

22 August 2013

**Report to Creditors**  
**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 to creditors in particular my reports dated 12 April 2012 and 27 June 2012 and provide an update on the Company.

I note that this report is prepared for the creditors of the Company, however the respective Receivers/Receivers and Managers of the funds (being the Equititrust Income Fund ("EIF") and the Equititrust Premium Fund ("EPF")) are in control of the winding up of those funds and the unit holders of the respective funds should review the latest reports for details in relation to the asset realisations/expected returns.

This report has been broken down into the following headings:

1. Current financial position
2. Update on the Funds
3. Investigations and Litigation
4. Application to Court
5. Receipts and Payments
6. Future updates

## **1 Current financial position**

Updated from the 27 June 2012 report I provide the following asset and liability position of the Company. The comments following the table should be read in conjunction with the comments in my previous reports to creditors.

Creditors will note that the amounts listed in the first column represent the Estimated Realisable Value ("ERV") as at 27 June 2012, whereas the second and third columns represent a high and low ERV as at the date of this report.

The ERV is the price that is expected to be obtained from the realisation of an asset, by a vendor who is compelled to realise with a sense of urgency. This is not the market or book value of the asset. Further, I note that the figures listed below are GST exclusive and I have not taken into account any future GST returns from input tax credits.

### **SYDNEY**

Level 29  
St Martin's Tower  
31 Market Street  
Sydney NSW 2000  
Australia

GPO Box 3555  
Sydney NSW 2001

Ph: (612) 9263 2600  
Fx: (612) 9263 2800

### **NEWCASTLE**

Ph: (612) 4969 5521  
Fx: (612) 4969 6059

### **PARRAMATTA**

Ph: (612) 9687 2100  
Fx: (612) 9687 2900

### **PENRITH**

Ph: (612) 4721 8144  
Fx: (612) 4721 8155

### **MELBOURNE**

Ph: (613) 8678 1600  
Fx: (613) 8678 1699

### **PERTH**

Ph: (618) 6557 6200  
Fx: (618) 9218 8950

### **BRISBANE**

Ph: (617) 3211 1250  
Fx: (617) 3211 1249

### **GOLD COAST**

Ph: (617) 5538 2322  
Fx: (617) 5526 8599

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Description	ERV	ERV (High)	ERV (Low)
	27-Jun-12	22-Aug-13	22-Aug-13
<b>Assets</b>			
Cash at Bank	-	635,403	635,403
Sundry Debtors	2,571,633	Unknown	Unknown
Other Receivables	625,192	1,044,906	395,792
<b>Total Assets</b>	<b>3,196,825</b>	<b>1,680,309</b>	<b>1,031,195</b>
<b>Liabilities</b>			
Liquidators Remuneration (20 April 2012 to 30 Nov 2012)	-	644,101	644,101
Liquidators Remuneration (1 May 2013 to 31 July 2013)	-	144,918	144,918
<b>Total Liabilities</b>	<b>-</b>	<b>789,019</b>	<b>789,019</b>
<b>Net Assets (Liabilities)</b>	<b>3,196,825</b>	<b>891,290</b>	<b>242,176</b>
Secured Creditors	17,136,498	7,929,156	7,929,156
<b>Balance for Unsecured Creditors</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>
Unsecured Creditors	69,627,335	80,808,429	80,808,429
Contingent Creditors (Unit holders)	-	Unknown	Unknown
<b>Return to Unsecured Creditors</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>

I refer creditors to my report dated 12 April 2012 and provide the following update in relation to the asset and liability position of the Company.

## 1.1 Assets

### 1.1.1 Cash at Bank (subject to asset realisations)

During my investigations into various aspects of the Company and its affairs my staff investigated the income tax returns lodged by the Company over previous financial years. In doing so they were able to determine that the Company may have a contingent asset in the form of prepaid income tax liability to the Australian Taxation Office ('ATO').

As per the information available from the ATO, Pay As You Go Instalments ("PAYGI") are a mechanism through which individuals and corporate entities can pay their income tax liability to the ATO periodically throughout a financial year as opposed to paying it at the end of the financial year. This is often prior to completing and lodging their income tax return for that year. Accordingly when the income tax return is completed and lodged, the instalments they have paid are applied against amounts owing under the lodged return.

Corporate entities that have an investment income greater than \$2 million, as in the case of the Company, must remit their income tax liability via the PAYGI option, i.e. they do not have the option to pay the income tax liability after lodgment of their tax return. The amount of the PAYGI is based upon a number of factors such as the latest income tax assessment and also how often the instalments are made.

In accordance with the above, during the 2010 financial year the Company made quarterly PAYGI as per the following dates and amounts:

Date	Amount Paid(\$)
22 October 2009	560,240
27 January 2010	337,914
22 April 2010	423,440
22 July 2010	756,083
<b>Total</b>	<b>2,077,677</b>

Accordingly these PAYGI could have been applied against the income tax liability of the Company upon lodgment of the 2010 income tax return however as at the date of appointment of the Administrators, the 2010 income tax return for the Company had not been lodged. As a result, the Company had a prepaid income tax liability of \$2,077,677 with the ATO as at the date of our appointment.

To the extent that monies are prepaid to the ATO, those monies are a corporate asset of the Company. To preserve this asset for the benefit of creditors of the Company, it was necessary for me and my staff to undertake tasks during the liquidation to investigate and verify the Company's tax return with respect to the year ended 30 June 2010 to be able to be in a position to finalise it prior to lodgement, including, without limitation:

- a) review and reconciliation of payments made to the ATO during the 2010 financial year and corresponding with the ATO in relation to same;
- b) review of draft tax return for the 2010 financial year;
- c) review of previous years' tax returns, including BAS Statements, and all other relevant documentation;
- d) preparation of various internal memoranda relating to the Company's tax position in the 2010 financial year;
- e) review of books and records relating to the impairment of loans which included:
  - i. a review and reconciliation of 13 loans; value of loans approximately \$12,500,000 (after write off by the Company), including the historical and current status of each borrower, whether the borrower went into administration and if so, when;
  - ii. sample testing loans to review the history and collectability. The testing included review of minutes of meetings of ETL credit committee, review of loan contract and amendments, analysis of interest calculations on loan statements (where available), and reviewing historical property valuations;
  - iii. gathering evidence in relation to the default of loans, such as searching through emails and correspondence in relation to defaults;
  - iv. researching and reviewing current taxation legislation regarding the deductibility of loans not collectible. In addition research was conducted and advice given on the treatment of the distribution to unit holders to determine possible reallocation as capital distribution;
  - v. reviewing KPMG audit work papers, and the Company's internal workings in relation to the tax calculations and bad debts for 2010;
  - vi. the write off of interest on loans as relates to the tax return for the financial year ended 30 June 2010; and
- (f) preparation and lodgment of the Company's tax return for the financial year ended 30 June 2010.

As a result of the above tasks being undertaken, I lodged the Company's income tax return for the year ending 30 June 2010 on 15 November 2012, noting that the Company had incurred a taxable loss of \$3,490,118 during that financial year which was attributable to the following:

- (a) the inclusion of impairment of loans as at 30 June 2010 as a deduction;
- (b) the write off of debt owed by various borrowers on mortgage loans;
- (c) the write off of the accrued interest on the mortgage loans; and
- (d) the write off of the EPF management fee and return on subordinated units.

As the Company did not have any income tax liability for the year ending 30 June 2010, the PAYG Instalment payments should have been refunded to the Company.

After lodging the return, my staff spent a considerable amount of time liaising with the ATO regarding payment of the refund. As such, the following actions were undertaken by my office:

- Telephone conversations with representatives of the ATO in relation to the lodgement and file notes of conversations;
- Internal meetings in relation to the appropriate action in order to progress the payment of the refund;
- Considered implications of lodging outstanding returns of the Company and the funds for which the Company is the responsible entity;
- Research into the ability of the ATO to withhold the refund on the basis of outstanding lodgements;
- Drafted and dispatched correspondence to the ATO in relation to their ability to withhold the refund on the basis of outstanding lodgements;
- Liaised with the ATO in relation to our correspondence;
- Sought legal advice in relation to the Company's position;
- Instructed Thomsons Lawyers to issue correspondence to the ATO in relation to the outstanding refund;
- Reviewed and authorised draft correspondence to the ATO from Thomsons;
- Provide bank account details to the ATO.

The refund was ultimately paid into the Company's Liquidation account in the amount of \$2,240,336.70 on 15 March 2013, which included a provision for General Interest Charge which had accrued as a result of the delayed payment of the refund.

Following receipt of the refund, I have proceeded to discharge various outstanding liabilities incurred during the Administration and Liquidation periods. Creditors are advised that a Summary of Receipts and Payments for the period of my appointment is annexed to this report.

#### 1.1.2 Sundry Debtors

Creditors will recall from my previous reports that this amount relates to the following:

- Yield earned on the Company's investment in EIF and EPF;
- Scheme expenses incurred in work completed on the funds.

Correspondence was issued to the Court appointed Receiver with respect to payment of the amount outstanding from EIF. The constitution of EIF provides for the indemnification of scheme expenses incurred by the Company in its capacity as the Responsible Entity of the respective funds.

In response, the Court appointed receiver outlined his position in regards to these amounts as follows:

- No management fee is payable to the Company by the EIF for the 2011 financial year as it was waived by a previous board of directors;
- The management fee is only payable if interest payments are being made to investors and all payments during the 2011 financial year were capital in nature; and
- The EIF is actually a creditor of the Company in the amount of \$537,656.57 (once the management fee is reversed).

Further information in this regard is available in section 3 of this report.

#### 1.1.2 Other Receivables

Other receivables include the following items and amounts as per the management accounts and investigations:

Item	ERV (Low) (\$)	ERV (High) (\$)
Billed Disbursements	Nil	255,366
Investment in EIF	3,834	5,624
Investment in Sophisticated Fund	391,958	783,916
<b>Total</b>	<b>395,792</b>	<b>1,044,906</b>

#### Billed Disbursements

Creditors will recall that at the major meeting of creditors held on 20 April 2012, I indicated that I would continue to negotiate with the Court appointed Receiver of the EIF with respect to payment of the billed disbursements however, in the event that negotiations between the Court appointed Receiver and my office did not achieve a commercial outcome, I would seek directions from the Court. Please refer to section 3 of this report in for an update in this regard.

#### Investment in EIF

Please refer to section 2.1 for an update on the EIF and I note that this amount is based on the estimated return from the Company's unit holding in the fund, as per the Court appointed Receiver's latest report to unit holders.

#### Investment in Sophisticated Fund

Please refer to section 2.3 for an update on the Sophisticated fund.

### 1.2 **Liabilities**

#### 1.2.1 Liquidators Remuneration

I advise that approval was sought from the Committee of Inspection ("COI") for my remuneration for the period of the Liquidation to 30 November 2012 in the amount of \$644,101. As the remuneration was not approved by the COI, I made an application to the Court for approval of my remuneration for this period. As at the date of this report, I am awaiting confirmation of a hearing date.

Furthermore, a meeting of the COI was held on 18 April 2013 to consider the Liquidators remuneration for the period 1 December 2012 until 31 March 2013. At the meeting, the remuneration of the Liquidators for the period 1 December 2012 to 31 January 2013 was approved and a process agreed upon by the Liquidators and the COI in order to consider the approval of the Liquidators remuneration going forward.

A meeting of the COI was held on 26 July 2013 to consider the Liquidators remuneration for the period 1 February 2013 to 30 April 2013. The amount listed in the above table for the period 1 May 2013 to 31 July 2013 will be subject to further consideration by the COI.

### 1.2.2 Secured Creditors

As per my report to creditors dated 27 June 2012, there were secured creditor claims in the order of approximately \$17m. I provide the following update in relation to the previous and current position of the respective secured creditors:

Creditor	Debt 27 Jun 12 (\$)	Debt 24 May 2013 (\$)	Security	Receivers	Likely to be Discharged
National Australia Bank	8,400,000	1,129,441	Company	Ferrier Hodgson	Expected to be paid in full
Commonwealth Bank of Australia	1,136,783	Nil	N/A	N/A	N/A
Bank of Scotland International	6,799,715	Nil	N/A	N/A	N/A
MS Asia Debt Acquisition	Nil	6,799,715	EPF	Worrells	Subject to Recoveries
Capital Finance Corporation	800,000	Nil	N/A	N/A	N/A
<b>Subtotal</b>	<b>17,136,498</b>	<b>7,929,156</b>			

#### *National Australia Bank ('NAB')*

Creditors will be aware from the latest updates provided by the Court appointed Receiver that various payments have been made by the Court appointed Receiver (from asset realisations in the EIF) to reduce the NAB debt. I understand the remainder of the debt owed to the NAB is in the order of \$1,129,441 and relates to bank guarantees for local council bonds securing performance under the terms of the relevant development approvals.

Unfortunately due to the nature of a guarantee, it is difficult to provide an estimated timeframe for the release of the guarantee or an estimate of the quantum of any claim under the guarantee and therefore satisfaction of the secured debt owed to the NAB.

As per the Court appointed Receiver's report dated 19 July 2013, I understand Mr. Whyte is in the process of finalising a deed of agreement for works required to be undertaken in the Tweed Shire Council for the release of one of the Guarantees. Furthermore, the report indicates that Mr. Whyte is in discussions with the Ipswich City Council in relation to the other Guarantees.

#### *Commonwealth Bank of Australia ('CBA')*

This debt related to the two bank guarantees discussed above. As I understand it, any potential debt to the CBA has been assigned to the National Australia Bank. As a result of the debt being satisfied, the CBA are no longer listed on the Company's register of charges as having a security interest in the Company.

#### *MS Asia Debt Acquisition Limited ('MS') / Bank of Scotland International ('BOSI')*

The debt owed to BOSI via the EPF was assigned to MS circa August 2012. Please refer to the comments in section 3.2 of this report with respect to an update on the EPF. At this stage it seems unclear whether or not the debt owed to MS will be satisfied.

#### *Capital Finance Corporation ('CFC')*

CFC was recorded on the ASIC register of charges as at the date of my appointment. I understand this debt relates to a partnership by the name of 'Connect the World' which was in limited operation some years prior to the appointment of Administrators.

I have issued correspondence to CFC requesting details of their security, copies of any agreements/contracts and details of the debt owed to them however am yet to receive a response nor has there been any indication that any debt remains outstanding. Furthermore, I have been

advised that prior to my appointment the security was to be released, however the process was not finalised. For the purposes of the above table I have not included any claim by CFC.

Creditors will note that I have spent a considerable amount of time liaising with secured creditors and their appointed insolvency practitioners in relation to the debts owed by the Company to the respective secured creditors.

### 1.2.3 Unsecured Creditors

Utilising the proofs of debts submitted by creditors I have estimated unsecured creditor claims to be \$72,408,429. A summary of claims of unsecured creditors is set out as follows:

Unsecured Creditor Name	Amount (\$)
ATO	46,037
Blacks Beach Cove Pty Limited	25,500
Cardno (formerly Humphreys Reynolds Perkins)	5,771
Cassowary Coast Regional Council	175,033
Cavallo Trading Pty Limited	2,805,934
Crackers Corporation Pty Limited	25,000,000
Deventer PR + Communications Pty	1,584
Equititrust Income Fund (Receiver Appointed)	537,657
Estate of Raymond Colin Davis, Deceased	128,209
Fidante Partners Ltd ATF Howard Mortgagee Fund	2,187,664
Freda Davies	15,000
Gadens Lawyers	16,879
Graham Hayes	3,700,534
Hunter Premium Funding C/ - Allianz Australia Insurance Limited	4,385
Jillmary Roberts	100,000
KPMG	137,500
Len George Nominees Pty Ltd	472,610
Len George Nominees Pty Ltd No 2	105,904
McCullough Robertson Lawyer	3,980
MM Capital Pty Limited (In Liquidation)	205,033
MM Holdings Pty Limited	10,766,519
Nyst Lawyers	15,005
RPS australia East Pty Ltd	2,830
Tucker & Cowen Solicitors	501,553
Westpac Banking Corporation	25,447,309
<b>Total</b>	<b>72,408,429</b>

This figure is subject to variation pending the receipt of final proofs of debt and adjudication of same.

My staff have undertaken the following work in this regard:

- Reviewing the claims received from creditors;
- Reviewing POD and supporting documentation;
- Liaising with creditors with respect to claim;
- Reviewing the Company's records in relation to the claims;
- Seeking legal advice in respect of the claims;
- Reviewing the constitution to determine right of indemnity from the EIF;
- Internal file notes in relation to the claims and any issues;
- Liaise with the Court appointed receiver in relation to the claims and the right of indemnity from the EIF.

### 1.2.3 Contingent Creditors

I refer to the comments in my previous reports with respect to the claims of unit holders and note that to date a number of unit holders have submitted claims in the Liquidation of the Company by way of damages, resulting from a decrease in unit value.

I note that whilst I have not admitted nor rejected any of the claims received (for distribution purposes), it appears as though the unit holders may have a valid claim against the Company in this regard.

Please refer to the comments in section 4 of this report with respect to an update on the Class Action by Piper Alderman.

## 2 **Update on the Funds**

### 2.1 Equititrust Income Fund (Receiver Appointed) ('EIF')

As committee members would be aware, David Whyte of BDO was appointed Receiver of the EIF by the Court and is in control of the winding up of the fund. Mr Whyte provides regular updates via reports posted on [www.equititrust.com.au](http://www.equititrust.com.au). Below is an extract from Mr Whyte's latest report dated 19 July 2013:

	Low \$000's	High \$000's
Cash at Bank	5,692	5,692
Total estimated selling prices	26,845	33,045
<b>Subtotal</b>	<b>32,537</b>	<b>38,737</b>
Less:		
Bank Guarantees	-1,100	-1,100
Selling costs- marketing and agents fees (3.5%)	-940	-1,157
Other loan	-3,394	-3,394
Land Tax and Rates	-4,397	-4,397
Other unsecured creditors	-800	-400
Receiver's Fees	-182	-182
<b>Subtotal</b>	<b>-10,813</b>	<b>-10,630</b>
<b>Estimated net amount available to investors as at 30 June 2013</b>	<b>21,724</b>	<b>28,107</b>
Total investor units	193,916	193,916
<b>Estimated return in the dollar</b>	<b>\$0.11</b>	<b>\$0.14</b>

Committee members will note that the estimated return in the dollar has changed from a low of \$0.15 to a high of \$0.22 as per the Court appointed Receivers' report dated 9 November 2012.

The above table does not take into account future operating costs, interest on bank loans until repaid in full, future fees of the Court Appointed Receiver, rates and land tax. The Court appointed Receiver has also indicated that he expects to commence interim distributions to investors in September 2013 (3 months later than the previous estimate of June 2013).

Unit holders of the EIF are encouraged to contact Andrew Want of BDO on (07) 3237 5999 or [andrew.want@equititrustincomefund.com.au](mailto:andrew.want@equititrustincomefund.com.au) with any queries they may have in this regard.



## 2.2 Equititrust Premium Fund ('EPF')

As noted in my previous reports, I understand the debt owed to BOSI was assigned to MS Asia Debt Acquisition Limited ("MS") who subsequently appointed Michael Richard Peldan and Christopher Richard Cook of Worrells as Receivers and Managers of the EPF.

I issued correspondence to Mr. Peldan and Mr. Cook of Worrells on 9 May 2013 requesting the following information:

1. Details of any asset recoveries conducted by the Receivers and Managers during their appointment;
2. Details of any future asset recoveries to be conducted by the Receivers and Managers;
3. Details of the receipts and payments made by the Receivers and Managers;
4. Details of the debt owed to MS;
5. Details of the estimated surplus (or shortfall) of funds available once the debt owed to MS has been satisfied;
6. Details of any legal proceedings being undertaken by the Receivers and Managers.

I received a response from Worrells on 14 May 2013 indicating that they "could not release details of the asset recoveries that have been made during the receivership" and it is unknown whether there will be a surplus of funds available once their appointor's debt has been satisfied.

As such, unfortunately I am unable to provide an update with respect to the current status of the Receivership of the EPF.

## 2.3. Sophisticated fund

I refer to the comments in my previous reports with respect to the Sophisticated fund and the expected returns from the investments. I advise that I have continued to monitor the terms of the Deed of Settlement with Rosea Pty Limited.

The final payment pursuant to the Deed of Settlement was due to be paid on 17 June 2013 however a meeting was held on 5 June 2013 (without my knowledge) between representatives of the Court Appointed Receiver, the Receivers and Managers of the EPF and the borrower.

Following the meeting, I was informed that the payment would not be made and a proposal for the repayment of the settlement sum would be provided by 14 June 2013. I have requested that the Liquidators be kept informed of any negotiations in this regard. To date, I have not received a response or been provided with any proposals.

I note however that the Company may be required to share the funds with an entity by the name of Shareholder Pty Limited as that entity funded 50% of the advance made by the Sophisticated Fund. The apportionment of funds recovered will be determined at a later date, however for the purposes of the above table I have provided a range of realisation.

## 3 **Application to Court**

I refer to comments earlier in this report with respect to an application to Court for guidance on the scope of the Company's indemnity from EIF pursuant to the constitution. In particular, a determination of whether the Company is indemnified for the billed disbursements and other costs incurred in relation to the EIF. This indemnity includes various creditors of the Company and also the remuneration of the Administrators with respect to tasks completed for the benefit of unit holders or in the capacity of the Company being the RE of the EIF.

In this regard, an application was made to the Supreme Court of Queensland ("the Court") on 5 October 2012 seeking direction on the following issues:

1. The extent to which the Administrators (now Liquidators) may seek to recover Administration remuneration and expenses (in respect of acting as RE of the EIF) from the assets of the EIF.
2. The reimbursement and indemnification of liabilities incurred by the Company under the services agreement dated 20 December 2011 ("service agreement") as negotiated by the court appointed Receiver between the Company, GCP (HQ) Pty Limited ("service provider"), ECG Administration Pty Ltd (In Liquidation) ("ECGA") and himself as Receiver to facilitate the winding up of EIF and therefore continued trading of the Company.

Creditors are advised that the application was deferred whilst my office dealt with the Proof of Debt ("POD") submitted by the EIF in the Liquidation of the Company. In this regard, Thomsons lawyers, under my instructions have continued to liaise with the legal representatives of the Court appointed Receiver in relation to the POD.

#### 4 Investigations and Litigation

Creditors are advised that my investigations into the Company's affairs indicate the following potential claims:

- Unfair preferences:
  - Please refer to my report dated 12 April 2012 for further discussion surrounding the potential unfair preferences and the recipients of same.
- Uncommercial Transactions:
  - Waiver of management fee;
  - Transactions with Tucker and Cowan;
  - Transactions with MM Holdings.
- Breaches of directors duties:
  - Waiver of management fee;
  - Transactions with Tucker and Cowan;
  - Transactions with MM Holdings.
- Insolvent trading:
  - Please refer to my report dated 12 April 2012 for further discussion surrounding insolvent trading.

Further to the claims discussed above, creditors will be aware of the class action being undertaken by Amanda Banton of Piper Alderman by way of a claim for damages on behalf of unit holders against the directors of the Company arising from the following:

- Breach of fiduciary duties:
  - Failure to act in the best interests of unit holders;
  - Excessive borrowing;
  - Excessive returns paid on subordinated units.
- Breach of trust:
  - Breaches of the Constitution;
  - Imprudent investments;
  - Defaulting mortgage re-negotiations.
- Breaches of the Corporations Act 2001 (Cth):
  - Continuous disclosure.
- Negligence:
  - Conduct of the management of the EIF;

- Lack of due diligence.
- Misleading and deceptive conduct:
  - Misleading statements in the Prospectus registered 10 December 1999 and subsequent prospectuses;
  - Misleading statements in the product disclosure statement;
  - Misleading statements in the financial reports.

Similar claims are available to be brought by the Company via the Liquidators. It is my opinion that having one claim would provide greater efficiency and reduce costs (compared to the potential costs and complications associated with two separate claims). As such, I engaged in preliminary negotiations with Ms. Banton with respect to adopting a co-operative and combined approach to pursue any claims on behalf of the Company and/or the unit holders. This is discussed further in section 4.2 of this report.

#### 4.1 Claim against the former auditor - KPMG

Creditors may be aware that prior to the appointment of Administrators, KPMG were the auditors of the Company. KPMG recommended an impairment of various loans of the Company and the Funds for which the Company was the RE in the amount of \$167,510,994 as at 30 June 2011.

According to the Australian Accounting Standards Board ("AASB") 136, an impairment loss is the amount by which the carrying amount of an asset or a cash-generating unit exceeds its recoverable amount.

It has been suggested that the loans should have been impaired earlier in order to avoid the provision of information to investors which may have been misleading or deceptive. As a result, KPMG may not have performed their duties in a proper manner and in accordance with the terms of their engagement.

Based on such information, I conducted preliminary investigations into the audit evidence and the conduct of the audit as a whole (i.e. not limited to the abovementioned impairment) in order to determine the adequacy of the audit process. I understand Piper Alderman is also actively investigating this claim for the benefit of unit holders.

The reasons for conducting these investigations were as follows:

1. To assist in establishing a claim against KPMG for a breach of contract (as discussed earlier in this section);
2. The potential to change the treatment of the payments to the unit holders (i.e. the payments may be considered return on capital rather than income, i.e. interest). If applicable, unit holders may have been in a position to amend their tax returns and potentially receive a refund from the ATO

The investigations of my staff concluded that at the time of the payments being made to unit holders, the payments were not treated as consisting of, or including, a return to capital. Furthermore, the Constitution provides that any decision made in relation to distribute income or capital to the unit holders is final. As such, there is no scope to go back and re-cast the accounts to treat the income returned as a return of capital

In the process of investigating this issue, my staff reviewed various files, including, but not limited to the following:

- The Company's audit files for 2006-2011;
- The Company's AFSL files for 2006-2011;
- Financial information and documents for 2006-2011;
- Documentation relating to the independence of the auditors;

- Various work papers, notes, files notes, verification documents, impairment documents, assessment of compliance.

Creditors are advised that staff members within the Hall Chadwick Audit team utilised the books and records of the Company in order to review the conduct of KPMG's audit and provide a preliminary report based on their findings.

A summary of the tasks conducted by the Hall Chadwick Audit team are as follows:

- Reviewing and analysing the financial statements for the years ended 30 June 2008, 30 June 2009, 30 June 2010 and 30 June 2011 in order to understand and identify potential issues in relation to possible audit deficiencies;
- Identifying relevant information from 15 storage boxes of documentation held by my office in order to make a preliminary assessment of expected documents which ought to have been inspected and documented in the KPMG audit files;
- Reviewing an external hard drive containing electronically imaged data from the Company's server (approximately 1 terabyte in size) in order to identify any information which may be relevant to assess the adequacy of audit procedures undertaken by KPMG;
- Reviewing and identifying specific areas of interest to request information from KPMG.

Furthermore, my staff continued to liaise with the Hall Chadwick Audit team in order to formulate a list of documents for the purposes of the examination summons and subsequent amended summonses to be issued to KPMG.

Following an exchange of correspondence between Thomsons Lawyers and KPMG's legal representatives, KPMG have made an application to set aside the examination summons which was heard on Wednesday, 29 May 2013.

Thomsons Lawyers acted on our behalf in respect of the proceedings with Mr. Craig Wilkins of Counsel. I note that at this hearing an agreement was reached between the parties as to which documents would be produced by KPMG. A summary of the documents to be provided includes:

- A copy of the audit files (including the audit files relating to the Australian Financial Services License) from the financial years ended 30 June 2005 onwards;
- A copy of any letters of engagement and retainer agreements between KPMG and Equititrust since KPMG's appointment as auditor of Equititrust in or about 2001.

Furthermore, the Liquidators are provided with the liberty to issue a further notice for further documents should the need arise. The date for the production of these records has been determined to be 23 July 2013.

#### 4.2 Public Examinations

On 7 November 2012 I sought an order pursuant to Section 596A and Section 596B of the Act for the Court to issue examination summonses to the individuals listed below. The table below is a summary of the individuals the Liquidators are examining and the claims in respect of which they may be able to provide information:

*This space has been left blank intentionally*

Name	Position	Period	Purpose of Examination
Mr. Mark McIvor	Director	21 Nov 2011 - Current	<ul style="list-style-type: none"> <li>• Uncommercial Transactions;</li> <li>• Breaches of directors duties;</li> <li>• Insolvent trading;</li> <li>• Breach of fiduciary duties;</li> <li>• Breach of trust;</li> <li>• Breaches of the Corporations Act 2001 (Cth);</li> <li>• Negligence;</li> <li>• Misleading and deceptive conduct;</li> <li>• Explore the claim against KPMG as discussed in section 4.1 above.</li> </ul>
Mr. Ross Honeyman	Former Director	21 Nov 2011 - Current	<ul style="list-style-type: none"> <li>• Uncommercial Transactions;</li> <li>• Breaches of directors duties;</li> </ul>
Mr. David Kennedy	Former Director	14 May 10 – 14 Jun 11	<ul style="list-style-type: none"> <li>• Insolvent trading;</li> <li>• Breach of fiduciary duties;</li> </ul>
Mr. David Tucker	Former Director	3 Sep 10 – 11 Oct 11	<ul style="list-style-type: none"> <li>• Breach of trust;</li> <li>• Breaches of the Corporations Act 2001 (Cth);</li> </ul>
Mr. Craig Treasure	Former Director	12 Oct 10 – 16 Oct 11	<ul style="list-style-type: none"> <li>• Negligence;</li> </ul>
Mr. John Goddard	Former Director	12 Oct 10 – 17 Oct 11	<ul style="list-style-type: none"> <li>• Misleading and deceptive conduct;</li> <li>• Explore the claim against KPMG as discussed in section 4.1 above.</li> </ul>
Mr. Paul Steer	Auditor	6 June 2011 - Current	Explore the claim against KPMG as discussed in section 4.1 above

The examination process may not be limited to those individuals identified above. We have initially determined to conduct examinations of the current and former directors as they were responsible for the affairs of the Company and also the auditor (as discussed above). The examination process may identify other individuals who ought to be examined (such as the Company's former accountant, legal advisor, key senior staff or members of the loan approval committee). If this is the case, such opportunities will be explored by the Liquidators and/or Piper Alderman as the case may be.

The Court Examination summons also contains a subpoena to produce various books and records. Although the Liquidators have obtained a significant amount of the Company's electronic and hard copy files, it is prudent to make such a demand to avoid relevant documents remaining undiscovered. The Liquidators office is in the process, in conjunction with our solicitors and legal counsel, of formulating a specific line of questioning for the parties to be examined with reference to the records already obtained and expected to be received pursuant to the subpoena.

The abovementioned claims will be considered and brought on a commercial basis for the benefit of creditors. Whilst the examination process is critical to gathering the required information and establishing the claim, it is likely to be a time consuming, and therefore costly exercise.

As creditors would be aware there are limited assets in the liquidation and a significant opportunity for a return to creditors is from pursuing the above legal actions. Furthermore, given the current financial position, the Company is not in a position to fund the ongoing litigation in this matter. As such, I anticipate that litigation funding will be required to pursue the actions.

I advise that I have engaged in preliminary negotiations with a litigation funder to seek the required funding. In these circumstances, the litigation funder will indemnify the Liquidator against any adverse costs order and fund the examinations and/or any actions resulting therefrom. If the litigation is successful, the litigation funder receives a priority out of the sum received for the legal costs they have paid and a percentage of the fruits of any action. The Liquidator then receives the balance of the funds for the benefit of the creditors. Please refer to section 4.3 of this report for further information in this regard

I advise that the following table is a summary of the current position in relation to the examinations:

Name of Examinee	Position	Status of Examination
Mr. Mark McIvor	Director	<ul style="list-style-type: none"> <li>Failed to appear and/or provide documentation;</li> <li>Examination adjourned to 23 July 2013;</li> <li>May seek warrant for arrest in the event of non attendance.</li> </ul>
Mr. Ross Honeyman	Former Director	<ul style="list-style-type: none"> <li>Failed to appear and/or provide documentation;</li> <li>Examination adjourned to 23 July 2013;</li> <li>May seek warrant for arrest in the event of non attendance.</li> </ul>
Mr. David Kennedy	Former Director	<ul style="list-style-type: none"> <li>Examinations adjourned- date to be fixed;</li> <li>Liquidators will require leave in order to effect service in Hong Kong.</li> </ul>
Mr. David Tucker	Former Director	<ul style="list-style-type: none"> <li>Documents provided to Court;</li> <li>Examinations adjourned- date to be fixed.</li> </ul>
Mr. Craig Treasure	Former Director	<ul style="list-style-type: none"> <li>Documents provided to Court;</li> <li>Examinations adjourned- date to be fixed.</li> </ul>
Mr. John Goddard	Former Director	<ul style="list-style-type: none"> <li>Documents provided to Court;</li> <li>Examinations adjourned- date to be fixed.</li> </ul>
Mr. Paul Steer	Auditor	<ul style="list-style-type: none"> <li>See section 4.1 for commentary in relation to KPMG.</li> <li>Documentation to be provided on 23 July 2013.</li> </ul>

I will provide further updates in relation to the above once they become available.

#### 4.3 Litigation Funding Agreement

I refer to the comments earlier in this report regarding my investigations and the potential claims available to the Company. My negotiations with the Litigation Funder are continuing with respect to adopting a co-operative and combined approach to pursue any claims on behalf of the Company and/or the unit holders.

The below is a summary of the action undertaken by this office by way of due diligence in respect of the funding agreement:

- I sought independent legal advice from Thomsons Lawyers in relation to the terms of the draft funding agreement;
- Meetings have been conducted with representatives of Piper Alderman to discuss the issues raised by Thomsons lawyers;
- It was determined that the most appropriate way forward was to approach alternate litigation funders in order to gauge their interest and determine if proceeding with the agreement with Piper Alderman's funder was in the best interests of creditors;
- At this time, the negotiations with Piper Alderman were put on hold until such time as my negotiations with other alternate funders had been finalised;
- Following the provision of a comprehensive information package and subsequent meetings, it has been determined that the agreement with Piper Alderman and the funder who is funding the unit holder class action is the most appropriate funding option available in respect of the Liquidators examinations and any subsequent claims.

As such, I have recommenced my negotiations with Piper Alderman and their funder in an attempt to finalise an agreement for the consideration of the members of the COI and/or the Court.

Given that the Funder has requested details of the draft funding agreement remain confidential, I have not included details of the agreement in this report. However, I propose to consult with the COI significant terms of the funding agreement to determine whether it will be appropriate to approach the Court for approval.

**5 Receipts and Payments**

Please find attached as "Annexure A" a summary of the receipts and payments made by my office for the period of my appointment.

**6 Future Updates**

I will continue to provide monthly updates on the Company's website ([www.equitrust.com.au](http://www.equitrust.com.au)). However, should creditors wish to discuss the conduct of the Liquidation, please do not hesitate to contact Rory Gillespie of this office on (02) 9263 2600.

Yours faithfully,

  
**Blair Pleash**  
**Liquidator**

## **“Annexure A”**



**Receipts and Payments Summary By Account: EQUILI - Equitrust Limited (In Liquidation)**

CVL, Bank, Cash and Cash Investment Accounts: All Dates (Gross Method)

Type	Account	GST	Total
<b>NON-TRADING RECEIPTS</b>			
	GST Control: GST Paid (Received)		121,682.00
	Income Tax Refund		2,240,336.74
	Miscellaneous Deposit		834.00
		0.00	2,362,852.74
<b>NON-TRADING PAYMENTS</b>			
	Appointee Disbursements	(26,044.95)	(286,494.50)
	Bank Charges		(15.85)
	Court Fees		(3,440.00)
	Fees: Appointee Fees	(84,725.05)	(931,975.55)
	IT Services	(29.20)	(321.20)
	Legal Disbursements	(5,035.82)	(55,393.94)
	Legal Fees	(40,891.73)	(449,808.98)
		(156,726.75)	(1,727,450.02)
	<b>Net Non-Trading Receipts and Payments</b>	(156,726.75)	635,402.72
	<b>Net Receipts (Payments)</b>	(156,726.75)	635,402.72