



## TO INVESTORS AS ADRESSED

10 August 2015

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

I refer to my previous reports and now provide my 24<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. Asset Recoveries**

#### **1.1 Property Realisations**

As advised in my 23<sup>rd</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**

Provided below is an update on the status of the remaining legal actions.

- The two claims filed against the same valuer for negligence and damages have settled following a two day mediation on 14 and 15 July 2015. The settlement amount of \$5.5 million was received in July 2015.
- The other claim filed against a valuer for negligence and damages is progressing with a summary of the Court timeframe as follows.
  - the Plaintiff is to deliver to the Defendant any expert report on which it intends to rely on at trial by 25 September 2015
  - the Defendant is to deliver to the Plaintiff any expert report on which it intends to rely on at trial by 30 October 2015
  - All experts are to produce a joint report by 27 November 2015
  - Mediation is to be completed by 4 December 2015
  - If the mediation does not occur or is unsuccessful, the parties are to file a request for a trial date by 11 December 2015

It is hoped that this matter will be resolved at mediation, which is expected to be completed in 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.

The solicitors for the Liquidators have advised that the status of the claim is as follows.

- Amendments to the pleading is being prepared, which will be served on the defendants next week.
- The matter is back before the court for directions on 13 August 2015.
- It is anticipated that there may be a contested hearing shortly after the 13 August 2015 directions hearing at which the plaintiffs will be seeking leave to file the amendments to the pleading.
- If leave is granted for the amendments to the pleading, the defendants will have to put on amended defences and the next substantive step in the proceeding will then be discovery. Because of the large number of documents involved, it is anticipated that this will take several weeks to complete; following which it is likely that orders will be made for the parties to put on their evidence.
- The matter has not yet been given a trial date. There is no mediation scheduled as yet.

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. 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**

Since my 23<sup>rd</sup> update report to Investors, agreements have been reached with two councils to exchange National Australia Bank (NAB) bank guarantees of approximately \$989,000 securing uncompleted works bonds on development sites that were formerly property securities. As previously advised, it was determined that it was not commercial to complete the outstanding works to have the guarantees released as the costs of the works would significantly exceed the value of the bonds.

The NAB bank guarantees were exchanged with the respective councils on 2 July and 8 July 2014 and have been cancelled.

The Fund's indebtedness to the NAB has now been extinguished in full.

### **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 and Receivers and Managers 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 ('proof of debt proceedings'). Repeated attempts to 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 have not been responded to.

It may be necessary for claims between the Fund and the Liquidators to be the subject of directions of the Court when finalising the winding up. In the meantime, I have instructed my solicitors to arrange for the costs awarded to the Fund in the proof of debt proceedings to be assessed.

### 3. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period from 29 April 2015 to 31 July 2015.

Summary of Receipts and Payments for the Period 29 April 2015 to 31 July 2015			
	\$		\$
<b>Opening Cash at Bank</b>			<b>14,745,006.66</b>
<b>Receipts</b>			
Interest Income			58,721.73
GST Refund			114,388.39
Loan Recoveries:			
Corymbia Estates Pty Ltd	2,750,000.00		
Corymbia Corporation Pty Ltd	2,750,000.00		
Wirrina Cove	49,233.22	5,549,233.22	
<b>Total Receipts</b>			<b>5,722,343.34</b>
<b>Payments</b>			
Agent's fees			4,950.00
Bank Charges			199.60
Bank Guarantee Fees			38,347.88
Bank Guarantee Settlements			989,221.43
<i>Distressed Loan funding:</i>			
Corymbia Corporation Pty Ltd	89,767.01		
Corymbia Estates Pty Ltd	78,434.97		
Graham Spottiswood (A Bankrupt)	8,806.80		
Wirrina Cove	34,423.44	211,432.22	
IT Expenses			17,862.90
Legal Fees			40,151.63
Printing and Stationery			1,472.92
Second Interim Distribution to Unit Holders of 3 cents			5,516,402.48
<b>Total Payments</b>			

6,820,041.06

**Closing Cash at Bank**

**13,647,308.94**

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

- The Loan Recoveries include:
  - \$5.5 million for Corymbia Estates Pty Ltd and Corymbia Corporation Pty Ltd relating to the settlement of the valuer claims noted at section 1.2 of this report
  - Wirrina Cove relates to the balance of proceeds received from the receiver and manager of the marina head lease
- The 'Distressed Loan Funding' include:
  - Legal costs in pursuing the claim against the valuer for Corymbia Corporation Pty Ltd and Corymbia Estates Pty Ltd
  - The balance of legal fees relating to the recovery of \$1.8 million from the bankrupt estate of Graham Spottiswood (A Bankrupt)
  - The final GST payment and legal costs from the realisation of assets at Wirrina Cove
- Bank guarantee settlements relate to the exchange of bank guarantees with two Councils for uncompleted works bonds, details of which are outlined at section 2.1 of this report
- Legal fees primarily relate to the costs in pursuing the remaining valuer claim as outlined in section 2.1 of this report

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

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 and second interim distributions paid by me in June 2014 and June 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 13 cents and 13.4 cents per unit as at 31 July 2015 as follows:

	Low	High
	\$000's	\$000's
Net Estimated Value of Fund Assets as at 31 July 2015	13,647	13,647
Less:		
Creditors and Other Payables	1,204	814
Estimated Equalisation Payment	2,500	2,000
<b>Estimated net amount available to investors as at 31 July 2015</b>	<b>9,943</b>	<b>10,833</b>
Add:		
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>25,137</b>	<b>26,027</b>
Total investor units as at 21 November 2011	193,912	193,912
<b>Overall Estimated Return to Investors per Unit</b>	<b>13 cents</b>	<b>13.4 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 valuers or other third parties.

I advised in my 23<sup>rd</sup> update report to investors that the overall estimated return per unit was between 11.7 cents and 11.9 cents as at 28 April 2015. This estimate has been revised upwards due to the \$5.5 million settlement in relation to the valuer claim noted at section 1.2 of this report. However, please note that the estimated return per unit as at 28 April 2015 did not include the estimated 'equalisation payment' due to certain investors.

In relation to the 'equalisation payment', as previously advised, distributions to investors ceased in March 2011 with the majority of investors who elected to receive distributions on an annual basis being left disadvantaged when compared to investors who received distributions on a monthly basis. I have not yet fully determined the amount of the 'equalisation payment' that may be due to investors, however preliminary investigations indicate that the 'equalisation payment' will be between \$2 million and \$2.5 million.

I have sought legal advice which indicates that the most appropriate means of resolving the 'equalisation payment' issue is, upon the finalisation of the winding up of the Fund, to apply and seek a declaration from the Court as to the final payment to be made to all Investors as well as consent for an 'equalisation payment' to be made. Accordingly, steps will be taken in this respect upon finalisation of the winding up of the Fund.

#### 4.1 Third Interim Distribution to Investors

I anticipate that the winding up of the Fund may take a further twelve months to finalise (including resolving the Liquidators' claim against the auditors), however, I expect to be in a position to make a third interim distribution to Investors by 30 September 2015 of 3 cents per

unit (calculated based on the number of units remaining in the Fund at that point in time). The third interim distribution will equate to approximately \$5.7 million.

Please note, in estimating the funds that are available for distribution to Investors, I must take into account the liabilities of the Fund outstanding at the date of this report along with monies required in order to pay future liabilities that may arise in a worst 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 remaining legal proceeding on foot.

The upcoming third 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 2015.

The timing of further distributions to Investors continues to be dependent on the timing of the resolution of the remaining legal proceedings currently on foot and the resolution of the claims with the Liquidators of Equititrust Limited.

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

## 5. Updated Unit Price

I calculate an estimated unit price twice yearly as at 30 June and 31 December. The sole purpose of calculating the estimated unit price is to assist Investors with a revision of their pensions with Centrelink.

I provide below an updated unit price as at 30 June 2015 of 3 cents per unit, which is based on the total value of Fund assets as at 30 June 2015 less creditors and other payables.

	\$000's
Total Value of Fund Assets as at 30 June 2015	8,660
Less Creditors and Other Payables	(3,259)
<b>Total Net Value of Fund Assets</b>	<b>5,401</b>
Total Number of Units as at 31 December 2014	178,718
<b>Unit Price</b>	<b>3 cents</b>

I attach a copy of a letter to Centrelink confirming the unit price as at 30 June 2015, which may be used by Investors to assist with the revision of their pensions.

Please note that the unit price as at 30 June 2015 does not include the \$5.5 million settlement received in July 2015. As noted above, the purpose of the estimated unit price is to assist Investors with a revision of their pensions and should not be confused with the overall estimated return per unit outlined in section 4 of this report.

As previously advised, I have written to the Minister for Families, Housing, Community Services and Indigenous Affairs seeking consideration to exempt units in the Fund from social security deeming provisions to assist retirees who are income and asset tested. However, the Minister has advised that an exemption from the deeming rules are only provided in very limited circumstances and only when specific characteristics are met, including the investment ceasing

to operate within the terms of the Product Disclosure Statement (PDS). The Minister considers that the freezing of distributions and the risks associated with this product is allowed for in the PDS and the constitution of the Fund and therefore an exemption will not be granted.

## 6. Receiver's Remuneration and Expenses

I attach a summary of my current remuneration and outlays outstanding for the period from 1 February to 31 July 2015. My remuneration incurred during this period totals \$220,240.50 plus outlays of \$6,723.24 plus GST. This equates to an average of approximately \$37,000 per month for the preceding six months to 31 July 2015 where the following key milestones have been achieved.

- A second interim distribution of 3 cents per unit was paid to Investors in June 2015
- A settlement of two claims against a valuer has been completed, which realised \$5.5 million for the benefit of Investors
- Progressing the remaining claim against a valuer with mediation expected to be completed by December 2015
- A settlement with two Councils to exchange bank guarantees totalling approximately \$989,000 has been completed

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.

## 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 Julia Mayne or Samantha Brown of this office who can be contacted as follows;

Phone: 07 3237 5999

Email: [Julia.Mayne@bdo.com.au](mailto:Julia.Mayne@bdo.com.au) or [Samantha.Brown@bdo.com.au](mailto:Samantha.Brown@bdo.com.au)

Yours faithfully



David Whyte  
Receiver

**TO WHOM IT MAY CONCERN**

6 August 2015

**EQUITRUST INCOME FUND  
ARSN 089 079 854  
(RECEIVER APPOINTED) ("THE FUND")**

I refer to my court appointment on 21 November 2011 as interim Receiver and subsequent appointment on 23 November 2011 as Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution.

I provide an update on the estimated unit price of the Fund as at **30 June 2015**, calculated as follows:

	<b>\$000's</b>
Total Value of Fund Assets as at 30 June 2015	8,660
Less Creditors and Other Payables	(3,259)
<b>Total Net Value of Fund Assets</b>	<b>5,401</b>
Total Number of Units as at 30 June 2015	178,718
<b>Unit Price as at 30 June 2015</b>	<b>3 cents</b>

Should you have any queries in respect of the above, please contact Julia Mayne of my office on (07) 3859 4385.

Yours faithfully



David Whyte  
Receiver



**REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 February 2015 to 31 July 2015**  
**Equititrust Income Fund (Receiver Appointed)**

Employee	Position	Rate	Totals		Task Area													
			hrs	\$	Assets		Creditors		Trade On		Investigations		Dividends		Administration			
			hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
David Whyte	Partner	560	84.7	47,432.00	47.5	26,600.00	10.7	5,992.00	5.1	2,856.00	0.3	168.00	1.1	616.00	20.0	11,200.00		
John Somerville	Senior Manager	440	125.0	55,000.00	62.1	27,324.00	46.6	20,504.00	7.6	3,344.00	1.0	440.00			7.7	3,388.00		
Daniel Tipman	Supervisor	360	143.4	51,624.00	33.6	12,096.00	73.0	26,280.00	29.8	10,728.00	0.3	108.00			6.7	2,412.00		
Murray Daniel	Supervisor	360	13.3	4,788.00	4.5	1,620.00	0.2	72.00	6.4	2,304.00					2.2	792.00		
Ashleigh Simpson-Wade	Supervisor	360	3.1	1,116.00			2.6	936.00					0.5	180.00				
Gavin Hennessy	Supervisor	280	0.3	84.00	0.3	84.00												
Philip Smith	Accountant I	225	0.1	22.50											0.1	22.50		
Nicola Kennedy	Accountant I	225	26.1	5,872.50	0.2	45.00	3.5	787.50	10.4	2,340.00			0.3	67.50	11.7	2,632.50		
Julia Mayne	Accountant II	195	129.7	25,291.50	2.5	487.50	121.5	23,692.50	5.7	1,111.50								
Dermot O'Brien	Accountant II	195	65.8	12,831.00			65.8	12,831.00							7.2	1,404.00		
Samantha Brown	Accountant II	195	47.5	9,262.50			40.3	7,858.50							0.6	117.00		
Sarah Cunningham	Team Assistant	195	3.6	702.00											0.6	111.00		
Elizabeth Wagner	Accountant II	185	0.6	111.00											0.6	111.00		
Samantha Brown	Undergraduate	160	21.0	3,360.00			15.1	2,416.00							5.9	944.00		
Nicole Jackson	Team Assistant	155	4.0	620.00			3.5	542.50							0.5	77.50		
Leisa Muller	Team Manager	135	0.1	13.50	0.1	13.50												
Reuben Tham	Undergraduate	110	1.0	110.00	1.0	110.00												
Moirra Hattingh	Team Assistant	80	25.0	2,000.00	4.9	392.00	3.4	272.00							16.7	1,336.00		
<b>TOTALS</b>			<b>694.3</b>	<b>220,240.50</b>	<b>156.7</b>	<b>68,772.00</b>	<b>386.2</b>	<b>102,184.00</b>	<b>65.0</b>	<b>22,683.50</b>	<b>1.6</b>	<b>716.00</b>	<b>4.9</b>	<b>1,448.50</b>	<b>79.9</b>	<b>24,436.50</b>		
			<b>GST</b>	<b>22,024.05</b>														
			<b>TOTAL INC GST</b>	<b>242,264.55</b>														
			<b>AVERAGE HOURLY RATE</b>	<b>317</b>		<b>439</b>		<b>265</b>		<b>349</b>		<b>448</b>		<b>296</b>		<b>306</b>		

Disbursements for the period 1 February 2015 to 31 July 2015	
Equititrust Income Fund (Receiver Appointed)	
Expense Type	Amount (\$ ex GST)
Search Fee	146.50
Postage	5,965.54
<b>TOTAL</b>	<b>6,112.04</b>
GST	611.20
<b>TOTAL INC GST</b>	<b>6,723.24</b>