

## TO INVESTORS

19 September 2013

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

I refer to my previous reports and now provide my 14<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.

## **1. Property Realisations**

Since my 13<sup>th</sup> report to Investors, properties at Carbrook QLD, Richmond NSW and the final lot in an industrial development site at Murwillumbah NSW have settled. There have also been various lots and marina berths that have settled at Wirrina Cove and the Wirrina Resort, Golf Course and Conference Centre is now subject to contract.

A summary of the properties subject to contract and the estimated settlement date are provided in the table below. As this is a public document and to ensure I do not prejudice completion of the contracts, I will not at this time identify the individual contract values.

Loan Number	Loan (Borrower)	Security location	Settlement Date
105665	Corymbia Corporation	Collingwood Park, QLD	15 November 2013
105637	Toowoomba (Foundry Shopping Centre)	Toowoomba, Qld	30 September 2013
105739	Sunset Cove Developments	Wirrina Cove, SA	Various

Further information with respect to these properties is provided as follows:

(i) Collingwood Park, QLD

A contract was executed on 10 April 2013, which was conditional upon the purchaser obtaining approval from the Ipswich City Council and the Australian Government Department of Sustainability, Water, Population and Communities by 31 July 2013 to clear the vegetation on the site.

On the basis that the purchaser had not obtained the vegetation clearing approvals and due to what I understand was a misunderstanding by the purchaser with respect to the terms of the contract, the purchaser terminated the contract on 31 July 2013.

This matter was subsequently resolved and a new contract of sale was executed on 13 August 2013 on the same terms as the original contract with the timeframe for the vegetation clearing approvals extended to 15 October 2013 with settlement scheduled for 30 days thereafter. The contract does allow the purchaser to extend the contract for up to 28 days up to a maximum of three times upon payment of a non-refundable fee of \$78,706.85 (for each extension) if the

approvals have not been obtained. Therefore, the latest possible settlement date under the contract is 6 February 2014.

(ii) Toowoomba Foundry, QLD

The contract with respect to the Toowoomba property became unconditional on 30 August 2013 with settlement scheduled for 30 September 2013.

(iii) Wirrina Cove, SA

At the time of writing this report, a total of 136 properties and marina berth under leases have settled with gross realisations of approximately \$7.8 million received. This includes the Wirrina Caravan Park, which settled on 12 September 2013.

The Wirrina Resort, Golf Course and Conference Centre is now under contract with settlement expected to take place in or around the end of October 2013 subject to the approval of the transfer of the liquor licence to the purchaser.

With respect to the remaining assets, there are currently 41 offers that have been accepted and/or contracts exchanged totalling approximately \$731,000 with respect to the remaining residential lots and marina berth under leases. A summary is provided below.

	Offers accepted/contracts exchanged (number)	Lots/marina berths remaining (number)
Marina berths	33	8
Residential land	8	0
<b>Total</b>	<b>41</b>	<b>8</b>

A contract has also been issued to an interested party with respect to the Marina St Vincent head lease.

A summary of the status of the three remaining properties to be realised is provided below. Again, as this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify their expected realisable values.

(i) Cornwallis, NSW

The Receiver and Manager appointed over this property is currently in negotiations with interested parties following the most recent auction campaign. An asking price of \$4.2 million has been set for this property, plant and equipment.

(ii) Rosea (Wongawallan, QLD)

As advised in previous reports, the Rosea loan is subject to a deed of settlement, which was scheduled to settle on 17 June 2013. As the debtor was unable to settle, a proposal was received whereby the debtor is undertaking a sale campaign with respect to the property in

Wongawallan, QLD with expressions of interest closing on 3 October 2013 with further payments proposed over a 12 month period.

(iii) Gold Coast, QLD

As advised in previous reports, this property is subject to possession proceedings and where mediation took place on 11 September 2013. An agreement was reached to obtain possession of the property, however, this is subject to the Equititrust Premium Fund (Receivers and Managers Appointed) ('EPF') also agreeing to provide a release of its claims. A response is currently awaited from the EPF in this regard. Should the EPF not agree, the matter will proceed to trial.

### 1.3 Legal Proceedings

As advised in my 13<sup>th</sup> report to Investors, there are several legal actions currently on foot. I am unable to provide specific details with respect to each matter and the expected outcome of same. However, I provide an overview below:

- As indicated above, a matter has been resolved at mediation, subject to the agreement of the EPF, with the borrower to vacate the secured property by February 2014. A sale campaign for the property will be conducted thereafter.
- Two claims have been filed against the same valuer for negligence and damages in excess of \$10 million. Further and better particulars are currently being prepared along with an amended statement of claim following feedback from expert witnesses. Any amount recoverable will be sought against a professional indemnity insurance policy;
- Two other claims have been filed against separate valuers for negligence and damages. The amount of the claim is still to be determined and expert valuers are being identified to prepare reports to progress the claims;
- Monetary judgement was obtained against a guarantor and orders sought to sell properties caveated to Equititrust, however a cross claim was filed by the borrower. To avoid the cost of going to trial, a settlement was recently agreed at \$570,000. The EPF has asserted a claim to some of these proceeds, however, this is strongly disputed by me as the EIF has priority to the proceeds due to the terms of the facility and security documentation and including the cross collateralisation of the facilities.
- Proceedings are ongoing against a bankrupt/related parties to realise an interest in the surplus proceeds that have been realised from the sale of a property. This is likely to result in a substantial recovery for the Fund;
- The proceeds from the sale of a property are currently in dispute with the EPF with proceeds of approximately \$423,000 currently held in my solicitors trust account and legal proceedings on foot to resolve the matter. The matter is likely to proceed to trial early in the new year.
- Other claims are still being considered against borrowers/guarantors/valuers to determine if commercial recoveries are achievable.

Given the nature of these matters, they are likely to take some time to resolve. However, it is expected that the actions will realise several million dollars for the benefit of Investors.

## **2. Creditor Claims**

### **2.1 Secured Creditors**

As advised in my 13<sup>th</sup> report to Investors, secured creditors' claims have been discharged, with the exception of approximately \$1.1 million in respect of bank guarantees issued by the National Australia Bank. The bank guarantees support bonds held by two Councils with respect to certain development sites.

A deed of agreement for works and release is still being finalised with respect to one of the guarantees whereby certain works are required to be undertaken for an uncompleted works bond to be released by the Tweed Shire Council while discussions are ongoing with the Ipswich City Council with respect to when the other guarantees will be called upon or released.

### **2.2 Other Creditors**

As advised in my 13<sup>th</sup> report to Investors, there are a number of creditors that require to be paid (or funds held back for) before a distribution is made to Investors, which include:

- Rates and land tax against certain properties to be realised;
- Trade creditors, which relate to liabilities necessarily incurred in the winding up of the Fund;
- Any other creditors outstanding at the date of my appointment; and
- Receiver's remuneration and outlays.

I am still undertaking investigations to identify the correct trustee of the Mclvor Superannuation Fund ('MSF') in order to repay a loan advanced by the MSF to the EIF. Whilst the books and records confirms that EIF is liable to repay the loan, which currently has a balance of approximately \$3.4 million, given the inconsistent information provided from a number of parties to date with respect to the actual trustee of the MSF, it may be necessary for me to pay the money into Court and seek clarification of the appropriate party to be paid.

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

The liquidators of EL (Hall Chadwick) have previously indicated that EL is indebted to the Fund for \$2,272,388, which is purported to be supported by a loan recorded in the management accounts of EL. This includes a management fee of \$2,810,045 for the 2011 financial year which was previously waived by the board but purportedly reinstated when Mark Mclvor became a director in November 2011. I have disputed EL's right to reinstate the fee and also assert that it is not payable on the basis that:

- (i) The management fee was waived by the board of EL in or around September 2011 (although the board purportedly resolved to reinstate the management fee on 23 November 2011, after my appointment on 21 November 2011); and
- (ii) The relevant terms of the constitution of the Fund provides that EL (as the responsible entity) is only entitled to the management fee out of the income of the Fund and this entitlement is subject to the priorities set out in the constitution. This includes, inter alia, that unit holders are paid a distribution of income up to their benchmark return.

The Fund generated a loss during the 2011 financial year and all distributions to unit holders were accounted for as distributions of capital.

An adjustment in the accounts for the incorrect charging of the management fee for the year ended 30 June 2011, which was booked to a loan account between the Fund and EL, determined that the Fund has a claim against EL. On 20 April 2012, I attended the second meeting of creditors of EL and submitted a proof of debt in the amount of \$537,656.57 for the purposes of voting on behalf of the Fund at that meeting (as a creditor of EL). The liquidators have recently sought to rule on this proof of debt. I disputed their right to do so as it was only lodged for voting purposes and, therefore, the proof of debt was withdrawn. Notwithstanding this, the liquidators decided to reject the claim. As a result, I lodged an application with the Supreme Court of Queensland on 24 July 2013 appealing their decision. A hearing date is yet to be set.

The Fund's claim against EL may increase following an investigation of prior year's management fees. However, as there is currently unlikely to be a distribution in the liquidation of EL, I do not intend incurring costs in investigating the claim further at this stage.

As advised in my previous reports, the liquidators of EL have lodged an application for directions with the Supreme Court of Queensland in relation to the extent to which they are entitled to be indemnified out of the Fund's assets for remuneration and expenses incurred by them as administrators totalling approximately \$805k. At this stage, I have not been served in the proceedings and no hearing date has been set. I have previously queried the basis of the liquidators' claims and their right to claim against the Fund's assets given that I was appointed to wind up the Fund prior to their appointment and that the Court Order of 29 February 2012 (which Hall Chadwick consented to) clarified the roles of the various insolvency practitioners to avoid the duplication of costs. It should also be noted that at the first meeting of creditors, Richard Albarran advised unit holders of the Fund that the costs and expenses of Hall Chadwick would not be claimed against the Fund and at the second meeting of creditors, assurances were provided Mr Albarran that they would not seek reimbursement of their costs from the Fund if they were appointed liquidators of EL.

I hope to resolve the above matters in the coming months.

### **3. Piper Alderman Class Action**

I understand that Piper Alderman is continuing to progress the claims available to Unit Holders in relation to the Fund's demise. Unit holders wishing to be part of the anticipated action should contact William Nolan on (02) 9253 9921 or email [wnolan@piperalderman.com.au](mailto:wnolan@piperalderman.com.au).

## 4. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period from 1 July to 16 September 2013.

Summary of Receipts and Payments for the Period 1 July 2013 to 16 September 2013		
	\$	\$
<b>Opening Cash at Bank</b>		<b>5,692,491.76</b>
<b>Receipts</b>		
Interest Income		16,424.68
<i>Loan Recoveries:</i>		
Checkling Pty Ltd	3,267.25	
Corymbia Estates Pty Ltd	1,682,248.61	
East Coast Pty Ltd	3,536.50	
Gamp Developments Pty Ltd	513.24	
Gonfanon Pty Ltd	2,330,908.74	
Morvale Land Pty Ltd	220.60	
Spottiswood, Graham (A Bankrupt)	13,606.11	
Tweed Central Pty Ltd	412,670.57	
Valencia Grove Pty Ltd	265,650.00	
Western Land Corporation Pty Ltd	50,487.55	
Wirrina Corporation Pty Ltd	3,050,271.88	7,813,381.05
Other Sundry Income		300.00
Sale of Plant and Equipment		300.00
<b>Total Receipts</b>		<b>7,830,405.73</b>

<b>Payments</b>		
Bank Charges		73.60
Bank Guarantee		25,500.00
<i>Distressed Loan funding:</i>		
Boothers Pty Ltd	50,535.43	
Corymbia Corporation Pty Ltd	78,753.36	
Corymbia Estates Pty Ltd	262,129.60	
Gonfanon Pty Ltd	28,102.91	
National Resorts Corporation Pty Ltd	46,645.38	
Rosea Pty Ltd	3,126.50	
Spottiswood, Graham (A Bankrupt)	44,066.17	
Toowoomba (Foundry Shopping Centre) Pty Ltd	3,132.92	
Tweed Central Pty Ltd	48,651.44	



Valencia Grove Pty Ltd	23,672.77	
Western Land Corporation Pty Ltd	79,500.92	
Windsor Turf Pty Ltd	124,973.26	
Wirrina Corporation Pty Ltd	1,299,279.17	2,092,569.83
GST Paid		369,259.00
IT expenses		13,785.20
Legal Fees		188,710.30
PAYG Paid		16,085.00
Printing & Stationary		10.00
Professional Fees		5,486.00
<b>Total Payments</b>		<b>2,711,478.93</b>
<b>Closing Cash at Bank</b>		<b>10,811,418.56</b>

I note that the 'Distressed Loan Funding' relates to marketing costs, agents' fees, consultants' fees, legal fees and rates and land tax. The incurring of these costs are considered essential in terms of successfully realising the assets subject to the Fund's securities.

The distressed loan funding for Wirrina Corporation Pty Ltd includes:

- legal fees of approximately \$304,000;
- costs to upgrade the water and sewerage infrastructure of approximately \$46,000;
- rates and land tax of approximately \$715,000; and
- agent's sales commission of approximately \$74,000.

The distressed loan funding for Corymbia Estates Pty Ltd includes:

- land tax of approximately \$182,000;
- rates of approximately \$8,000;
- Agent's sales commission of approximately \$33,000; and
- Legal fees of approximately \$27,000.

The distressed loan funding for Windsor Turf Pty Ltd includes funding advanced to the Receiver and Manager with respect to the Receiver and Manager's fees, marketing expenses and legal fees.

## 5. Estimated Return to Investors

I provide below an estimated return to Investors of between 12 and 14 cents in the dollar as at 31 August 2013 as follows:

	Low \$000's	High \$000's
Cash at Bank	8,262	8,262
Estimated selling prices	24,991	28,291
<i>Less:</i>		
Bank guarantees	(1,100)	(1,100)
Selling costs (3.5% of sale price)	(875)	(990)
Other loan	(3,400)	(3,400)
Land tax & rates	(3,551)	(3,551)
Other unsecured creditors	(600)	(400)
Receiver's fees	(389)	(389)
<b>Estimated net amount available to investors as at 31 August 2013</b>	<b>23,338</b>	<b>26,723</b>
Total investor units	193,916	193,916
<b>Estimated return in the dollar</b>	<b>0.12</b>	<b>0.14</b>

The above table does not take into account future operating costs, future interest on the other loan, future Receivers fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

The timing of an interim distribution to investors is still dependent on the settlement of the properties at Collingwood Park, Toowoomba, Cornwallis and the remaining assets at Wirrina Cove.

I expect that the Toowoomba property will settle by the end of September 2013 and the remaining Wirrina Cove assets by November 2013.

As noted previously in this report, I do not know if the Collingwood Park property will settle on the contracted date of 14 November 2013 as this is subject to the purchaser obtaining vegetation clearing approvals by 15 October 2013.

There is also no clear timeframe with respect to the sale of the Cornwallis property at this stage.

In any event, I will provide a further update to investors in late October or early November 2013 and, at that time, I hope to be able to advise Investors of the timing of an interim distribution either in late 2013 or early 2014.

Please note that the distribution to Investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests (a total amount of approximately \$9.9 million as at 31 August 2013).

## 6. Receiver's Remuneration and Expenses

I attach a summary of my current remuneration and outlays outstanding for the period from 1 July to 31 August 2013. My remuneration incurred during this period totals \$206,420.50 plus outlays of \$10,279.46 plus GST.

I anticipate that my next application for approval of my remuneration will be heard in October or November 2013. 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.

## 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

The Bundall office was closed on 30 April 2013 and therefore any queries should be directed to Daniel Tipman of this office who can be contacted as follows;

Phone: 07 3237 5999  
Email: [daniel.tipman@bdo.com.au](mailto:daniel.tipman@bdo.com.au)

Should Investors have any queries in relation to the winding up of the Fund, they should contact my office on (07) 3237 5999 or by email at [info@bdo.com.au](mailto:info@bdo.com.au).

Yours faithfully,

David Whyte  
Receiver



Equititrust Income Fund (Receiver Appointed)  
1 July 2013 to 31 August 2013

Employee	Position	Rate (\$)	Total Units	Total (\$)	Administration		Assets		Creditors		Employees		Investigation		Trade On	
					Units	(\$)	Units	(\$)	Units	(\$)	Units	(\$)	Units	(\$)	Units	(\$)
Whyte, David	Partner	560.00	99.5	55,720.00	9.50	5,320.00	85.10	47,656.00	2.20	1,232.00	-	-	0.20	112.00	2.50	1,400.00
Somerville, John	Senior Manager	425.00	183.2	77,860.00	13.30	5,652.50	148.40	63,070.00	17.20	7,310.00	-	-	0.80	340.00	3.50	1,487.50
Tipman, Daniel	Senior Accountant I	310.00	220.2	68,262.00	165.50	51,305.00	13.70	4,247.00	26.50	8,215.00	1.10	341.00	3.00	930.00	10.40	3,224.00
Coulston, Jayden	Senior Accountant I	310.00	0.2	62.00	0.20	62.00	-	-	-	-	-	-	-	-	-	-
Kennedy, Nicola	Accountant II	190.00	18.6	3,534.00	18.50	3,515.00	0.10	19.00	-	-	-	-	-	-	-	-
Jackson, Nicole	Practice Assistant	150.00	4.4	660.00	-	-	-	-	4.40	660.00	-	-	-	-	-	-
Hattingh, Moira	Administration Assistant	75.00	2.4	180.00	2.40	180.00	-	-	-	-	-	-	-	-	-	-
Richardson, Ashley	Administration Assistant	75.00	1.9	142.50	1.90	142.50	-	-	-	-	-	-	-	-	-	-
<b>TOTAL</b>			<b>530.40</b>	<b>206,420.50</b>	<b>211.30</b>	<b>66,177.00</b>	<b>247.30</b>	<b>114,992.00</b>	<b>50.30</b>	<b>17,417.00</b>	<b>1.10</b>	<b>341.00</b>	<b>4.00</b>	<b>1,382.00</b>	<b>16.40</b>	<b>6,111.50</b>
				<b>GST</b>	<b>20,642.05</b>											
				<b>TOTAL INC GST</b>	<b>227,062.55</b>											
<b>AVERAGE HOURLY RATE</b>				<b>389.18</b>	<b>313.19</b>	<b>464.99</b>	<b>346.26</b>	<b>310.00</b>	<b>345.50</b>	<b>372.65</b>						

DISBURSEMENT REPORT

Equititrust Income Fund (Receiver Appointed)  
1 July 2013 to 31 August 2013

Item	\$
Archiving	125.50
Couriers	154.93
Postage	2,614.74
Printing/photocopying	6,379.20
Searches	69.70
Travel - Flights/Parking/Car	935.39
<b>Sub Total</b>	<b>10,279.46</b>
<b>GST</b>	<b>1,027.94</b>
<b>TOTAL</b>	<b>11,307.40</b>