



# ***CR 2004/146 - Income tax: DB RREEF Office Trust - DB RREEF Trust - stapling arrangement***

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## Class Ruling

### Income tax: DB RREEF Office Trust – DB RREEF Trust – stapling arrangement

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#### **Preamble**

*The number, subject heading, **What this Class Ruling is about** (including **Tax laws, Class of persons and Qualifications** sections), **Date of effect, Withdrawal, Arrangement and Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

#### **What this Class Ruling is about**

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

#### **Tax laws**

2. The tax laws dealt with in this Ruling are:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
  - Division 6C of Part III of the ITAA 1936;
  - Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - section 104-70 of the ITAA 1997;
  - section 104-155 of the ITAA 1997;
  - section 109-5 of the ITAA 1997;
  - section 109-10 of the ITAA 1997;
  - section 110-25 of the ITAA 1997;
  - section 110-55 of the ITAA 1997;
  - section 112-25 of the ITAA 1997;
  - Division 725 of the ITAA 1997;
  - section 725-50 of the ITAA 1997;
  - section 725-55 of the ITAA 1997;

- Subdivision 727-E of the ITAA 1997; and
- section 727-360 of the ITAA 1997.

## Class of persons

3. The class of persons to which this Ruling applies are those owners of units in DB RREEF Office Trust who:

- hold those units on capital account;
- participated in the arrangement that is the subject of this Ruling; and
- are residents of Australia within the meaning of that term in subsection 6(1) of the ITAA 1936.

## Qualifications

4. The Commissioner makes this Ruling on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 22.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Ruling applies to the income year ending 30 June 2005.

## Withdrawal

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9. This Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the arrangement during the term of the Ruling.

## Arrangement

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10. The arrangement that is the subject of the Ruling is described below. In the description, the following acronyms are used to identify the entities involved:

DB RREEF Diversified Trust	DDF
DB RREEF Industrial Trust	DIT
DB RREEF Office Trust	DOT
DB RREEF Operations Trust	DRO
Deutsche Asset Management (Australia) Ltd	DeAM
DB Real Estate Australia Limited	DBRE
DB RREEF Funds Management Limited	DRFM
Deutsche trust group also known as DB RREEF Trust	DRT

11. The description of the arrangement is based on a number of documents. These documents, or the relevant parts of them, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- class ruling request from Greenwoods and Freehills Pty Limited (Greenwoods and Freehills) dated 27 August 2004;
- DOT trust deed dated 17 June 1998 (as amended up to 19 April 2001) (existing DOT constitution);
- Supplemental Deed Poll dated 13 September 2004 under which the existing DOT constitution is amended (DOT Supplemental Deed Poll);
- Deed Poll dated 15 September 2004 executed by DRFM in favour of the unitholders of DIT, DOT and DDF (Stapling Implementation Deed Poll);

- Explanatory Memorandum & Product Disclosure Statement in relation to a proposal to staple the units of DIT, DOT, DDF and DRO dated 27 August 2004 (Explanatory Memorandum);
- DOT Transaction Overview and Notice of Meeting dated 27 August 2004;
- submissions to Australian Securities and Investment Commission (ASIC) relating to proposed stapling of units in DIT, DOT, DDF and DRO prepared by Freehills dated 4 and 9 August 2004;
- notices lodged with ASIC in relation to Deutsche Group holdings in DDF, DIT and DOT;
- letter dated 10 September 2004 from Freehills;
- letter dated 23 September 2004 from Greenwoods and Freehills;
- notes of meetings between ATO, Greenwoods and Freehills and representatives of DIT, DOT and DDF (prepared by the ATO and confirmed by Greenwoods and Freehills) from 22 June 2004 to date; and
- e-mails from Greenwoods & Freehills from 22 June 2004 to date.

**Note 1:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

**Note 2:** certain terms used in this Ruling are also defined and explained in the Glossary of terms at Appendix A.

12. The arrangement that is the subject of this Ruling is referred to as 'the stapling arrangement'. The stapling arrangement is separate from the cash sale and exchange facilities arrangement which is the subject of a separate class ruling, Class Ruling CR 2004/143.

13. The stapling arrangement is available to entities that own DOT units on the stapling record date. The dates for this and other events described in this Ruling are set out below:

<b>Event</b>	<b>Date</b>
Effective date	30 September 2004
Last trading date	5 October 2004
Commencement of trading in stapled securities on a deferred settlement basis	6 October 2004

Stapling record date	12 October 2004
Issue date	19 October 2004

14. On 4 August 2004, the directors of DeAM (the then trustee of DIT and DOT) and the directors of DBRE (the then trustee of DDF) announced a proposal to combine the three trusts with a newly formed trading trust, DRO, by stapling units in each trust together, and certain other transactions. Before the stapling, the units in DIT were split (converted DIT unit) and the units in DOT were consolidated (converted DOT unit). DRFM then became the trustee of all the trusts in the new group known as DRT.

15. The directors of DeAM and DBRE determined the value contributed by the unitholders of DIT, DOT and DDF (stapling percentage) and their entitlement to DRT stapled securities (stapling ratio) as follows:

Trust	Stapling percentage	Stapling ratio	Approximate number of stapled securities per 100 existing units
DDF	38.8%	1.0000000000	100
DIT	19.8%	1.5110759679	151
DOT	41.4%	0.9317613987	93

The actual number of DRT stapled securities issued to individual unitholders was rounded to the nearest whole number.

16. All conditions precedent to the implementation of the stapling proposal detailed in clause 2.1 of the Stapling Implementation Deed Poll were satisfied or waived. The date on which the last of the conditions precedent is satisfied or waived is the effective date.

17. The stapling provisions in schedule 4 of the DOT Supplemental Deed Poll provide that the following steps are to be taken on the issue date as part of the stapling arrangement:

- original DOT units to be consolidated in the ratio of 0.9317613987 converted DOT units for each original DOT unit (with the total holding being rounded to the nearest whole number of converted DOT units);
- DOT to pay to unitholders a capital distribution of \$0.362 per converted DOT unit;

- DRFM, on behalf of each unitholder, to apply the distribution as the subscription for a converted DIT unit for \$0.16, a DDF unit for \$0.20 and a unit in DRO for \$0.002; and
- each converted DOT unit is to be stapled to a converted DIT unit, a DDF unit and a DRO unit to form a DRT stapled security.

**Note 3:** these steps are illustrated in the diagram in Appendix B.

18. The effect of the stapling is to restrict the transferability of the individual units that together make up the DRT stapled security. While the units are stapled, DRFM as responsible entity of a trust may not register a transfer or transmission of any unit other than as a part of the stapled security. In addition, the ordinary units in one trust will only be issued if there are an equivalent number of ordinary units issued in each of the other three trusts. DRFM as responsible entity of a trust may not issue any new class of units different from any currently issued units without the approval of an ordinary resolution of unitholders of each of the trusts.

19. Each of the individual units (that is, a converted DIT unit, a converted DOT unit, a DDF unit and a DRO unit) that together make up a DRT stapled security will retain its separate legal character.

### **Redemption of initial units in DRO**

20. DRO was established with an issue of units to an entity related to DRFM at an issue price of \$1.00 per unit (initial DRO units). Immediately following the issue of further DRO units as part of the stapling arrangement the initial DRO units were redeemed at the issue price of \$1.00 per unit. DRT have advised that the market value of an initial DRO unit did not exceed its issue price of \$1.00 during this time.

### **Trading business**

21. The implementation of the stapling and other transactions will result in DRO acquiring a 50% interest in DRFM which will enable it to control the affairs and operations of DRFM in respect of the carrying on of DRFM's trading business (being the provision of trustee and investment management services). As a result, DRO will be a public trading trust for the purposes of Division 6C of Part III of the ITAA 1936.

22. Under the arrangement and under all plans of which the arrangement is part, and in any event for the whole of the year of income in which the arrangement occurs, DRO will be the only trading trust (as defined in Division 6C of Part III of the ITAA 1936) in the group. No other entity in the group will either carry on a trading business or control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that person of a

trading business, whether under the arrangement, under any plans of which the arrangement is part, or in the year of income in which the arrangement occurs.

## **Ruling**

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### **Consolidation of original DOT units**

23. The consolidation of original DOT units did not result in any CGT event in Division 104 of the ITAA 1997 happening. Each unitholder is taken to have a cost base and reduced cost base for their converted DOT units based on the cost base and reduced cost base of their original DOT units and the stapling ratio for DOT (subsection 112-25(4) of the ITAA 1997).

### **Capital distribution**

24. The capital distribution to the DOT unitholders results in CGT event E4 in section 104-70 of the ITAA 1997 happening in respect of their converted DOT units. The consequences for each unitholder will depend upon the cost base of each of their units and other non-assessable payments made by DOT during the income year. CGT event H2 in section 104-155 of the ITAA 1997 will not apply in respect of the capital distribution.

### **Issue of units**

25. The first element of the cost base (section 110-25 of the ITAA 1997) and reduced cost base (section 110-55 of the ITAA 1997) of:

- each converted DIT unit acquired under the arrangement is \$0.16;
- each DDF unit acquired under the arrangement is \$0.20; and
- each DRO unit acquired under the arrangement is \$0.002.

26. Each converted DIT unit, each DDF unit and each DRO unit was acquired by DOT unitholders at the time they were issued (section 109-10 of the ITAA 1997).

27. The issue of converted DIT units, DDF units and DRO units did not result in CGT event H2 in section 104-155 of the ITAA 1997 happening to DOT unitholders.

## **Application of Division 725**

### ***Issue of converted DOT units***

28. The issue of converted DOT units did not have any direct value shifting consequences for DOT unitholders because section 725-50 of the ITAA 1997 is not satisfied.

### ***Issue of DRO units***

29. There are no consequences under Division 725 of the ITAA 1997 for the cost base and reduced cost base of the DRO units acquired by DOT unitholders under the stapling arrangement.

## **Stapling of units**

30. No CGT event in Division 104 of the ITAA 1997 happened as a result of the stapling of a converted DOT unit to a converted DIT unit, a DDF unit and a DRO unit.

## **Explanation**

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### **Consolidation of original DOT units**

31. Subsection 112-25(4) of the ITAA 1997 provides that, if two or more CGT assets are merged into a single asset where the beneficial ownership of the original assets and new assets remains the same, the merger does not result in the happening of a CGT event. It also provides that each element of the cost base and reduced cost base of the new asset (at the time of merging) is the sum of the corresponding elements of each original asset.

32. Accordingly, the consolidation of the original DOT units did not result in a CGT event happening.

33. Each DOT unitholder is taken to have a cost base and reduced cost base for their converted DOT units based on the cost base and reduced cost base of the original DOT units and the DOT stapling ratio (0.9317613987).

34. Subsection 109-5(1) of the ITAA 1997 provides that a CGT asset is generally acquired when it commences to be owned. The time of acquisition of converted DOT units is the time when they were originally acquired.

35. Where a DOT unitholder holds original DOT units with more than one acquisition date, ie, there are different parcels of original units, the converted DOT units should be allocated to a parcel having a particular acquisition date on a reasonable basis. The Commissioner accepts that a reasonable basis is to allocate the converted DOT units based on the number of original DOT units in a parcel as a proportion of the total original DOT units, with fractions of

converted DOT units being cascaded to the next parcel with a later acquisition date.

### **Capital distribution**

36. Under section 104-70 of the ITAA 1997, CGT event E4 happens if the trustee of a trust makes a payment to a unitholder in respect of their unit in the trust and some or all of the payment is not included in the unitholder's assessable income.

37. The consequences of CGT event E4 happening are determined on an annual basis, that is, having regard to all such CGT events that happen to a unit during an income year.

38. If CGT event E4 happens during an income year, a unitholder will make a capital gain if the total of the non-assessable payments made by the trustee during the income year in relation to a unit exceeds the cost base of the unit.

39. However, if the sum of the non-assessable payments is not more than the cost base of the unit, the cost base and reduced cost base are reduced.

40. The distribution paid by DOT on the issue date of \$0.362 per converted DOT unit will not be included in the assessable income of the unitholder. Therefore, the distribution by DOT under the stapling arrangement will result in CGT event E4 happening to each converted DOT unit.

41. Accordingly, the cost base and reduced cost base of each converted DOT unit, which may have been adjusted by previous tax deferred distributions, will be reduced by \$0.362. A unitholder whose cost base for the converted DOT unit is less than \$0.362 will make a capital gain to the extent of the difference.

### **Issue of units**

42. Sections 110-25 and 110-55 of the ITAA 1997 provide that the first element of the cost base and reduced cost base respectively of a CGT asset is the money paid in respect of its acquisition.

43. Owners of converted DOT units are taken to have paid \$0.16 for the acquisition of each converted DIT unit, \$0.20 for the acquisition of each DDF unit and \$0.002 for the acquisition of each DRO unit as a result of the distribution being applied by DRFM on behalf of each unitholder.

44. Accordingly, the first element of the cost base and reduced cost base of each converted DIT unit is \$0.16, each DDF unit is \$0.20 and each DRO unit is \$0.002.

45. If a trustee issues units in circumstances where no contract is entered into in respect of the acquisition, the units are taken to have been acquired at the time of issue (Item 3 in the table in section 109-10 of the ITAA 1997).

46. Accordingly, an owner of a converted DOT unit is taken to have acquired each converted DIT unit, each DDF unit and each DRO unit at the time they are issued, that is, on the issue date.

## **CGT event H2**

47. CGT event H2 in section 104-155 of the ITAA 1997 happens if:

- an act, transaction or event occurs in relation to a CGT asset owned by a taxpayer; and
- the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base.

48. CGT event H2 does not apply in relation to the cost base adjustment (paragraph 104-155(1)(b) of the ITAA 1997) or the issue of new units (paragraph 104-155(5)(d) of the ITAA 1997).

## **Application of Division 725**

### ***Issue of converted DOT units***

49. Division 725 of the ITAA 1997 may apply where there is a direct value shift under a scheme involving equity interests in an entity. For Division 725 to have consequences, paragraph 725-50(b) requires, amongst other things, that the 'controlling entity test' be satisfied.

50. The 'controlling entity test' is satisfied for value shifting purposes if an entity (the controller) controls the target entity at some time during the period starting when the scheme is entered into and ending when the scheme has been carried out (section 725-55 of the ITAA 1997).

51. Subdivision 727-E of the ITAA 1997 sets out the circumstances in which an entity will be regarded as controlling another entity for value shifting purposes.

52. Having regard to:

- all of the documents and any other material referred to in paragraph 11 of this Ruling; and
- all of the facts comprising the arrangement as described in paragraphs 10 to 22 of this Ruling,

it is considered that, for the purposes of section 727-360 of the ITAA 1997, DOT is a fixed trust for the period starting when the scheme is entered into and ending when it is carried out.

53. As a fixed trust, section 727-360 contains the relevant tests for whether an entity controls DOT. On the basis of the information provided regarding the beneficial ownership of DOT, it is considered that there is no entity that would be regarded as controlling DOT for

value shifting purposes under the tests in section 727-360 during this period.

54. Therefore, as the threshold requirement in paragraph 725-50(b) of the ITAA 1997 is not satisfied, Division 725 can have no consequences for the DOT unitholders in relation to the issue of converted DOT units to owners of DDF and DIT units on the stapling record date.

### ***Issue of DRO units***

55. If a direct value shift were to happen on the issue of DRO units to owners of DOT units on the stapling record date, the controlling entity test in section 725-55 would be satisfied as the initial unitholder would control the target entity DRO for value shifting purposes for a time during the scheme period before those units were issued. However, based on the information provided, there would not be any practical consequences for DOT unitholders under Division 725 for any such direct value shift.

### **Stapling of units**

56. One of the consequences of the stapling arrangement is to restrict the transferability of the individual units that together make up each DRT stapled security. Each individual unit (that is, a converted DIT unit, a converted DOT unit, a DDF unit and a DRO unit) will retain its separate legal character without any change in ownership.

57. Therefore, no CGT event in Division 104 of the ITAA 1997 happens as a result of the stapling of a converted DOT unit to a converted DIT unit, a DDF unit and a DRO unit.

## **Detailed contents list**

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58. Below is a detailed contents list for this Class Ruling:

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**Commissioner of Taxation**

15 December 2004

<i>Previous draft:</i>	- ITAA 1997 104-155
Not previously issued as a draft	- ITAA 1997 104-155(1)(b)
	- ITAA 1997 104-155(5)(d)
	- ITAA 1997 109-5
<i>Related Rulings/Determinations:</i>	- ITAA 1997 109-5(1)
CR 2001/1; TR 92/1; TR 97/16;	- ITAA 1997 109-10
CR 2004/143; CR 2004/144;	- ITAA 1997 110-25
CR 2004/145; CR 2004/147;	- ITAA 1997 110-55
CR 2004/148	- ITAA 1997 112-25
	- ITAA 1997 112-25(4)
	- ITAA 1997 Div 725
<i>Legislative references:</i>	- ITAA 1997 725-50
- TAA 1953 Pt IVAAA	- ITAA 1997 725-50(b)
- Copyright Act 1968	- ITAA 1997 725-55
- ITAA 1936 6(1)	- ITAA 1997 Subdiv 727-E
- ITAA 1936 Div 6C of Pt III	- ITAA 1997 727-360
- ITAA 1997 Div 104	
- ITAA 1997 104-70	

## ATO references

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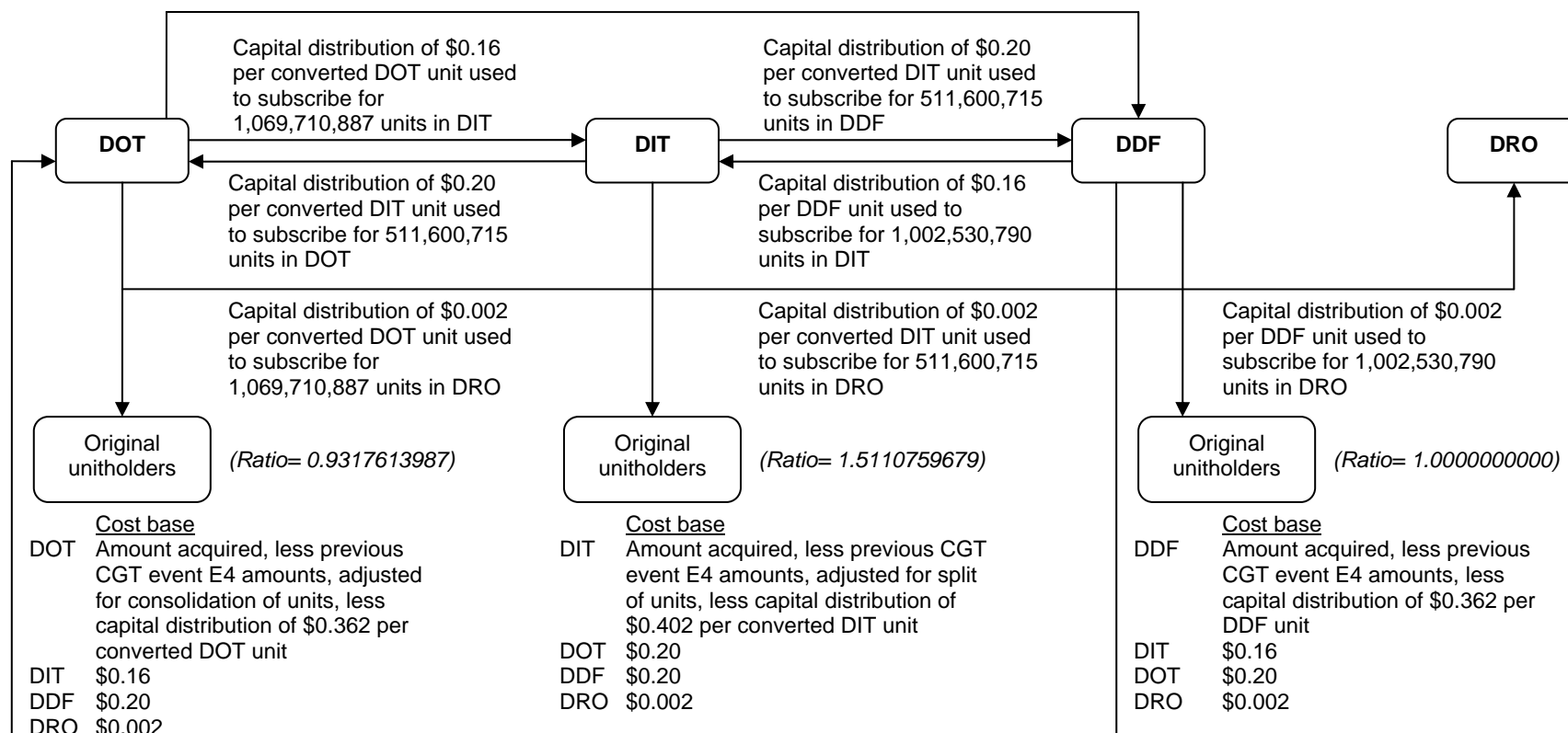
**Appendix A***Glossary of Terms*

<b><i>Ruling Terminology</i></b>	<b><i>Meaning</i></b>
<i>Certain terms used in this Ruling have the same meaning as corresponding terms in the Explanatory Memorandum in relation to a proposal to staple the units of DOT, DIT, DDF and DRO</i>	
DDF unit	DDF Unit
DIT unit	DIT Unit
DOT unit	DOT Unit
DRO unit	DRO Unit
effective date	Effective Date
last trading date	Last Trading Date
issue date	Issue Date
stapling record date	Stapling Record Date
<i>Other terms used in this ruling have the following meaning</i>	
original DIT unit	DIT unit owned on the stapling record date.
original DOT unit	DOT unit owned on the stapling record date.
converted DIT unit	DIT unit split in the ratio 1.5110759679 for each original DIT unit.
converted DOT unit	Original DOT unit consolidated in the ratio 0.9317613987 for each original DOT unit.

## Appendix B - DRT stapled group

Capital distribution of \$0.20 per converted DOT unit used to subscribe for 1,069,710,887 units in DDF

Issue date: 19 October 2004



Capital distribution of \$0.20 per DDF unit used to subscribe for 1,002,530,790 units in DOT

- DOT: DB RREEF Office Trust
- DIT: DB RREEF Industrial Trust
- DDF: DB RREEF Diversified Trust
- DRO: DB RREEF Operations Trust