

## TO INVESTORS AS ADDRESSED

13 June 2017

**EQUITITRUST INCOME FUND  
(RECEIVER APPOINTED) (“the Fund” or “EIF”)  
ARSN 089 079 854**

I refer to my previous reports and now provide my 29<sup>th</sup> update to Investors since my appointment as Court appointed Receiver and person responsible for winding up the EIF on 21 November 2011. This report should be read in conjunction with my previous update reports to Investors.

### **1. Asset Recoveries**

#### **1.1 Property Realisations**

As advised previously, all real property assets of the Fund have now been realised. Since my appointment, 46 properties have been realised with a total gross realisation of approximately \$59.26 million.

#### **1.2 Legal Proceedings**

The remaining claim filed against a valuer for negligence and damages continues to progress, but has unfortunately been delayed due to:

- My solicitors identifying deficiencies in the defendants Amended Defence, and requesting further and better particulars, including the delivery of further disclosure documentation
- One of the defendant’s experts was required to undergo surgery and was unable to meet the other experts as scheduled under the Court Orders. This this resulted in amended Orders being required and the extension of the time period for the experts to both meet and file joint reports.

Summarised below is a table of the four (4) previously advised milestone events, together with the current status of each milestone and where applicable the amended due dates.

<b>Milestone</b>	<b>Previously Event &amp; Timeframe</b>	<b>Status</b>	<b>Court Approved Amended Due Date</b>
1	By 28 January 2017 the Defendant is to deliver any expert report in reply to my further expert report.	Complete	N/A
2	By 24 February 2017, all experts in the same discipline, whose reports address the same issues must attend a meeting with a view to identifying the matters in respect	Complete	N/A

Milestone	Previously Event & Timeframe	Status	Court Approved Amended Due Date
	of which they agree and disagree, and attempt to resolve any disagreement.		
3	By 17 March 2017, all experts in the same discipline are to file joint reports regarding the outcome of the expert meeting.	Incomplete	24 June 2017
4	The parties sign and file a request for trial date by 31 March 2017.	Incomplete	4 August 2017

The Defendant has delivered its expert valuation report in reply to my further expert report and the valuation expert conclave involving the four (4) valuation experts took place on Tuesday 2 May 2017. The joint experts report is scheduled to be filed by 24 June 2017.

The two (2) lending experts met on 27 April 2017 and produced a joint report on 5 May 2017.

The purpose of the experts meetings and subsequent reports was to identify the matters in which they agree and disagree, and attempt to resolve any disagreement. The results of these meetings and the subsequent joint reports will assist in determining both the number of parties and the matters which will be cross-examined at Trial. These factors assist in determining the length of the proposed Trial.

The milestone date for a request for a Trial Date is 4 August 2017. My solicitors advise they anticipate the Trial will be concluded by the end of this calendar year. Once the Trial has been heard the timing of the decision being handed down is unknown and outside my control. I will provide a further update on the status of the proceedings in my next report to Investors.

### 1.3 Liquidators' claim against the Auditors and Directors and Officers

As previously advised, a Claim and Statement of Claim was filed in the Federal Court on 27 September 2013 by the Liquidators of Equititrust Limited (EL) against the Auditors, Directors and EL in its own capacity for breach of duties. The claim includes the claims that were originally contemplated as being made on behalf of the Investors of the Fund as a class action.

Judgement on the Liquidators of EL's application for leave to amend the statement of claim is still to be handed down by the Federal Court, although on 3 May 2017 the Court indicated that judgment was expected to be handed down in late July or early August this year.

Notwithstanding, while the matter has not yet been given a trial date and there are no outstanding court orders while judgment is pending on the liquidators' Amendment Application, the Applicant is in the process of preparing its expert evidence and narrowing the pool of discoverable documents in anticipation of the resumption of the court timetable.

As previously advised, the Liquidators entered into a litigation funding deed with a litigation funder, which has been approved by the Court, to fund the action against the Auditors, Directors and EL in its own capacity. Therefore, the Fund is not bearing any costs of the litigation; however any funds realised from this claim that relate to the EIF will be paid to the Fund (after deducting the costs of the litigation). Please note that I will not



be in a position to make a final distribution and finalise the winding up of the Fund until this litigation has been resolved.

I will provide a further update to Investors in my next report which based on the Court's estimated timeframe a decision should have been handed down in relation to EL's application for leave to amend the statement of claim.

## **2. Creditor Claims**

### **2.1 Other Creditors**

As previously advised, there are a number of creditors that are required to be paid before further distributions can be made to Investors, which include:

- Trade creditors, which relate to liabilities necessarily incurred in the winding up of the Fund;
- Potential claims against the Fund made by the Liquidators of EL (refer section 2.2 below);
- Any other creditors outstanding at the date of my appointment; and
- Receiver's remuneration and outlays.

### **2.2 Claims by the Liquidators of Equititrust Limited ('EL')**

As previously advised, repeated attempts have been made to resolve all claims between the Fund and the Liquidators in respect of a costs order awarded against EL in the proof of debt proceedings and the amount owing at the date of their appointment (where I consider monies are owing to the Fund) and any amount due to the Liquidators after their appointment in relation to costs reasonably and properly incurred by them pursuant to the terms of the Fund's constitution.

The provision of requested information from the Liquidators to support their claim has continued to be very slow. A detailed review has been undertaken of their remuneration claim, including timesheets for the liquidation period. However, timesheets are still awaited for the Administration period. Their total claims are for approximately \$2.1M (remuneration of \$1.2M and disbursements of \$0.9M), which seems extremely unreasonable given that I have been in control of the fund since before their appointment, and Receivers have been appointed to the second mortgage fund, Equititrust Premium Fund. Therefore, there has been little for them to do other than pursue the proceedings against the Auditors and Directors, which is subject to litigation funding.

Once the Liquidators provide the further information requested, I will make a decision on the claim and seek directions from the Court if considered necessary.

### 3. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period from 1 January 2017 to 31 May 2017.

Summary of Receipts and Payments for the Period 1 January 2017 to 31 May 2017	
	\$
Opening Cashbook Balance	6,943,670.03
<b>Receipts</b>	
Interest Income	46,965.68
<b>Total Receipts</b>	<b>46,965.68</b>
<b>Payments</b>	
Agent's Fees	1,776.67
Bank Charges	40.00
Printing & Stationery Expenses	2,568.97
IT Expenses	10,560.00
Advertising	2,032.56
Legal Fees	86,444.26
<b>Total Payments</b>	<b>103,422.46</b>
Closing Cashbook Balance	6,887,213.25

I note the following in relation to the above receipts and payments of the Fund:

- Agent's fees include the costs of works performed in relation to Liquidators of Equititrust Limited's (EL) claim against the Auditors, Directors and EL, these costs are due to be reimbursed.
- IT expenses include the cost of hosting and maintaining the Equititrust server and licence fees for the investor management database.
- Advertising expenses include the costs of advertising my application to Court for remuneration approval. Advertising of the application is a requirement of the Court.
- Printing & Stationery expenses relate to the cost of copying and issuing updates to Investors
- Legal fees primarily relate to the costs in pursuing the remaining valuer claim and dealing with the claims by the Liquidators of EL as outlined in sections 1.2 and 2.2 of this report respectively.

The incurring of these costs is considered essential in terms of successfully recovering assets for the benefit of Investors.



## 4. Estimated Return to Investors

To date the following distributions have been paid to Investors:

- First interim distribution of 5 cents per unit paid in June 2014 totalling \$9.678 million
- Second interim distribution of 3 cents per unit paid in June 2015 totalling \$5.516 million
- Third interim distribution of 3 cents per unit paid in September 2015 totalling \$5.36 million.

As previously advised, the Fund recorded an accounting and tax loss for the year ended 30 June 2011. Accordingly, the Fund had no surplus income available to distribute to Investors in the 2011 financial year. All payments to Investors other than payments of interest accrued as at 30 June 2010 were deemed by the Fund as a partial repayment of capital.

Prior to my appointment, the Fund accounted for this partial repayment of capital as a corresponding reduction in the unit balance of the Fund. The accounting treatment for the first, second and third interim distributions paid by me in June 2014, June 2015 and September 2015 respectively has remained the same (i.e. as distributions are made, the number of units in the Fund continue to decrease in accordance with the amount distributed to Investors). Therefore, the cents per unit return for each distribution is calculated based on the units in the Fund at that point in time.

In light of the above, I provide below the overall estimated return to Investors of between 12 cents and 13 cents per unit as at 31 May 2017 as follows:

	Low	High
	\$000's	\$000's
Net Estimated Value of Fund Assets as at 31 December 2016	6,887	6,887
Less:		
Creditors and Other Payables	540	290
Estimated Equalisation Payment	3,000	2,500
<b>Estimated net amount available to Investors at 31 December 2016</b>	<b>3,347</b>	<b>4,097</b>
Add:		
3 cent interim distribution paid September 2015	5,360	5,360
3 cent interim distribution paid June 2015	5,516	5,516
5 cent interim distribution paid June 2014	9,678	9,678
<b>Total Funds Available for Distribution to Investors</b>	<b>23,901</b>	<b>24,651</b>
Total investor units as at 21 November 2011	193,912	193,912
<b>Overall Estimated Return to Investors per Unit</b>	<b>12 cents</b>	<b>13 cents</b>

The above table does not take into account future operating costs, future legal fees and future Receiver's fees.

The overall estimated return to Investors has been revised downwards by 0.6 cents on the low scenario since my 28<sup>th</sup> update report dated 31 January 2017. This adjustment is primarily due to the anticipated additional funds being paid to affected Investors under the 'equalisation payment' process.

The estimated return also excludes potential legal recoveries against valuers or other third parties as outlined in sections 1.2 and 1.3 of this report and therefore Investors' overall return may be higher than this estimate.

#### **4.1 Future Distributions to Investors**

As previously advised, I will not be in a position to make further distributions to Investors until the remaining legal proceedings currently on foot and the claims with the Liquidators of EL have been resolved.

I anticipate that the winding up of the Fund will take a further twelve months to finalise unless out of court settlements can be reached on the valuer and Liquidators claims. As outlined at section 1.3 the Court is expected to hand down its decision in relation to EL's application for leave to amend the statement of claim in July or early August and the Liquidators' solicitors consider a 12 month timeframe to finalise the matter to be a reasonable estimate.

I will continue to provide updates to Investors on its progress and the timing of future distributions. I will issue my next update to Investors in October 2017.

#### **4.2 Equalisation Payment to Investors**

As previously advised, an 'equalisation payment' is proposed to Investors, and will be the subject of an application to Court to approve same, who did not receive a partial repayment of capital during the period from 1 July 2010 up until the cessation of distribution payments in March 2011. These Investors include Investors that elected to receive distribution payments annually and where their investments did not mature during this period.

The 'equalisation payment' is also proposed to ensure an equitable return of capital is paid to all Investors given the different interest rates applicable for each class of unit which was used in calculating the partial return of capital paid at the relevant time.

Significant work has been undertaken in relation to the calculation of the equalisation payment, which include:

1. An IT generated adjustment (i.e. formula) to 'equalise' the distributions between the Investors who received different rates of return
2. Manually reviewing and amending the IT generated adjustment in respect to Investors, where:
  - New units were acquired and reinvestments took place during FY2011
  - Units transferred to different/new unit holdings during FY2011 and at a later date
  - Hardship payments made during FY2011.

I am currently finalising the manual review of the 'equalisation payment' process, however based on the transactions reviewed to date I have increased the estimated funds which will be required to be paid to Investors under this measure to between \$2.5M to \$3M. This adjustment is reflected in the estimated return to Investors at Section 4.

Once the review has been finalised I will file an application to Court to obtain directions to process the payment to Investors. Investors will be advised of the application in due course and a copy of the relevant documentation will be uploaded to the websites [www.equitytrustincomefund.com.au](http://www.equitytrustincomefund.com.au) and [www.equitytrust.com.au](http://www.equitytrust.com.au).





## 5. Receiver's Remuneration and Expenses

I attach a summary of my current remuneration and outlays incurred since my last report to Investors, which covers the period from 1 January 2017 to 31 May 2017 totalling \$91,517.50 plus outlays of \$2,560.39 (excluding GST).

The last Court approval of my remuneration covering the 13 months ended 31 October 2016 was heard on 20 December 2016 and approved in the amount of \$299,548.50 (excluding GST), equating to \$23,042 plus GST per month. My unbilled remuneration since then, covering the period from 1 November 2016 to 31 May 2017 (including the period detailed above), totals \$131,301.00 (excluding GST), equating to \$18,757 plus GST per month.

The main tasks undertaken during the period were:

- Correspondence with Investors, including:
  - Confirmation of unit holding balance
  - Change of details
  - Transfer of units
- Ongoing maintenance and updating of the Investor database
- Correspondence with Investors financial advisors seeking updates in relation to the Fund
- Reviewing expert reports and documentation in relation to the valuer claim. Meetings and correspondence with my solicitors in relation to the claim
- Correspondence with the ASIC regarding the extension of the suspension of the AFSL
- Reviewing correspondence from the Liquidators and their solicitors in relation to the claim against the Auditors, Directors and EL
- Providing assistance to the Liquidators and access to records in relation to the claim against the Auditors, Directors and EL
- Equalisation payment calculations
- Preparing and issuing my 28<sup>th</sup> update to Investors
- Reviewing documentation provided by the Liquidators in relation to their claim for remuneration and expenses. Correspondence with the Liquidators regarding insufficient documentation to support the claim.

I anticipate that my next application for approval of my remuneration will be heard in November or December 2017 and will cover the period from 1 November 2016 to 31 October 2017. A copy of my application in this respect will be posted to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au) and Investors will be notified when this application has been lodged.

## 6. Updating your contact details

If Investors wish to update their postal address or bank details, a request should be submitted in writing to the following address.

Equititrust Income Fund (Receiver Appointed)  
C/- BDO  
GPO Box 457, Brisbane, QLD 4001.

## 7. Queries

All queries should be directed to Eloise Carroll of this office who can be contacted as follows:

Phone: 07 3237 5999

Email: [Eloise.Carroll@bdo.com.au](mailto:Eloise.Carroll@bdo.com.au)

Yours faithfully

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

David Whyte  
Receiver



REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 January 2017 to 31 May 2017

Equititrust Income Fund

Employee	Position	Rate	Totals		Task Area									
			hrs	\$	Assets		Creditors		Trade On		Investigations		Administration	
					hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
David Whyte	Partner	580	39.8	23,084.00	6.1	3,538.00	19.4	11,252.00	13.8	8,004.00	0.5	290.00		
Charles Haines	Senior Manager	455	10.5	4,777.50	2.3	1,046.50	0.9	409.50	7.1	3,230.50			0.2	91.00
John Sommerville	Senior Manager	455	31.8	14,469.00	3.9	1,774.50	20.0	9,100.00	6.6	3,003.00	1.1	500.50	0.2	91.00
Aubrey Meek	Senior Accountant II	290	21.2	6,148.00	0.8	232.00	19.7	5,713.00					0.7	203.00
Dermot O'Brien	Senior Accountant II	290	1.0	290.00			1.0	290.00						
Samantha Brown	Accountant I	235	0.1	23.50			0.1	23.50						
Eloise Carroll	Accountant II	200	29.9	5,980.00	0.1	20.00	29.7	5,940.00					0.1	20.00
Sarah Cunningham	Team Assistant	200	0.6	120.00									0.6	120.00
Ryan Whyte	Undergraduate	165	171.6	28,314.00			171.0	28,215.00	0.2	33.00			0.4	66.00
Andrew Whittaker	Accountant II	165	24.2	3,993.00	1.2	198.00	18.5	3,052.50					4.5	742.50
Antoinette Fielding	Undergraduate	165	21.3	3,514.50			20.4	3,366.00			0.3	49.50	0.6	99.00
Elizabeth Albany	Secretary	130	0.3	39.00									0.3	39.00
Moir Hattingh	Team Assistant	85	9.0	765.00									9.0	765.00
TOTALS			361.3	91,517.50	14.4	6,809.00	300.7	67,361.50	27.7	14,270.50	1.9	840.00	16.6	2,236.50
			GST	9,151.75										
			TOTAL INC GST	100,669.25										
AVERAGE HOURLY RATE			253		473		224		515		442		135	

Note: All amounts exclude GST unless otherwise noted

**Disbursements for the period 1 January 2017 to 31 May 2017**

**Equititrust Income Fund**

Expense Type	Amount (\$ ex GST)
Taxi fares	19.98
General	80.00
Postage	2,339.57
Courier	120.84
<b>TOTAL</b>	<b>2,560.39</b>
<b>GST</b>	<b>256.04</b>
<b>TOTAL INC GST</b>	<b>2,816.43</b>