

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

Respondents: THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729

ORDER

Before: Justice Boddice

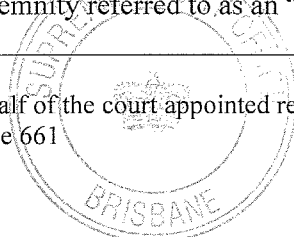
Date: 2 April 2019

Initiating document: Application filed 3 August 2018

THE ORDER OF THE COURT IS THAT:

1. Blair Pleash and Richard Albarran (the **Liquidators**), the liquidators of Equititrust Limited ACN 061 383 944 (In Liquidation) (**EL**), be directed to:
 - (a) ascertain the debts payable by, and claims against, EL in accordance with the Act, excluding any claim by any unitholders of the Equititrust Income Fund ARSN 089 079 854 (**EIF**) and any claim against EL by the Liquidators or former administrators of EL (such that any such claims will not form part of the process provided for in this Order);
 - (b) adjudicate upon those debts and claims in accordance with the provisions of the Act;
 - (c) identify whether EL has a claim for indemnity from the property of the EIF in respect of any, or any part of any, debt payable by or claim against EL which is admitted by the Liquidators in the winding up of EL following the process described in 1(a) and 1(b) above (each such claim for indemnity referred to as a "**Creditor Indemnity Claim**").
2. For the avoidance of doubt, any claims by unitholders of the EIF and any claims relating in any way to the liquidators' own remuneration (including costs and expenses incurred by the liquidators) be excluded from the process described in paragraph 1 above and the process to be followed as set out in orders 3 to 6 below.
3. Within 14 days after any debt or claim is admitted by the Liquidators in the winding up of EL and, in respect of such debt or claim, a Creditor Indemnity Claim is identified by the Liquidators, the Liquidators must notify the Receiver in writing of any such claim.
4. When notifying the Receiver of a claim in accordance with paragraph 3 (each such claim for indemnity referred to as an "**Eligible Claim**"), the Liquidators must:

ORDER
Filed on behalf of the court appointed receiver
Form 58 Rule 661



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- (a) provide the Receiver with:
 - (i) a copy of the relevant proof of debt and supporting documentation relating to the Eligible Claim; and
 - (ii) such other information the Liquidators consider relevant to EL's claim for indemnity from the property of the EIF;
 - (b) within 14 days of receipt of a request from the Receiver pursuant to paragraph 5(a) below for further information in respect of an Eligible Claim, provide such reasonably requested further information to the Receiver.
5. The Receiver is directed to:
 - (a) within 30 days of receipt of an Eligible Claim, request any further material or information he reasonably considers necessary to assess the Eligible Claim;
 - (b) within 45 days of receipt of an Eligible Claim or of the information requested in accordance with (a) above (whichever is the later):
 - (i) accept the Eligible Claim as one for which EL has a right to be indemnified from the scheme property of the EIF; or
 - (ii) reject the Eligible Claim; or
 - (iii) accept part of it and reject part of it;and give to the Liquidators written notice of his determination; and
 - (c) if the Receiver rejects an Eligible Claim, whether in whole or in part, provide the Liquidators with written reasons for his decision when, or within 7 days after, giving notice of his determination.
6. Within 28 days of receiving notification from the Receiver of the reasons for rejecting, in whole or in part, any Eligible Claim ("**Rejected Claim**"), the Liquidators:
 - (a) may make an application to this Honourable Court for directions as to whether or not the Eligible Claim is or is not one for which EL has a right of indemnity out of the scheme property of the EIF; or
 - (b) must notify the relevant creditor for any Rejected Claim of:
 - (i) the Receiver's decision;
 - (ii) any reasons provided by the Receiver for that decision;
 - (iii) any material provided pursuant to paragraph 4 hereof;
 - (iv) whether they intend to make an application for directions in respect of the Rejected Claim pursuant to paragraph 6(a) hereof.
7. The Receiver and the Liquidators have liberty to apply to the Court for directions in respect of any question arising in connection with the consideration or payment of an Eligible Claim or these orders.
8. The Liquidators are entitled to claim reasonable remuneration in respect of the time spent by them and employees of Hall Chadwick who perform work in carrying out the work they are required to do under this Order at rates and in the sums from time to time approved by the

Court, and to be indemnified out of the assets of the EIF in respect of such remuneration for any amounts which the Court approves by way of further order and within 14 days of such order being served on the Receiver.

9. For the avoidance of doubt the liquidators are to serve any Application for approval of their remuneration pursuant to paragraph 8, and any supporting Affidavit material, upon the Receiver no later than 14 days before the date of any hearing of that Application.
10. Subject to any further order of the Court, the Liquidators are to be indemnified from the EIF for all proper costs and expenses (including legal costs on a full indemnity basis) incurred by them in complying with this Order, with such amounts to be paid by the Receiver to the Liquidators from the assets of the EIF within 14 days upon the Receiver being presented by the Liquidators from time to time with invoices in respect of such costs and expenses.
11. If, following the making of this order and during the liquidation of the applicant, the Liquidators recover funds in that liquidation, then before making a distribution of those funds including to pay the Liquidators' remuneration and expenses, the Liquidators must:
 - (a) give written notice to the Receiver as to the amount and nature of those funds and the Liquidators' proposal as to how those funds shall be distributed; and
 - (b) not make any distribution of those funds, until the later of:
 - (i) 14 days following the service on the Receiver of the written notice referred to in (a) above;
 - (ii) if the Receiver brings an application pursuant to paragraph 12 below within the 14 day period provided for in paragraph 10 below, and serves it on the Liquidators within 2 business days of filing, the date on which that application has been determined or discontinued.
12. Within 30 days of receiving any notice pursuant to paragraph 11(a) above, the Receiver has liberty to apply to the Court for an order that all or part of the funds referred to in the notice be paid to the EIF, for the purpose of reimbursing the EIF for the Liquidators' remuneration and expenses incurred in complying with this Order.
13. Subject to any further order of the Court, pursuant to section 601NF(2) of the *Corporations Act 2001* (Cth), the Receiver is directed not to make any distribution to the members of the EIF, without first giving the Liquidators 14 days notice of the amount and nature of those funds.
14. For the purposes of all time limits referred to in this order:
 - (a) public holidays are excluded from the time period; and
 - (b) time does not run in relation to any time period between (and including) 22 December 2018 and 6 January 2019.
15. The parties' costs of and incidental to this application to date be paid out of the assets of the EIF on the indemnity basis.
16. The application is otherwise adjourned to a date to be fixed.

Signed:

Deputy Registrar

