



## TO INVESTORS AS ADRESSED

22 December 2015

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

I refer to my previous reports and now provide my 25<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 24<sup>th</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 remaining claim filed against a valuer for negligence and damages is progressing. My expert has delivered his expert valuation report. The defendant was required to deliver their expert’s report(s) by 30 October 2015, however they advised that their expert was unable to complete the expert report within the Court timeframe due to an inability to finalise their investigations in relation to access to the subject property. A lending expert’s report was served on me on 16 December 2015.

As a result, the Court timeframe has been revised as follows

- the Defendant is to deliver to the Plaintiff any expert valuation report on which it intends to rely on at trial by 29 February 2016
- Mediation is to be completed by 21 March 2016
- If the mediation is unsuccessful, all experts in the same discipline are to produce a joint report by 18 April 2016
- If the matter has not been resolved, the parties are to file a request for a trial date by 30 April 2016

I am hopeful that this matter is resolved at mediation in March 2016.

#### **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 (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.

Since my last report to investors, the Liquidators of EL have been unable to obtain leave from the Court to file and serve amendments to the claim and statement of claim. In this regard, the

solicitors for the Liquidators have advised that they are presently involved in a protracted interlocutory contest with three directors in relation to aspects of the amended pleading.

The proceedings are listed for a further case management hearing before the Judge in the Federal Court on 16 December 2015.

I understand that if leave is granted for the amendments to the pleading, the defendants will have to file amended defences and the next substantive step in the proceeding will 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 and no mediation has been scheduled.

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.

## **2. Creditor Claims**

### **2.1 Secured Creditors**

As advised in my 24<sup>th</sup> report to investors, the Fund's indebtedness to the National Australia Bank (NAB) has now been extinguished in full.

As the NAB has been repaid in full, I understand that the Receivers and Managers appointed by NAB over EL will be retiring shortly.

### **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 EL;
- 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.

I have had my costs assessed that were awarded in the proof of debt proceedings, however the Liquidators have lodged a Notice of Objection. A Reply to the Notice of Objection has been

prepared and will be served on the Liquidators shortly together with a request to agree on an assessor to be appointed to carry out an assessment pursuant to a Court Order.

It may be necessary for claims between the Liquidators and the Fund to be the subject of directions of the Court when finalising the winding up.

### 3. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period from 1 August 2015 to 30 November 2015.

Summary of Receipts and Payments for the Period		\$	\$
1 August 2015 to 30 November 2015			
<b>Opening Cash at Bank</b>			<b>13,647,308.94</b>
<b>Receipts</b>			
Interest Income			47,175.90
Funds Returned from EFT Payments for the Third Interim Distribution			398,441.97
Loan Recoveries:			
	Graham Spottiswood (A Bankrupt)	53,623.94	
	Checkling Pty Ltd	3,410.72	
	Wirrina Cove Pty Ltd	2,284.75	
	Windsor Turf Pty Ltd	4,248.55	63,567.96
	<b>Total Receipts</b>		<b>509,185.83</b>
<b>Payments</b>			
Consultant's fees			29,444.67
Appointee Fees			337,905.70
Appointee Disbursements			10,059.41
Bank Charges			154.00
Costs Orders in the winding up proceedings			55,814.27
<i>Distressed Loan funding:</i>			
	Boothers Pty Ltd	4,040.83	
	Corymbia Corporation Pty Ltd	42,738.59	
	Corymbia Estates Pty Ltd	41,061.75	
	Graham Spottiswood (A Bankrupt)	3,177.63	
	Tweed Central Pty Ltd	1,349.83	
	Wirrina Cove	11,463.17	
	Windsor Turf Pty Ltd	125,336.68	229,168.48
Fees and Disbursements of the Receivers and Managers of Equititrust Limited			137,431.00
IT Expenses			24,098.80
Legal Fees			70,476.94



Third Interim Distribution to Unit Holders of 3 cents - Cheque	443,796.47	
Third Interim Distribution to Unit Holders of 3 cents - EFT	5,315,354.18	
Reissued Cheques due to Returned EFT payments	20,641.15	5,779,791.80
<b>Total Payments</b>		<b>6,674,345.07</b>
<b>Closing Cashbook Balance</b>		<b>7,482,149.70</b>
<b>Add Unpresented Cheques</b>		<b>198,525.58</b>
<b>Closing Cash at Bank</b>		<b>7,680,675.28</b>

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

- The Loan Recoveries include:
  - Final recoveries from Mr Spottiswood's wife's bankrupt estate
  - Final recoveries from the receiver and manager of Checkling Pty Ltd, Windsor Turf Pty Ltd and the Wirrina Cove marina head lease
- The 'Distressed Loan Funding' include:
  - Final legal costs in pursuing the claim against the valuer for Corymbia Corporation Pty Ltd and Corymbia Estates Pty Ltd. As advised in my 24<sup>th</sup> update report, an amount of \$5.5 million was recovered from this action
  - Final costs of the receiver and manager of Windsor Turf Pty Ltd. Please note that proceeds received by the Fund from the sale of the Windsor Turf business and assets by the receiver and manager were approximately \$3.1 million
- The Costs Orders in the winding up proceedings relate to costs awarded by the Court in favour of a third party in proceedings 9534 of 2011 and 10478 of 2011. The costs have only recently been assessed by a costs assessor and were in order to pay.
- The fees and disbursements of the receivers and managers of EL were paid following legal advice that these costs were captured under the NAB's security over the Fund. As noted earlier in this report, the NAB has been repaid in full and I understand the receivers and managers of EL will be retiring shortly.
- Legal fees primarily relate to the costs in pursuing the remaining valuer claim and dealing with the claims by the Liquidators of EL as outlined in sections 1.2 and 2.3 of this report respectively.

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
- 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 12.9 cents and 13.3 cents per unit as at 30 November 2015 as follows:

	Low	High
	\$000's	\$000's
Net Estimated Value of Fund Assets as at 30 November 2015	7,482	7,482
Less:		
Creditors and Other Payables	583	333
Estimated Equalisation Payment	2,500	2,000
<b>Estimated net amount available to investors at 30 November 2015</b>	<b>4,399</b>	<b>5,149</b>
Add:		
3 cent interim distribution paid September 2015	5,360	5,360
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>24,953</b>	<b>25,703</b>
Total investor units as at 21 November 2011	193,912	193,912
<b>Overall Estimated Return to Investors per Unit</b>	<b>12.9 cents</b>	<b>13.3 cents</b>

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

The estimated return to investors has been revised downwards slightly by 0.1 cent since my 24<sup>th</sup> update report dated 10 August 2015 primarily due to the future operating costs not being taken into account. However, the estimated return also excludes potential legal recoveries against valuers or other third parties as outlined in sections 1.2 and 1.3 of this report and therefore it is possible that investors' overall return may be higher than this estimate.

#### 4.1 Future Distributions to Investors

I will not be in a position to make further distributions to Investors until the remaining legal proceedings currently on foot and the claims with the Liquidators of EL have been resolved.

Please note that in estimating the funds 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.

I anticipate that the winding up of the Fund may take a further twelve months to finalise (including resolving the Liquidators' claim against the directors of EL and the auditors) and I will continue to provide updates to investors on its progress and the timing of future distributions. In order to reduce costs, I will issue my next update to Investors in April 2015.

## 5. Receiver's Remuneration and Expenses

As notified to Investors recently, my sixth application for approval of my remuneration for the period 1 February to 30 September 2015 was heard on 20 November 2015 and was fixed in the amount of \$356,952.20 (inclusive of GST). A copy of the court order along with the material filed in support of the application can be obtained from the websites detailed below.

I attach a summary of my current remuneration and outlays outstanding for the period from 1 October to 30 November 2015. My remuneration incurred during this period totals \$80,736 plus outlays of \$2,004.87 plus GST.

I anticipate that my next application for approval of my remuneration will be heard in June 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 Julia Mayne or Dermot O'Brien 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 [Dermot.O'Brien@bdo.com.au](mailto:Dermot.O'Brien@bdo.com.au)

Yours faithfully



David Whyte  
Receiver

**REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2015 to 30 November 2015**  
**Equititrust 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	21.0	11,760.00	3.5	1,960.00	6.0	3,360.00	1.9	1,064.00			9.6	5,376.00
John Somerville	Senior Manager	440	46.3	20,372.00	3.8	1,672.00	18.5	8,140.00	2.4	1,056.00	4.8	2,112.00	16.8	7,392.00
Murray Daniel	Supervisor	360	3.5	1,260.00	2.5	900.00							1.0	360.00
Nicola Kennedy	Senior Accountant II	280	23.5	6,580.00			1.0	280.00	17.7	4,956.00			4.8	1,344.00
Samantha Brown	Accountant II	195	84.7	16,516.50	0.4	78.00	83.5	16,282.50					0.8	156.00
Julia Mayne	Accountant II	195	90.2	17,589.00			64.1	12,499.50	3.1	604.50			23.0	4,485.00
Dermot O'Brien	Accountant II	195	29.0	5,655.00			0.3	58.50					28.7	5,596.50
Dermot O'Brien	Accountant II	185	4.3	795.50									4.3	795.50
Moira Hattigh	Team Assistant	80	2.6	208.00									2.6	208.00
<b>TOTALS</b>			<b>305.1</b>	<b>80,736.00</b>	<b>10.2</b>	<b>4,610.00</b>	<b>173.4</b>	<b>40,620.50</b>	<b>25.1</b>	<b>7,680.50</b>	<b>4.8</b>	<b>2,112.00</b>	<b>91.6</b>	<b>25,713.00</b>
			<b>GST</b>	<b>8,073.60</b>										
			<b>TOTAL INC GST</b>	<b>88,809.60</b>										
			<b>AVERAGE HOURLY RATE</b>	<b>265</b>	<b>452</b>	<b>234</b>	<b>306</b>	<b>440</b>	<b>281</b>					

Note: All amounts exclude GST unless otherwise noted

**Disbursements for the period 1 October 2015 to 30 November 2015**

**Equititrust Income Fund (Receiver Appointed)**

Expense Type	Amount (\$ ex GST)
General	902.12
Postage	1,033.20
Search Fee	69.55
<b>TOTAL</b>	<b>2,004.87</b>
<b>GST</b>	<b>200.49</b>
<b>TOTAL INC GST</b>	<b>2,205.36</b>