

TO INVESTORS AS ADDRESSED

28 February 2018

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

1. Introduction

I refer to my previous reports and now provide my 31st 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 reports to Investors.

In summary, there have been three distributions to Investors to date totalling 11 cents in the dollar and based on the reducing number of units held. This equates to 10.6 cents in the dollar of the units held at the date of my appointment on 21 November 2011. The current total estimated return to Investors is between 12.2 and 12.3 cents in the dollar as detailed at Section 5 of this report.

The remaining matters to be completed in order to finalise the winding up, are as follows:

- Finalise the proceedings against the valuers (refer Section 2).
- Resolve the claims by the Liquidators (refer Section 3.2).
- Apply to Court for authority to pay an equalisation payment to Investors who did not receive a return of capital in the 2011 financial year (refer Section 5.2).
- The Liquidators of Equititrust Lid (In Liquidation) (Receivers and Managers Appointed) (EL) to resolve the proceedings against the directors of EL and the auditors of the fund. If successful, funds will be paid to the Fund after deducting the costs of the proceedings and a payment to the litigation funder (refer Section 2.2)
- Pay a final distribution to Investors.

The timing of the final distribution to Investors is uncertain principally because it is unknown when the proceedings against the directors of EL and the auditors of the Fund will be resolved.

2. Legal Proceedings

2.1 Valuer Legal Proceedings

I refer to my previous update and milestones in relation to the claim filed against a valuer for negligence and damages.

The proceedings have continued to progress with the key matters addressed since my last report on 31 October 2017 being as follows:

- The mediation set down for 7 December 2017 was deferred due to the unavailability of the parties and was held on 19 February 2018
- An offer to settle the proceedings was made by me at the mediation and the defendants are liaising with the relevant parties to determine if this is acceptable to them
- In the event mediation is unsuccessful, a request for trial date is to be lodged with the Court by no later than 23 March 2018.

Should the matter settle, I will advise Investors by way of letter and upload to the websites www.equitrust.com.au and www.equitrustincomefund.com.au. The letter will not be mailed to Investors in order to save the costs of doing so. Otherwise I will update Investors by 30 June 2018 when my next report is due.

2.2 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 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.

I have received an update from the Liquidators' solicitors and note the following in relation to the proceedings:

- On 17 January 2018, Foster J handed down his judgment concerning the application by the Liquidators of EL to amend the statement of claim and on 21 February 2018, the Court indicated that it will allow the amendments. Those amendments include a pleading that the auditor failed to comply with section 1041E of the *Corporations Act 2001* (the Act), which is a non-apportionable claim. Orders to that effect will be made by his Honour shortly
- The Court will also make timetabling orders for the Respondents to file and serve defences to the amended pleading in late March or early April 2018. After that, the proceeding will return to Court for a further case management conference, at which time we expect that the Court will make orders for discovery and, possibly evidence.

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.

3. Creditor Claims

3.1 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 3.2 below)

- Any other creditors outstanding at the date of my appointment
- Receiver's remuneration and outlays.

3.2 Claims by the Liquidators of EL

As advised in my last report to Investors, 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.

As previously advised, the Liquidators' total claims are for approximately \$2.1M (remuneration of \$1.2M and disbursements of \$0.9M), which seems unreasonable as 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, in my opinion, there has been little for them to do other than pursue the proceedings against the Auditors and Directors, which is subject to litigation funding.

A detailed review of their claim has been undertaken however has been hampered by no timesheets being provided for the Voluntary Administration period and the invoices provided on the disbursements being redacted to the point there is insufficient information to make a proper assessment as to the extent they are justifiable expenses.

I have undertaken a detailed review of the Liquidators timesheet entries totalling \$1.2M however have been only been able to identify approximately \$8,000 as directly relating to the Fund.

The Liquidators have not separated the narrations to differentiate the work done on the following distinct matters:

- general Liquidators' work for the corporate entity, EL
- the EIF
- the EPF
- the EPCIF
- the Sophisticated Fund.

Given that there has been no material progress made since my last report, I have instructed my solicitors to make an application to Court for directions in order to resolve the matter.

In order to save costs, this will be done at the same time as the Court application seeking the authority for me to make the equalisation payment as discussed at Section 5.2.

3.3 Claims by former employee of borrowing entity

A former employee of a borrower of the Fund commenced proceedings against the Receiver of the Fund and the Receiver and Manager previously appointed by the Fund to realise the Fund's security over the borrower. The former employee's claim totals approximately \$330,000 and is in respect of unpaid employee entitlements that they believe are payable from the realisation of circulating assets that were subject to the Fund's security over the borrower pursuant to section 433 of the Act.

I believe this claim has little prospects of success for the following reasons:

- The proceedings have been brought against the wrong parties
- The former employee has failed to obtain the consent of the former Liquidators of the borrowing entity to sue for compensation pursuant to section 596AF of the Act. I note the borrowing entity is now deregistered
- The Fund advanced monies to the Receiver and Manager of the borrowing entity so it could continue trading and to fund day-to-day operations
- The monies advanced by the Fund and referred to above were in excess of the realisations from circulating assets
- The Fund is entitled to offset funds advanced to the Receiver and Manager from the circulating assets in priority to the entitlements of employees (*Waters v Widdows [1984] VR 503 at 520*).

Following provision of further information to the employee’s solicitors it has been agreed that the proceedings will be discontinued with no order as to costs.

4. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period from 1 October 2017 to 31 January 2018.

Summary of Receipts and Payments for the period 1 October 2017 to 31 January 2018	
	(\$)
Opening Cashbook Balance	6,863,719.02
Receipts	
Interest Income	47,033.90
Loan Recoveries - Wirrina Cove	180.00
Overpaid Investor Distributions	944.41
Total Receipts	48,158.31
Payments	
Advertising Fees	(2,704.65)
Bank Charges	(40.00)
IT Expenses	(9,669.00)
Legal Fees	(109,635.40)
Printing & Stationery Expenses	(3,817.69)
Appointee Fees	(318,561.65)
Appointee Disbursements	(5,820.65)
Total Payments	(450,249.04)
Closing Cashbook Balance	6,461,628.29

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

- The loan recovery relates to minor debtor collections for an outstanding water bill on Wirrina Cove.
- The return of overpaid Investor distributions relates to a clerical error whereby an Investor was overpaid in the cashbook. This amount was never physically paid and the refund results from the reversal of this payment in the cashbook.
- Advertising fees relate to the advertising of the Receivers remuneration application to Court.
- IT expenses include the cost of hosting and maintaining the Equititrust server and licence fees for the Investor management database.
- Legal fees primarily relate to the costs in pursuing the remaining valuer claim, dealing with the claims by the Liquidators of EL and preparing and attending the Receiver's remuneration application to Court, as outlined in sections 1.2, 2.2 and 5 of this report, respectively.
- Printing and stationary expenses relate to the external cost of copying and issuing correspondence to Investors.
- Appointee Fees relate to the Receiver's Court approved remuneration for the period 1 November 2016 to 31 October 2017, which were approved by the Court on 20 December 2017.
- Appointee Disbursements primarily relate to postage costs associated with issuing updates to Investors for the period 1 November 2016 to 31 October 2017.

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

5. 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 12.2 cents and 12.3 cents per unit as at 31 January 2018 as follows:

	Low	High
	\$000's	\$000's
Net Estimated Value of Fund Assets as at 31 January 2018	6,462	6,462
Less:		
Estimated Creditors and Other Payables	(540)	(290)
Estimated Equalisation Payment	(2,924)	(2,924)
Estimated net amount available to Investors at 31 January 2018	2,998	3,248
Add:		
3 cent interim distribution paid September 2015	5,360	5,360
3 cent interim distribution paid June 2015	5,526	5,526
5 cent interim distribution paid June 2014	9,696	9,696
Total Funds Available for Distribution to Investors	23,580	23,830
Total investor units as at 21 November 2011	193,912	193,912
Overall Estimated Return to Investors per Unit	12.2 cents	12.3 cents

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

The estimated return also excludes potential legal recoveries against valuers or other third parties as outlined in sections 2.1 and 2.2 of this report and therefore, the overall return to Investors may be higher than this estimate.

5.1 Future Updates and Distributions to Investors

As previously advised, I will not be in a position to make further distributions to Investors, other than the proposed equalisation payment, until the remaining legal proceedings currently on foot (refer sections 2.1 and 2.2 of this report) and the claims with the Liquidators of EL have been resolved.

I anticipate that the winding up of the Fund may take a further twelve months or more to finalise unless out of Court settlements can be reached on the valuer and Liquidators' claims.

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 by 30 June 2018.

5.2 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.

I have calculated the total equalisation payment to Investors to be \$2.924M across 2,447 separate Investor accounts. An adjustment for the equalisation payment is reflected in the estimated return to Investors at Section 5 and is in line with the estimate in my 30th report to Investors.

I have instructed my solicitors to prepare an application to Court to approve the equalisation payment to Investors and anticipate this application will be made by 30 April 2018. Subject to receiving Court directions approving the payment, I anticipate that the equalisation payment will be distributed to Investors in the 2018 financial year.

Investors will be advised of the application in due course and a copy of the relevant documentation will be uploaded to the websites www.equititrustincomefund.com.au and www.equititrust.com.au.

6. 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 October 2017 to 31 January 2018 totalling \$134,929.00 plus outlays of \$4,528.57 (excluding GST).

The last Court approval of my remuneration covering the 12 months ended 31 October 2017 was heard on 20 December 2017 and approved in the amount of \$289,601.50 (excluding GST), equating to \$24,133 (excluding GST) per month. My unbilled remuneration since then, covering the period from 1 November 2017 to 31 January 2018 (including the period detailed above), totals \$89,717.00 (excluding GST), equating to \$29,906 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.
- Reviewing correspondence from the Liquidators and their solicitors in relation to the claim against the Auditors, Directors and EL.
- Preparing and lodging statutory returns.
- Preparing my remuneration application to Court and supporting material for the period 1 November 2016 to 31 October 2017.
- Liaising with my solicitors in relation to the remuneration application to Court for the period 1 November 2016 to 31 October 2017.
- Review claim and Court application made by former employee in respect of the realisation of assets subject to the Fund's security over a borrower. Liaise with my solicitors in relation to responding to the claim.

- Finalisation of equalisation payment calculations.
- Preparation of explanatory notes to the equalisation payment to assist in the preparation of the Court application, including reference to issues where manual review and adjustments were required. These included where:
 - New units were acquired and reinvestments took place during FY2011
 - Units were transferred to different/new unit holdings during FY2011 and at a later date
 - Hardship and redemption payments were made during FY2011.
- Correspondence with the Liquidators regarding insufficient documentation provided to support claim for remuneration from the Fund and request for undertaking in relation to dealing with any funds received from their proceedings.

I anticipate that my next application for approval of my remuneration will be heard in November or December 2018 and will cover the period from 1 November 2017 to 31 October 2018.

7. 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

8. Queries

All queries should be directed to this office, as follows:

Phone: (07) 3237 5999
Email: equititrust@bdo.com.au

Yours faithfully



David Whyte
Receiver

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2017 to 31 January 2018

Equititrust Income Fund (Receiver Appointed)

Employee	Position	Rate	Totals		Task Area									
					Assets		Creditors		Trade On		Investigations		Administration	
			hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
David Whyte	Partner	580	34.7	20,126.00	10.2	5,916.00	10.8	6,264.00	4.5	2,610.00	0.3	174.00	8.9	5,162.00
Charles Haines	Senior Manager	470	14.9	7,003.00	4.7	2,209.00	7.9	3,713.00	0.6	282.00	0.2	94.00	1.5	705.00
Jayden Coulston	Manager	430	175.3	75,379.00	4.7	2,021.00	51.9	22,317.00	0.2	86.00	72.2	31,046.00	46.3	19,909.00
Ainsley Watt	Senior Accountant I	350	4.1	1,435.00			3.6	1,260.00					0.5	175.00
Andrew Whittaker	Accountant II	215	0.5	107.50			0.3	64.50					0.2	43.00
Sarah Cunningham	Team Assistant	215	1.3	279.50									1.3	279.50
Eloise Carroll	Accountant II	215	0.1	21.50			0.1	21.50						
Ryan Whyte	Undergraduate	175	92.8	16,240.00			70.9	12,407.50			11.6	2,030.00	10.3	1,802.50
George Lethbridge	Undergraduate	175	26.2	4,585.00	0.5	87.50	22.1	3,867.50					3.6	630.00
Antoinette Fielding	Undergraduate	175	52.2	9,135.00	0.1	17.50	38.2	6,685.00	0.7	122.50	0.6	105.00	12.6	2,205.00
Moirá Hattingh	Team Assistant	95	6.5	617.50									6.5	617.50
TOTALS			408.6	134,929.00	20.2	10,251.00	205.8	56,600.00	6.0	3,100.50	84.9	33,449.00	91.7	31,528.50
GST				13,492.90										
TOTAL INC GST				148,421.90										
AVERAGE HOURLY RATE				330		507		275		517		394		344

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2017 to 31 January 2018

Equititrust Income Fund (Receiver Appointed)

Expense Type	Amount (\$ ex GST)
Postage	3,957.31
Search Fee	571.26
TOTAL	4,528.57
GST	452.86
TOTAL INC GST	4,981.43