

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

First Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Second Applicant: **BLAIR ALEXANDER PLEASH AND RICHARD ALBARRAN IN THEIR CAPACITY AS LIQUIDATORS OF EQUITITRUST LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ACN 061 383 944**

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: The Honourable Justice Crowley

Date: 21 June 2023

Initiating document: Application filed 13 August 2021 (Court document 228)

Amended Application filed 6 June 2023 (Court document 282)

THE COURT ORDERS AND DIRECTS THAT:

A. Equalisation payment to the members of the EIF

1. Mr David Whyte in his capacity as Court-appointed receiver of the Equititrust Income Fund ARSN 089 079 854 (the **EIF**) (the **Receiver**) be directed to make the Equalisation Payment as defined, explained and proposed in paragraphs 47 to 101 (inclusive) of the affidavit titled "*equalisation payment and finalisation of the EIF*" of David Whyte filed 13 August 2021 and in paragraphs 12-18 (inclusive) of the similarly named affidavit of David Whyte filed 6 June 2023, to members of the EIF.
2. Within 60 days of payment of the Equalisation Payment to members of the EIF, the Receiver be directed to make the final distribution as explained and proposed in paragraphs 102 to 108 (inclusive) of the affidavit titled "*equalisation payment and finalisation of the EIF*" of David Whyte filed 13 August 2021 and in paragraphs 19-20 (inclusive) of the similarly named affidavit of David Whyte filed 6 June 2023, to members of the EIF.

ORDER

Filed on behalf of the Court-appointed Receiver
Form 58 Rule 661

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B. Preparation, audit and service of final accounts of the EIF

3. Within 30 days of payment of the final distribution to members of the EIF, the Receiver is directed to arrange for:

- (a) The preparation of final accounts of the EIF;
- (b) The final accounts of the EIF to be audited by a registered company auditor;
- (c) The preparation of an auditor's report in respect of the audited final accounts of the EIF,

as proposed and explained in paragraphs 109 to 111 (inclusive) of the affidavit of David Whyte titled "*equalisation payment and finalisation of the EIF*" filed 13 August 2021 and in paragraph 21 of the similarly titled affidavit of David Whyte filed 6 June 2023.

4. Pursuant to rule 1.8 of Schedule 1A of the *Uniform Civil Procedure Rules 1999* (Qld) (the **UCPR**) and/or rules 116 or 658 of the UCPR and/or section 601NF(2) of the *Corporations Act 2001* (Cth) (the **Act**), and/or the general liberty to apply granted to any person affected by the Order of Justice Applegarth dated 23 November 2011:

- (a) notice and service of the audit report of the final accounts of the EIF be effected on the members of the EIF by:
 - (i) placing an advertisement of the audit report and final accounts in *The Australian*, *The Courier-Mail* and the *Gold Coast Bulletin* newspapers;
 - (ii) posting a notice of the audit report and final accounts in a prominent location on the Equititrust Limited website of www.equititrust.com.au;
 - (iii) posting a notice of the audit report and final accounts in a prominent location on the Equititrust Income Fund website of www.equitrustincomefund.com.au; and
 - (iv) sending a notice of the audit report and final accounts to all members of the EIF and the EPCIF at their last known email address or, if no email address is known, their last known postal address.
- (b) the form of the advertisement and respective notices be in substantially the same form as the notice set out in "Annexure A" to this application.
- (c) service/notice of the audit report and final accounts be deemed effected on each of the members of the EIF five (5) days after those documents are made available in PDF format on the following websites: "www.equititrust.com.au" and "www.equitrustincomefund.com.au".

C. Approval of remuneration

5. The amount that the Receiver is entitled to claim as remuneration in respect of time spent by him and by any servants or agents of BDO who have performed work in the winding up of the EIF and the receivership of the EIF for the period:

- (a) 1 May 2020 to 30 June 2021 be in the amount of \$211,274.25 (inclusive of GST);

- (b) for the period 1 July 2021 to 30 April 2023 be in the amount of \$344,529.35 (inclusive of GST) (approximately \$15,660.43 per month); and
- (c) for the period from 1 May 2023 to the end of the receivership be as required by the Receiver but capped at the amount of \$220,000.00 (inclusive of GST) subject to any further order.

D. Retirement of the Receiver

- 6. Within 60 days of the notice referred to in paragraph 4 above or such further date as ordered by the Court before that time:
 - (a) pursuant to section 1101B(1) and 601NF(2) of the Act, the Receiver be directed to retire as receiver of the property of the EIF;
 - (b) the Receiver be discharged under section 601NF of the Act from personal liability as the person responsible for ensuring that the EIF is wound up in accordance with its constitution; and
 - (c) the Receiver be directed to provide written notice to the Australian Securities and Investments Commission (ASIC) that the winding up of the EIF has been finalised and the Receiver has retired as receiver of the property of the EIF.

E. Costs

- 7. That the Applicant's costs of and incidental to the Application be costs in the winding up of the EIF.

Signed:

DEPUTY REGISTRAR



ANNEXURE A

TO THE MEMBERS OF:

EQUITITRUST INCOME FUND ARSN 089 079 854 (“EIF”)

TAKE NOTICE that, pursuant to orders made by the Supreme Court of Queensland on 21 June 2023 which provide for the steps to finalise the affairs of the EIF, David Whyte, the court appointed receiver of the EIF, has caused final accounts for the EIF to be prepared and for those accounts to be audited.

Copies of the final accounts and the audit report, and copies of the court documents in respect of these matters, are available on the Equititrust Limited website of “www.equititrust.com.au” and the Equititrust Income Fund website of “www.equititrustincomefund.com.au”.

Pursuant to the orders made by the Supreme Court of Queensland on 21 June 2023, Mr Whyte will be retiring as receiver, and the affairs of the EIF will be concluded, within 60 days of the date of this notice.

Dated: