

4 February 2013

**Report to the Investors**  
**of**  
**Equititrust Limited**  
**(Receiver Appointed)**  
**(In Liquidation)**  
**(Receivers and Managers Appointed)**  
**A.C.N. 061 383 944**  
**("the Company")**

I refer to my previous reports and write to and provide an update on the Liquidation of the Company.

#### Investigations and Litigation

- Creditors will note from my previous reports that my investigations indicated a number of potential claims;
- I am currently negotiating with Piper Alderman with respect to adopting a co-operative and combined approach to pursuing claims on behalf of the Company and/or the unit holders;
- Public Examinations are to be conducted on a number of individuals in July 2013, comprising primarily of current/past directors of the Company, its associated entities and its auditor;
- It is anticipated that the Public Examinations will assist in formulating and/or developing any potential claims.

#### Litigation Funding Deed

- To date the liquidation is currently unfunded;
- I am in negotiations with a litigation funder with respect to a draft Litigation Funding Deed. Once a Deed is in an acceptable form, it will be put to the Creditors or the Committee of Inspection or the Court for approval.

#### Amendment of Tax Returns of Unit Holders

- The possibility of amending unit holders individual tax returns has been explored by the Liquidators;
- The Hall Chadwick Tax Division has reviewed the position and provided their advice in this regard. See attached a copy of the advice as Annexure A;
- In summary, as per the constitution, at the end of each distribution period, the manager of the fund (the Company) could choose to exercise its discretion to treat income as a return on capital. Any such decision could only be made after consultation with the auditor and any decision is final.
- As the above conditions were not met, there is no scope to amend the financials and treat income as a return on capital.
- Should unit holders have any specific queries in relation to their tax position, please contact James Meli of the Hall Chadwick Tax division on (02) 9263 2600 or alternatively you may wish to seek your own advice.

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**Remuneration and Disbursements**

- Please see attached as Annexure B a copy of the remuneration incurred by my office for the month of December 2012. I will continue to provide monthly updates in relation to the remuneration incurred by my office.

Should you have any queries regarding the winding up of the Company please do not hesitate to contact either myself or Rory Gillespie of this office.

Yours faithfully,

  
BLAIR PLEASH  
LIQUIDATOR

## ANNEXURE A

4 December 2012

The Unit Holders  
Equititrust Income Fund  
[INSERT ADDRESS]  
[INSERT ADDRESS]

**By email – [INSERT ADDRESS]**

Dear Unit Holder,

**EQUITITRUST LIMITED AS TRUSTEE FOR THE EQUITITRUST INCOME FUND  
EVALUATION OF ABILITY TO RECLASSIFY INCOME AS RETURN OF CAPITAL**

We have reviewed the Deed Poll governing the establishment and operation of the Equititrust Income Fund ARSN 089 079 854 ("Fund") as amended from time to time ("Deed").

In the absence of a request on behalf of a unit holder to redeem some or all of their units in the Fund in accordance with clause 11 of the Deed, there is little in the Deed as to the specific power to, or procedure for, a return of capital by the trustee.

We note however that clause 8.2 of the Deed states:

**"8.2 Decision of the Manager Final**

The decision of the Manager in consultation with the Auditor as to whether any amount to be distributed to Members is Income or capital shall be final."

The term, 'Income' is defined in clause 1.1 as:

"all receipts from Authorised Investments which are paid into the Scheme Account."

In turn, clause 1.1 states that 'Distributable Income':

"means subject to clause 8.5 [which deals with the Manager's expenses] any amount determined by the Manager from time to time to be distributed to Members, including:

- (a) the net income of the Scheme;
- (b) other income of the Scheme; and
- (c) any amount of capital of the Scheme."

The term, 'capital' is not defined and therefore, takes its ordinary meaning.

In our view, if 'Income' covers all receipts from Authorised Investments (after expenses of the Fund), then the term, 'capital' must refer to the capital invested by unit holders rather than capital receipts of the Fund, although this is an interpretation of the Deed rather than something defined in the Deed. Further, any income of the Fund that was re-classified as capital for Trust law purposes would still constitute net income of the Fund for tax law purposes.

Further, clause 8.8 of the Deed states:

**"8.8 Members presently entitled to Distributable Income**

In accordance with clause 8.5, at the end of each Distribution Period the Members will be presently entitled (within the meaning of the Tax Act) to all Distributable Income derived during the relevant Distribution Period."

Implicit in the above, coupled with the very broad powers of the Manager as outlined in clause 4 of the Deed:

1. the Manager could return capital in its absolute discretion, although only after consultation with the Auditor;

2. the Manager's decision, after consultation with the Auditor, as to the split (if any) between income and capital in relation to a particular distribution was final.

From the information provided, the Manager did not exercise his discretion to treat any amount in any particular income year as consisting of, or including, a return of capital.

Based on the above, as there has not been a decision by the Manager in accordance with clause 8.2 to return capital, and no consultation with the Auditor to do so, there is **no scope to go back and re-cast the accounts to treat the income returned as a return of capital.**

If you have any questions please do not hesitate to contact our office.

Regards,  
**HALL CHADWICK**

**Gino Malacco**

## ANNEXURE B

**Equititrust Limited (In Liquidation) (Recievers and Managers Appointed)**  
**Remuneration Report: Calculation of Remuneration**  
**For the Period 1 December 2012 - 31 December 2012**

<b>Position</b>	<b>\$/hour (excls GST)</b>	<b>Total hours</b>	<b>Total \$</b>
Appointee	590.00	19.20	11,328.00
Associate	550.00	19.50	10,725.00
Accounting Partner	490.00	9.00	4,410.00
Accounting Associate	460.00	20.37	9,371.00
Manager	460.00	22.30	10,258.00
Audit Manager	370.00	29.80	11,026.00
Accounting Manager	370.53	2.33	863.33
Tax Supervisor	329.17	10.80	3,555.00
Senior 1	345.00	39.10	13,489.50
Senior 2	305.00	2.30	701.50
Intermediate 1	275.00	0.40	110.00
Intermediate 2	250.00	32.70	8,175.00
Junior	150.00	17.00	2,550.00
Administration Assistant	135.00	14.40	1,944.00
Accounting Intermediate	105.00	2.00	210.00
Accounting Junior	95.00	79.85	7,585.75
Administration Assistant	55.00	1.60	88.00
<b>TOTAL</b>		<b>322.65</b>	<b>96,390.08</b>
<b>GST (10%)</b>			<b>9,639.01</b>
<b>TOTAL (INCL. GST)</b>			<b>106,029.09</b>