

## TO INVESTORS AS ADDRESSED

18 July 2022

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

### **1. INTRODUCTION**

I refer to my previous reports and now provide my 37<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. This report should be read in conjunction with my previous reports to Investors.

Since my last report dated 25 May 2021, I have been taking steps to finalise the winding up of the Fund with a view to paying an equalisation payment to certain investors who did not receive a return of capital in the 2011 financial year and a final distribution to investors.

On 13 August 2021, and as previously advised to members, I made an application to court seeking to:

- Resolve any outstanding claims by the Liquidators of Equititrust Ltd (In Liquidation) (**EL Liquidators**) (refer Section 2.2);
- Seek authority from the Court to pay an equalisation payment to Investors who did not receive a return of capital in the 2011 financial year and pay a final distribution (including the equalisation payment) to Investors to finalise the winding up of the Fund.
- Approve my outstanding remuneration from 1 May 2020 to 30 June 2021 and further remuneration to finalise the administration;
- Other ancillary orders.

Copies of the application and supporting affidavits can be found on the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au)

As detailed at Section 2.2, the finalisation of the winding up is being delayed by the EL Liquidators who have, on a number of separate occasions, failed to comply with the Court directions for the filing and service of documents in respect of the multiple applications they have brought, which relate to their claim to be indemnified out the Fund in the amount of \$2.7M.

## 2. CREDITOR CLAIMS

### 2.1. Other Creditors

As previously advised, there are a number of creditors that are required to be paid before the equalisation payment and the final distribution can be made to Investors, which include:

- Trade creditors, which relate to liabilities necessarily incurred in the winding up of the Fund.
- Claims against the Fund made by the EL Liquidators (refer Section 2.2 below).
- Receiver's remuneration and outlays.

### 2.2. Claims by the Liquidators of EL and Claims by Creditors

As advised in my previous reports to Investors, repeated attempts have been made to resolve all claims between the Fund and the EL Liquidators in respect of a costs order awarded against EL in the proof of debt proceedings and the amount owing at the date of their appointment (where I consider monies are owing to the Fund) and any amount due to the EL Liquidators after their appointment in relation to costs reasonably and properly incurred by them pursuant to the terms of the Fund's constitution.

I have provided a detailed update regarding this matter in my previous reports to Investors which formed the background of an application I caused to be made to Court on 3 August 2018 in which I sought directions to resolve any outstanding claims against the EIF.

That application was (part) heard by the Honourable Justice Boddice in the Supreme Court of Queensland on 12 October 2018 with orders handed down on 2 April 2019 (Order). The application was otherwise adjourned to a date to be fixed. A copy of the Order made by the Honourable Justice Boddice on 2 April 2019 is available on the EIF websites [www.equitrust.com.au](http://www.equitrust.com.au) and [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au).

In January 2020, the EL Liquidators provided me with details of Creditor Indemnity Claims pursuant to the Order. These claims have now been resolved with claims totalling \$23,988.40 being accepted out of the total \$8.64M claimed by the EL Liquidators.

I continued to correspond with the EL Liquidators in an attempt to explore a resolution of the EL Liquidators' claim against the Fund for remuneration and costs, however as they have to date not provided sufficient information or explanations of why the work was done, why it was required and why it should be paid from the Fund, I was forced to bring an application in Court to seek orders for any claim by them to be progressed or abandoned.

As stated at section 1 above, on 13 August 2021, I made an application to Court for directions to resolve the remaining outstanding matters in order to conclude the winding up of the Fund which included:

- Resolution of any outstanding claim by the EL Liquidators for an indemnity from the Fund for their remuneration and expenses;
- Application of an equalisation payment to the members of the Fund;
- Final distribution to members of the Fund;
- Final remuneration claim by the court appointed receiver of the Fund; and
- The finalisation of the Fund (including but not limited to the preparation of and audit of the final accounts and the deregistration of the Fund).

The Court subsequently made orders for the EL Liquidators to lodge an Indemnity Application and for the other matters to be adjourned to a date to be fixed pending resolution of that Application.

The EL Liquidators lodged an Indemnity Application on 28 September 2021, and were required under the orders made by the Honourable Justice Boddice on 1 October 2021, to serve a Points of Claim by 15 October 2021. The Points of Claim was not served by 15 October 2021, and was instead received on 22 October 2021. The Points of Claim sought payment of up to \$2.7M for remuneration and expenses, but did not include the Particulars or the Schedules referred to therein which provide crucial information regarding how the \$2.7M of claimed costs and disbursements were incurred.

On 4 November 2021, the Honourable Justice Williams made timetabling orders for the progression of the matter (**November Order**), which required the EL Liquidators to serve further particulars by way of a summary of the categories of each of the costs and disbursements claimed in their Indemnity Application by 11 November 2021 (**Summary**). In breach of the November Order, the summary was served by the EL Liquidators on 19 November 2021. I was required under the November Order to serve a Points of Defence responding to the Summary by 25 November 2021, however due to the EL liquidator's delay, I was unable to file and serve a Points of Defence until 6 December 2021. Additionally, on 2 December 2021, the EL Liquidators filed and served an amended version of their Indemnity Application, and an amended Points of Claim.

On 8 December 2021, the Honourable Justice Martin made further directions for the proceeding, requiring the EL Liquidator to serve any application for the determination of a separate question and affidavits in support of same by 14 December 2021 (**Separate Question Application**) (**December Order**). In breach of the December Order, the Separate Question Application and an unsealed copy of a supporting affidavit was served on 17 December 2021. Pursuant to a further order of the Court dated 17 December 2021 (**Second December Order**), the Separate Question Application was listed for a hearing on 28 February 2022, and the EL Liquidators were required to serve any further material upon which they intended to rely by 14 January 2022. In breach of the Second December Order, and despite numerous letters from my solicitors to the EL Liquidators following up same, the EL Liquidators did not file and serve their additional material until 4 February 2022.

Shortly prior to the hearing date of the Separate Question Application, on 25 February 2022, the EL Liquidators made an application to adjourn the matter until 6 May 2022. As members had not been served with a number of documents, orders were made to adjourn the matter to a date to be fixed not less than 21 days after all relevant material is served. The EL Liquidators were also ordered to pay my costs thrown away by the adjournment of the hearing of the Separate Question Application.

Despite following the EL Liquidators up on a number of occasions, they have not progressed either their Indemnity Application or the Separate Question Application, and have in fact indicated in correspondence to my solicitors that they intend to bring a further Application which is related to their claim to be indemnified out of the Fund.

My solicitors have urged the EL Liquidators to progress the amended Indemnity Application by filing and serving the required supporting material which demonstrates why they are entitled to be indemnified out of the Fund in the amount of \$2.77M, to abandon the Separate Question Application as it will not resolve their claim for indemnity and to promptly file and serve the additional foreshadowed application. In circumstances where I have conducted the winding up of the Fund and I have not received sufficient

supporting material justifying the EL Liquidators' claims for up to \$2.7M, I remain unsure of exactly what their claim is for and how the work being claimed related to and benefitted the Fund.

Material relating to the applications can be found on the Updates Page of the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au) under **EIF Receiver's Court Application for Directions - Hearing Date 1 October 2021 and Liquidators Reports.**

### **3. RECEIVER'S REMUNERATION AND EXPENSES**

There have been eleven applications to Court to date to approve my remuneration since the date of my appointment on 21 November 2011. My eleventh application was included in the Winding Up application filed on 13 August 2021 and where I have sought orders fixing my remuneration:

- For the period 1 May 2020 to 30 June 2021 (14 months) in the amount of \$211,274.25 (Inc GST) (approximately \$15,091.02 per month); and
- For the period from 1 July 2021 to the end of the receivership in the amount of \$275,000.00 (Inc GST).

Given the ongoing delays caused by the EL Liquidators not progressing their application, it is likely the costs to conclude the receivership will exceed the above amount of \$275,000. Once the Indemnity Application has been determined I will revise my estimate and provide an updated estimated return to investors that takes account of any amounts to be paid to the EL Liquidators.

### **4. 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

### **5. QUERIES**

All queries should be directed to this office, as follows:

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

All updates to Investors are posted to the websites; [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au) and [www.equititrust.com.au](http://www.equititrust.com.au).

Yours faithfully



David Whyte  
Receiver