

## TO INVESTORS

19 March 2014

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

I refer to my previous reports and now provide my 18<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**

A summary of the status of the remaining properties to settle or be sold is provided 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 individual contract values or expected realisable values.

### (i) Collingwood Park, QLD

As noted in my 17<sup>th</sup> update to Investors, it was hoped that the contract would become unconditional in late February 2014 with settlement of the property effected by the end of March 2014.

The purchaser has obtained conditional approval from the Australian Government Department of Sustainability, Water, Population and Communities (‘Department of Sustainability’) to clear the vegetation on the site.

The purchaser has advised that they are currently reviewing the decision made by Department of Sustainability and the conditions attached to the approval to determine if they are satisfactory.

As the purchaser had not obtained satisfactory planning approval by 6 March 2014, they exercised their right under the contract to extend the Approval Date by a further 28 days until 3 April 2014.

Under the terms of the contract, the purchaser has the ability to extend the Approval Date a 7<sup>th</sup> and final time by a further 28 Days. Accordingly, the last possible date for the purchaser to obtain satisfactory planning approval is 1 May 2014. Once satisfactory planning approval has been obtained by the purchaser, the contract will become unconditional with settlement scheduled 30 days thereafter.

I am hopeful that the purchaser will not exercise their right to extend the Approval Date by a further 28 days a 7<sup>th</sup> and final time. It is therefore hoped that settlement of the property will be effected by early May 2014.

As noted in my previous reports, for each 28 day extension of the satisfactory planning approval condition sought by the purchaser under the contract from 17 October 2013, the purchaser is liable to pay a non-refundable fee of \$78,706.85 (for each extension) for the first four extensions and a non-refundable fee of \$118,060.27 (for each extension) for the final three

extensions if satisfactory planning approval has not been obtained. To date the purchaser has paid \$550,947.94 in extension fees.

(iii) Wirrina Cove, SA

As a result of the settlement of the Wirrina Resort, Golf Course and Conference Centre, all real property at Wirrina Cove has now been sold.

The remaining asset at Wirrina Cove is the Marina St Vincent head lease and six remaining berths. As noted in my 17<sup>th</sup> update to Investors, negotiations are progressing with an interested party, with the terms of the contract currently being finalised. It should be noted that the sale of the marina head lease is also subject to the approval of the assignment of the head lease by the South Australian Department of Transport.

(iv) Cornwallis, NSW

The Receiver and Manager appointed over this property has received a deposit and two executed contracts from an interested party in respect of the sale of the land and business, plant and equipment. Unfortunately, several clauses in the contracts have had to be amended and have been sent to the purchaser to re-execute. The contracts are subject to a 14 day finance clause and a 60 day settlement.

(v) Rosea (Wongawallan, QLD)

As advised in my 17<sup>th</sup> report to Investors, a sale campaign undertaken by the debtor closed on 3 October 2013. An offer for the property was received however was not at an acceptable level. The debtor has submitted a proposal to satisfy their obligations under a deed of settlement, which is being negotiated between the interested parties including the Equititrust Premium Fund (Receivers and Managers Appointed) ('EPF').

(vi) 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 was subject to the EPF also agreeing to provide a release of its claims. At this stage, the EPF has not agreed to the release of its claims and therefore a request for a trial date was issued to the defendant. The defendant did not agree to the request for a trial date and made an application for disclosure citing that further disclosure is required before they are willing to execute the request for trial date. At a hearing on 14 March 2014, the judge ordered a trial date to be set and for further limited disclosure. The trial is likely to be around July 2014.

## 1.1 Legal Proceedings

As advised in my 17<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, an agreement was reached with a borrower to obtain possession of a property, however this was subject to the EPF agreeing to also provide a release of its claims. As an agreement has not been reached with the EPF, the matter will proceed to trial. 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. Expert witness reports with respect to the properties have been

received and served on the defendants. A further amended statement of claim has now been prepared and filed, with respect to one of the claims. The defendant is required to file a defence by 17 April 2014. A further amended statement of claim is currently being prepared with respect to the other claim. Any amount recoverable with respect to the claims 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 claims are still to be determined. An expert report has been received with respect to one of the properties with an amended statement of claim currently being prepared to establish the loss or damage suffered. The expert report for the other property is expected to be received by the end of March 2014 to enable the claim to be progressed.
- 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 agreed at \$570,000. As advised in my previous reports, the EPF has asserted a claim to some of these proceeds, however, this is strongly disputed and the matter is still to be resolved.
- 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. Negotiations are taking place with several parties who may have an interest in the funds held by the court.
- 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 solicitor's trust account and legal proceedings on foot to resolve the matter. According to the proposed caseflow intervention notice, a trial date should be requested by 16 May 2014.

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 17<sup>th</sup> report to Investors, secured creditors' claims have been discharged, with the exception of approximately \$989,000 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.

It has been determined that it is not commercial to complete the outstanding works as the costs of the works are likely to significantly exceed the value of the bonds. It is expected that the bonds will be called upon by the Ipswich City Council (\$893,820) and Tweed Shire Council (\$94,500) in due course.

### **2.2 Other Creditors**

There are a number of creditors that are required to be paid (or funds retained) 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.

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

As advised in my 17<sup>th</sup> update to Investors, I lodged an application with the Supreme Court of Queensland on 24 July 2013 appealing the decision of the Liquidators of EL (Hall Chadwick) to adjudicate on a proof of debt lodged by the Fund. The matter was heard on 5 December 2013 and the Court determined that the Liquidators had no right to rule on the proof of debt. The Court also awarded costs against the Liquidators.

I am endeavouring to resolve a claim against the Liquidators for the costs incurred in relation to the application in addition to resolving any other claims between the Fund and the Liquidators in respect of 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.

A meeting with the Liquidators is proposed to be held in the week commencing 31 March 2014 with a view to agreeing to a procedure to resolve the outstanding issues and claims.

## 3. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period from 10 February 2014 to 18 March 2014.

Summary of Receipts and Payments for the Period 10 February 2014 to 18 March 2014			
		\$	\$
Opening Cash at Bank			8,746,398.87
<b>Receipts</b>			
Interest Income			14,332.03
<i>Loan Recoveries:</i>			
Corymbia Corporation Pty Ltd		236,060.27	
Tweed Central Pty Ltd		13,286.15	
Robert Hardy, Elysian Marketing Pty Ltd and Mark James (QLD) Pty Ltd		5,899.05	
Wirrina Corporation Pty Ltd		107,000.00	362,245.47
GST Refund			62,057.31
	<b>Total Receipts</b>		<b>438,634.81</b>
<b>Payments</b>			
Bank Charges			17.50
<i>Distressed Loan funding:</i>			
Boothers Pty Ltd		2,476.67	



Wirrina Corporation Pty Ltd	62,533.39	65,010.06
IT expenses		3,670.70
Legal Fees		4,965.48
Professional Consulting Fees		26,913.74
<b>Total Payments</b>		<b>100,577.48</b>
<b>Closing Cash at Bank</b>		<b>9,084,456.20</b>

Please note that the 'Distressed Loan Funding' for Wirrina Corporation includes:

- Costs to upgrade the Water and Sewage infrastructure of approximately \$6,600. This amount will be reimbursed from funds held in my solicitor's trust account pursuant to the sale of the water and sewage infrastructure to the Yankalilla District Council
- Valuation fees of approximately \$7,700 which relate to the objection of the 2013 land valuation of the properties at Wirrina Cove. A refund of several hundred thousand dollars is expected as a result of the objection
- Marina St Vincent insurance fees of approximately \$3,000
- Advances to cover trading losses of approximately \$45,400

The incurring of these costs is considered essential in terms of successfully realising the assets subject to the Fund's securities.

#### 4. Estimated Return to Investors

I provide below an estimated return to Investors of between 11 and 12 cents in the dollar as at 18 March 2014 as follows:

	Low \$000's	High \$000's
Cash at Bank	9,084	9,084
Estimated selling prices	15,960	17,010
<i>Less:</i>		
Bank guarantees	(989)	(989)
Selling costs (3.5% of sale price)	(559)	(595)
Other unsecured creditors	(800)	(600)
Receiver's fees and outlays	(365)	(365)
<b>Estimated net amount available to investors as at 31 December 2013</b>	<b>22,331</b>	<b>23,545</b>
Total investor units	193,916,000	193,916,000
<b>Estimated return in the dollar</b>	<b>0.11</b>	<b>0.12</b>

The above table does not take into account future operating costs, future Receiver's fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

#### 4.1 Interim Distribution to Investors

The timing of an interim distribution to Investors is still dependent on the timing of the settlement of the Collingwood Park property and/or the resolution of the claims with the Liquidators.

As noted previously in this report, I am hopeful that the purchaser of the Collingwood Park property will not exercise their right to extend the satisfactory planning approval date by a further 28 days beyond the current extension date of 3 April 2014. It is therefore hoped that settlement of the property will be effected by early May 2014. Although, based on discussions held with the purchaser, it is unlikely, there is the possibility that settlement under the contract could be delayed until June 2014 if the purchaser extends the satisfactory planning approval date by a further 28 days.

In any event, I will update Investors further with respect to the anticipated timing of an interim distribution at the end of April/early May 2014.

#### 5. Receiver's Remuneration and Expenses

I attach a summary of my current remuneration and outlays outstanding for the period from 1 February 2014 to 28 February 2014. My remuneration incurred during this period totals \$88,684.50 plus outlays of \$6,327.54 plus GST.

I anticipate that my next application for approval of my remuneration will be heard in or around May 2014. 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.equitrustincomefund.com.au](http://www.equitrustincomefund.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

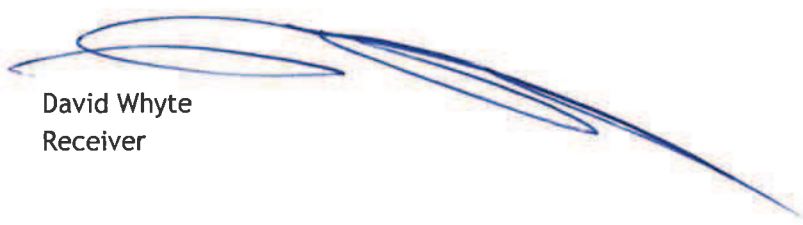
#### 7. Queries

As the Bundall office is now closed, all 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 February 2014 to 28 February 2014

Employee	Position	Rate (\$)	Total Units	Total (\$)	Administration		Assets		Creditors		Investigation		Trade On	
					Units	(\$)	Units	(\$)	Units	(\$)	Units	(\$)	Units	(\$)
Whyte, David	Partner	560.00	24.40	13,664.00	2.10	1,176.00	17.60	9,856.00	1.20	672.00	0.70	392.00	2.80	1,568.00
Somerville, John	Senior Manager	425.00	97.50	41,437.50	8.70	3,697.50	81.40	34,595.00	7.00	2,975.00	-	-	0.40	170.00
Tipman, Daniel	Senior Accountant I	310.00	101.40	31,434.00	3.00	930.00	13.80	4,278.00	67.90	21,049.00	-	-	16.70	5,177.00
Watt, Ainsley	Accountant II	190.00	3.00	570.00	3.00	570.00	-	-	-	-	-	-	-	-
Kennedy, Nicola	Accountant II	190.00	5.20	988.00	5.20	988.00	-	-	-	-	-	-	-	-
Watson, Sarah	Financial Assistant	180.00	0.70	36.00	0.20	36.00	-	-	-	-	-	-	-	-
Jackson, Nicole	Practice Assistant	150.00	0.30	45.00	-	-	-	-	0.30	45.00	-	-	-	-
Hattingh, Moira	Team Assistant	75.00	6.10	457.50	2.70	202.50	-	-	3.40	255.00	-	-	-	-
Richardson, Ashley	Team Assistant	75.00	0.70	52.50	0.70	52.50	-	-	-	-	-	-	-	-
<b>TOTAL</b>			<b>238.80</b>	<b>88,684.50</b>	<b>25.60</b>	<b>7,652.50</b>	<b>112.80</b>	<b>48,729.00</b>	<b>79.80</b>	<b>24,996.00</b>	<b>0.70</b>	<b>392.00</b>	<b>19.90</b>	<b>6,915.00</b>
			<b>TOTAL INC GST</b>	<b>8,868.45</b>										
			<b>AVERAGE HOURLY RATE</b>	<b>371.38</b>	<b>298.93</b>	<b>431.99</b>	<b>313.23</b>	<b>560.00</b>	<b>347.49</b>					

DISBURSEMENT REPORT  
Equititrust Income Fund (Receiver Appointed)  
1 February 2014 to 28 February 2014

Item	\$
Archive Retrieval	17.00
Postage	1,632.94
Printing/photocopying	4,677.60
Sub Total	6,327.54
GST	632.75
<b>TOTAL</b>	<b>6,960.29</b>