

## TO INVESTORS

6 May 2015

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

I refer to my previous reports and now provide my 23<sup>rd</sup> update to Investors since my appointment as Court appointed Receiver and person responsible for winding up the EIF on 21 November 2011.

## **1. Asset Recoveries**

### **1.1 Property Realisations**

As advised in my 22<sup>nd</sup> update to Investors, 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**

As advised in my 22<sup>nd</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:

- Two claims have been filed against the same valuer for negligence and damages in excess of \$10 million. The plaintiff and defendants have filed expert reports in the proceedings along with a list of witnesses and a summary of the witnesses' evidence. The matter is listed for a review on 8 May 2015 with a trial date likely to be set at the review.

The defendants have submitted offers of settlement, however, the amount of the offers are considered to be too low.

Any amount recoverable with respect to the claims will be sought against a professional indemnity insurance policy.

- One further claim has been filed against a valuer for negligence and damages.

A Reply to the Defence was filed by the plaintiff on 30 January 2015. The parties are currently attending to disclosure of documents. It is expected that the matter will proceed to mediation once disclosure has been completed.

I am hopeful that these claims can be finalised this calendar year.

### **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 against the Auditors, Directors and Equititrust Limited 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 will advise Investors further once I have received an update from the Liquidators, however, Investors should 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. Any funds realised from this claim will be paid to the Fund and after deducting the costs of the litigation.

## **2. Creditor Claims**

### **2.1 Secured Creditors**

As advised in my 22<sup>nd</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 ('NAB'). The bank guarantees support bonds held by two Councils with respect to certain development sites.

As previously advised, 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. Verbal agreements have been reached with the respective Councils to exchange these bank guarantees for cash and as such, I expect to have these matters resolved shortly.

The Receivers and Managers of Equititrust Limited ('EL') have advised that they will be seeking to have their outstanding fees and expenses of approximately \$100,000 paid from Fund assets pursuant to the terms of NAB's security. I am currently obtaining legal advice as to whether the Receivers and Managers are entitled to be paid from assets of the Fund.

### **2.2 Other Creditors**

As previously advised, there are a number of creditors that are required to be paid (or funds retained) 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 Equititrust Limited;
- 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 previously advised, I was awarded costs against the Liquidators of EL in relation to my application objecting to their decision to rule on a proof of debt. I continue to try and resolve this and 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. I am considering what further action can be taken in order to resolve this matter without further delay and in order to minimise costs.

## **3. Receipts and Payments**

I provide below a summary of the Receipts and Payments of the Fund for the period from 27 January 2015 to 28 April 2015.

**Summary of Receipts and Payments for the Period**  
**27 January 2015 to 28 April 2015**

	\$	\$
<b>Opening Cash at Bank</b>		<b>13,598,567.13</b>
<b>Receipts</b>		
Interest Income		57,962.50
Loan Recoveries:		
Graham Spottiswood (A Bankrupt)	1,839,763.17	
Skanwood	3,307.41	
Wirrina Cove	80,077.00	1,923,147.58
<b>Total Receipts</b>		<b>1,981,110.08</b>
<b>Payments</b>		
Advertising		1,854.03
Bank Charges		51.00
<i>Distressed Loan funding:</i>		
Corymbia Corporation Pty Ltd	38,810.40	
Corymbia Estates Pty Ltd	55,343.45	
Windsor Turf Pty Ltd	73,185.07	
Wirrina Cove	4,980.48	172,319.40
IT Expenses		10,644.70
Legal Fees		64,614.45
Receiver's Fees & Outlays		582,261.70
Printing and Stationery		2,925.27
<b>Total Payments</b>		<b>834,670.55</b>
 <b>Closing Cash at Bank</b>		 <b>14,745,006.66</b>

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

The Loan Recoveries of approximately \$1.8M in respect of Graham Spottiswood (A Bankrupt) was received after several years of legal proceedings and represents the Bankrupt's interest in a property formerly held in his wife's name and which was sold on behalf of the mortgagee.

The 'Distressed Loan Funding' for Corymbia Corporation Pty Ltd relates to costs in pursuing a legal claim and includes:

- Legal fees of approximately \$38,800

The 'Distressed Loan Funding' for Corymbia Estates Pty Ltd relates to costs in pursuing a legal claim and includes:

- Legal fees of approximately \$55,300

The 'Distressed Loan Funding' for Windsor Turf Pty Ltd relates to post settlement issues incurred by the Receiver and Manager of this entity and includes:

- Trade Creditors of approximately \$7,500
- Receiver and Manager's fees and outlays of approximately \$55,600
- Legal fees of approximately \$10,180

The 'Distressed Loan Funding' for Wirrina Corporation Pty Ltd relates to costs incurred in objecting to a land tax assessment where approximately \$80,000 was recovered and includes:

- Legal fees of approximately \$5,000

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

#### 4. Estimated Return to Investors

I provide below an overall estimated return to Investors of between 11.7 and 11.9 cents in the dollar as at 28 April 2015 as follows:

	Low	High
	\$000's	\$000's
Net Estimated Value of Fund Assets as at 28 April 2015	14,745	14,745
Less: Creditors and Other Payables	(1,729)	(1,339)
<b>Estimated net amount available to investors as at 28 April 2015</b>	<b>13,016</b>	<b>13,406</b>
Total investor units as at 28 April 2015	184,234	184,234
<b>Estimated Value of Remaining Units as at 28 April 2015</b>	<b>7.1 cents</b>	<b>7.3 cents</b>
5 cent interim distribution paid to investors	9,678	9,678
Total investor units as at 21 November 2011	193,912	193,912
<b>Overall Estimated Return in the Dollar</b>	<b>11.7 cents</b>	<b>11.9 cents</b>

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

It also excludes any potential legal recoveries against borrowers, valuers or other third parties and this has impacted on the estimated return which has been revised downwards slightly from my estimate as at 26 January 2015 of between 11.9 cents and 12.0 cents.

##### 4.1 Distributions to Investors

As advised in my previous reports, an interim distribution of 5 cents per unit was made on 20 June 2014.

I anticipate that the winding up of the Fund may take a further twelve to eighteen months to finalise (including resolving the Liquidators' claim against the auditors), however, I expect to be in a position to make a further interim distribution to Investors by 30 June 2015.

Please note, in estimating the funds that are available for distribution to Investors, I must take into account the secured creditors, land tax, rates, Receiver's fees and the unsecured creditors outstanding at the date of this report along with monies required in order to pay future liabilities that may arise in a worse case scenario.

A "provision" is required to ensure that legal and other costs can be met, including, in the event costs may be awarded against the Fund in relation to the legal proceedings on foot or other claims that may be brought against the Fund.

I provide below a summary of the estimated funds that will be available in June 2015 to make a further distribution to Investors of 3 cents per unit which amounts to approximately \$5.5M.

	\$000's
Cash at Bank	14,750
Less:	
Bank guarantees - NAB	(989)
Bank guarantees - Other	(523)
Provision for future:	
Legal Costs (Including any adverse costs order)	(2,000)
Service Providers	(50)
Unsecured Creditors	(500)
Receiver's fees and outlays	(800)
Equalisation Payment	(2,500)
Contingency	(1,900)
<b>Estimated net amount available to investors in June 2015</b>	<b>5,488</b>

The upcoming interim distribution will be paid into the bank account which has previously been nominated by Investors. Investors will also receive an individualised letter detailing the interim distribution paid similar to the one received in June 2014.

The timing of further distributions to Investors continues to be dependent on the timing of the resolution of the legal proceedings currently on foot and the resolution of the claims with the Liquidators of Equititrust Limited. I expect though that a further distribution will be made by 31 December 2015 with a final distribution upon the conclusion of the Liquidator's claim against the auditors.

In order to reduce costs, I will issue my next update to Investors in August 2015.

## 5. Receiver's Remuneration and Expenses

As notified to Investors recently, I confirm that my fifth application for approval of my remuneration for the period 1 May 2014 to 31 January 2015 was heard on 5 March 2015 and was fixed in the amount of \$521,115.00 plus GST. A copy of the court order can be obtained from the websites detailed below.

I attach a summary of my current remuneration and outlays outstanding for the period from 1 February to 30 April 2015. My remuneration incurred during this period totals \$97,746.00 plus outlays of \$2,745.25 plus GST.

I anticipate that my next application for approval of my remuneration will be heard in October 2015. 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

All queries should be directed to Dermot O'Brien or Julia Mayne of this office who can be contacted as follows;

Phone: 07 3237 5999

Email: [Dermot.O'Brien@bdo.com.au](mailto:Dermot.O'Brien@bdo.com.au) or [Julia.Mayne@bdo.com.au](mailto:Julia.Mayne@bdo.com.au)

If 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

**REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 February 2015 to 30 April 2015**  
**Equitrust Income Fund (Receiver Appointed)**

Employee	Position	Rate	Totals		Task Area									
			hrs	\$	Assets	Creditors	Trade On	Investigations	Administration					
			hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$		
David Whyte	Partner	560	45.4	25,424.00	19.0	10,640.00	3.3	1,848.00	2.0	1,120.00	1.2	672.00	19.9	11,144.00
John Somerville	Senior Manager	440	40.3	17,732.00	23.7	10,428.00	9.2	4,048.00	2.2	968.00			5.2	2,288.00
Ashleigh Simpson-Wade	Supervisor	360	2.3	828.00							2.3	828.00		
Daniel Tipman	Supervisor	360	106.1	38,196.00	31.3	11,268.00	42.9	15,444.00	25.2	9,072.00	0.3	108.00	6.4	2,304.00
Gavin Hennessy	Supervisor	280	0.3											
Nicola Kennedy	Accountant I	225	1.6	360.00							1.3	292.50		
Dermot O'Brien	Undergraduate	195	55.0	10,725.00									54.5	10,627.50
Julia Mayne	Accountant II	195	20.7	4,036.50	1.0	195.00	0.3	58.50	14.7	2,866.50			4.7	916.50
Nicole Jackson	Team Assistant	155	0.7	108.50									0.5	77.50
Leisa Muller		135	0.1											
Reuben Tham	Undergraduate	110	1.0											
Moira Hattingh	Team Assistant	80	4.2	336.00	1.1	88.00							3.1	248.00
<b>TOTALS</b>			<b>277.7</b>	<b>97,746.00</b>	<b>76.1</b>	<b>32,619.00</b>	<b>56.7</b>	<b>21,594.50</b>	<b>45.4</b>	<b>14,319.00</b>	<b>3.8</b>	<b>1,608.00</b>	<b>94.3</b>	<b>27,605.50</b>
			<b>GST</b>	<b>9,774.60</b>										
			<b>TOTAL INC GST</b>	<b>107,520.60</b>										
			<b>AVERAGE HOURLY RATE</b>	<b>352</b>	<b>429</b>	<b>381</b>	<b>315</b>	<b>423</b>	<b>293</b>					

**Note:** All amounts exclude GST unless otherwise noted

Disbursements for the period 1 February 2015 to 30 April 2015	
<b>Equitrust Income Fund (Receiver Appointed)</b>	
Expense Type	Amount (\$ ex GST)
Postage	2,745.25
<b>TOTAL</b>	<b>2,745.25</b>
GST	274.53
<b>TOTAL INC GST</b>	<b>3,019.78</b>