect to their security over the claims of unsecured creditors, such as holders of the Notes, to the extent of the value of the assets securing such indebtedness.

All of the Trust's bank credit facilities are secured. Claims of the secured creditors of the Trust will have priority with respect to the assets securing their indebtedness over the claims of holders of the Notes. Therefore, the Notes will be effectively subordinated to any secured indebtedness and other secured obligations of the Trust to the extent of the value of the assets securing such indebtedness or other obligations.

In the event of a foreclosure or winding up or other insolvency proceedings of the Trust, holders of secured indebtedness will continue to have prior claims to the assets of the Trust that constitute their collateral. Holders of Notes will participate on a *pari passu* basis with all other holders of the unsecured indebtedness of the Trust based on the respective amounts owed to each holder or creditor, in the remaining assets of the Trust.

If any of the secured indebtedness of the Trust becomes due or the creditors thereunder proceed against the assets that secure such indebtedness, the Trust's assets remaining after repayment of that secured indebtedness may not be sufficient to repay all amounts owing in respect of the Notes. As a result, Noteholders may receive less than holders of secured indebtedness of the Trust.

### **3. Risks Relating to the Units**

#### ***The sale or possible sale of a substantial number of Units in the public market could adversely affect the price of the Units***

Members of the Rickmers Group hold 300,729,185 Units (representing in aggregate approximately 34.19% of the total number of Units in issue) as at the Latest Practicable Date. The net asset value per Unit may be diluted if further issues are priced below the current net asset value per Unit as at the time of such issues. The RM Trust Deed contemplates that new issues of Units may occur and that the subscription price for such Units may be above, at or below the then prevailing net asset value per Unit. Where new Units are issued at less than the then prevailing net asset value per Unit, the net asset value of each existing Unit will be diluted.

#### ***There may not be an active or liquid market for the Units***

An active public market for the Units may not be sustained. The Trustee-Manager does not guarantee that a trading market for the Units will develop further or that there will be continued liquidity of that market for the Units. Although it is currently intended that the Units will remain listed on the SGX-ST, there is no guarantee of the continued listing of the Units. For example, the Trust may not continue to satisfy the listing requirements for business trusts. A failure to maintain the Trust's listing on the SGX-ST, or other securities markets, could adversely affect the market value of the Units.

***The price of the Units may decline after this Consent Solicitation***

The trading price of the Units will depend on many factors, including:

- the perceived prospects of the Trust's business and the container shipping market;
- differences between the Trust's actual financial and operating results and those expected by prospective investors and analysts;
- changes in analysts' recommendations or projections;
- changes in general economic or market conditions;
- the market value of the Trust's assets;
- the perceived attractiveness of the Units against those of other equity or debt securities, including those not in the container shipping industry;
- the balance between buyers and sellers of the Units;
- the future size and liquidity of the Singapore business trust market;
- any future changes to the regulatory system, including the tax system, both generally and specifically in relation to Singapore business trusts;
- the ability on the Trust's part to implement successfully the Trust's investment and growth strategies;
- foreign exchange rates; and
- broad market fluctuations, including weakness of the equity market and increases in interest rates.

For these reasons, among others, the Units may trade at prices that are higher or lower than the net asset value per Unit. To the extent that the Trust retains operating cash flow for investment purposes, working capital reserves or other purposes, these retained funds, while increasing the value of the Trust's underlying assets, may not correspondingly increase the market price of the Units. Any failure on the Trust's part to meet market expectations with regard to future earnings and cash distributions may adversely affect the market price for the Units. The Units are not capital-safe products and, if the market price of the Units declines, there is no guarantee that Unitholders can regain the amount originally invested. If the Trust is terminated or liquidated, it is possible that investors may lose all or a part of their original investment in the Units. In addition, the SGX-ST and other securities markets have from time to time experienced significant price and volume fluctuations that are not related to the operating performance of any particular company. These fluctuations may also materially and adversely affect the market price of the Units.

***Exchange rate fluctuations may adversely affect the value of the Units and any distributions for Singapore investors***

The Units will be listed and quoted on the SGX-ST in Singapore dollars. However, the Trust's revenue will be received in U.S. dollars, and the Trust's distributions will be declared in U.S. dollars, except that Unitholders who hold their Units through the CDP will receive distributions in the Singapore dollar equivalent of the U.S. dollar distribution declared. The Trustee-Manager will make the necessary arrangements to convert distributions declared in U.S. dollars into Singapore dollars. Fluctuations in the exchange rate between the U.S. dollar and the Singapore dollar will affect, among other things, the U.S. dollar value of the Singapore dollar price of the Units. For Unitholders who hold their Units directly through the CDP, the Singapore dollar value of the Trust's distributions will also be affected by exchange rate fluctuations between the U.S. dollar and the Singapore

dollar. For example, the Singapore dollar amount of distributions will decline if the value of the Singapore dollar increases against the U.S. dollar. In the event that U.S. dollar declines in value against the Singapore dollar, Unitholders will also have currency risk in the event that they seek to convert the Singapore dollar proceeds from the sale of their Units into U.S. dollars.

***Singapore laws contain provisions that could discourage a take-over of Rickmers Maritime***

The Trust is subject to the Singapore Code on Take-overs and Mergers (the “Code”) which contains provisions that may delay, deter or prevent a future take-over or change in control of the Trust. Under the Code, any person acquiring an interest, either individually or with parties acting in concert, in 30% or more of the voting rights in the Trust, may be required to extend a take-over offer for the Trust’s remaining voting Units in accordance with the Code. A take-over offer is also required to be made if a person holding between 30% and 50% inclusive of the Trust’s voting rights, either individually or in concert, acquires an additional 1% of the Trust’s voting rights in any six-month period. While the Code seeks to ensure an equality of treatment among Unitholders, its provisions may discourage or prevent certain types of transactions involving an actual or threatened change of control of the Trust and, as a result, may adversely affect the market price of the Units and the ability to realise any potential change of control premium.

***Foreign Unitholders may not be permitted to participate in future rights issues by the Trust***

The RM Trust Deed provides that in relation to any rights issue, the Trustee-Manager may, in its absolute discretion, elect not to extend an offer of Units under a rights issue to those Unitholders whose addresses are outside Singapore. The rights or entitlements to the Units to which such Unitholders would have been entitled will be offered for sale and sold in such manner, at such price and on such other terms and conditions as the Trustee-Manager may determine. The proceeds of any such sale, if successful, will be paid to Unitholders whose rights or entitlements have been thus sold, provided that where such proceeds payable to the relevant Unitholder are less than S\$10, the Trustee-Manager will be entitled to retain such proceeds as part of the trust property. The unitholding of the relevant Unitholder may be diluted as a result of such sale.