

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITRUST LIMITED ACN 061 383 944

Applicant: EQUITRUST LIMITED ACN 061 383 944

AND

Respondents: THE MEMBERS OF THE EQUITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729

AFFIDAVIT

I, DAVID WHYTE of Level 6, 10 Eagle Street Street, Brisbane in the State of Queensland, Official Liquidator, say on oath:

1. I am an Official Liquidator and a Registered Liquidator and a Partner of the firm BDO. I am an affiliate member of the Institute of Chartered Accountants of Australia and an associate member of the Insolvency Practitioners Association of Australia.
2. By Order of this Honourable Court made 21 November 2011 and 23 November 2011 (the **Orders**) I was appointed:
  - (a) pursuant to sections 1101B(1) and 601NF(2) of the *Corporations Act 2001* (Cth) (the **Act**) as the receiver of the property of the Equititrust Income Fund ARSN 089 079 854 (**EIF**) and the property of the Equititrust Priority Class Income Fund ARSN 089 079 729 (**EPCIF**) (collectively, the **Funds**); and
  - (b) pursuant to section 601NF(1) of the Act to take responsibility for ensuring that the Funds are wound up in accordance with the Funds' constitutions.
3. Now produced and shown to me and marked "**DW-1**" is a true and correct copy of the Orders under which I was appointed and the Reasons for Judgment of Justice Applegarth.
4. I have made an application for the approval of my remuneration for acting as receiver of the property of the EIF and person responsible for ensuring that the EIF is wound up in accordance with its constitution for the period 1 September 2012 to 30 April 2013 (**Application**).
5. I am seeking orders from the Court that *inter alia*:
  - (a) That notice of the Application and any further applications to be made by me in these proceedings for approval of my remuneration be effected on the members of the EIF by:
    - (i) placing an advertisement of the application in The Australian, The Courier Mail and the Gold Coast Bulletin newspapers;

Signed:

  
Affidavit  
Filed on behalf of the Court Appointed Receiver  
Form 46 R.431

Taken by:

  
GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201204781

- (ii) posting a notice of the application in a prominent location on the Equititrust Limited website of [www.equititrust.com.au](http://www.equititrust.com.au);
  - (iii) posting a notice of the application in a prominent location on the Equititrust Income Fund website of [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au); and
  - (iv) sending a notice by ordinary post to all members at their last known address;
- (b) That the form of the advertisement and respective notices be in substantially the same form as the notice set-out in "Annexure A" to the Application;
  - (c) Alternatively, that service of the Application and any further applications filed by me in these proceedings for approval of my remuneration and any supporting affidavits on each of the members of the Equititrust Income Fund pursuant to rule 112 of the *Uniform Civil Procedure Rules 1999* (Qld) be dispensed with; and
  - (d) That service of the Application and supporting affidavit of me and any further applications filed by me in these proceedings for approval of my remuneration and supporting affidavits be deemed effected on each of the members of the Equititrust Income Fund five (5) days after those documents are made available in PDF on the websites of "[www.equititrust.com.au](http://www.equititrust.com.au)" and "[www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au)".

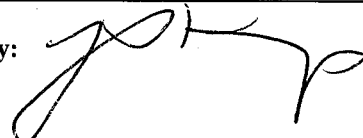
### Background

- 6. Equititrust Limited ACN 061 383 944 (In Liquidation) (Receivers and Managers Appointed) (EL) is the Responsible Entity (RE) of the Funds. EL is also the manager of the Equititrust Premium Fund (EPF), which is an unregistered managed investment scheme. I have not been appointed in any capacity over the EPF or its property.
- 7. The EIF is a first mortgage fund. There are approximately 1,600 investors in the EIF.
- 8. Of these 1,600 investors, approximately 1,100 are located in Queensland, 30 are located outside of Australia and the remainder are located in various locations across Australia.
- 9. On 29 February 2012, I sought and obtained an order from this Honourable Court which (without derogating from my appointment or my powers pursuant to the Orders of His Honour Justice Applegarth of 21 November 2011 and 23 November 2011) authorised me to *inter alia*:
  - (a) take all steps necessary to ensure the realisation of property of the EIF held by EL as RE of the EIF by exercising any legal right of EL as RE of the EIF in relation to the property of the EIF;
  - (b) bring, defend or maintain any proceedings on behalf of the EIF in the name of EL as is necessary for the winding up of the EIF in accordance with clause 9 of EIF's constitution; and
  - (c) take all steps necessary to effect the implementation of a NAB bank guarantee facility and the replacement of the existing CBA bank guarantee facilities.
- 10. Now produced and shown to me and marked "DW-2" is a true copy of the Order of Justice Dalton dated 29 February 2012.

Signed:

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Taken by:



### **Communications with EIF investors**

11. Prior to my appointment, EL used its website of "www.equitrust.com.au" (**EL website**) to provide investors with updates with respect to the Funds, particularly the EIF, including general news, information, Disclosure Statements and Annual Financial Reports.
12. This website was also used as a way of notifying investors of the proceedings commenced by EL in November 2011 as a result of which I was appointed receiver of the Funds and person responsible.
13. EL applied to the Court in these proceedings and obtained an order granting service of the Court documents, including the originating application filed 15 November 2011 and the supporting affidavit of Paul Vincent sworn 15 November 2011 and any further Court documents to be relied upon, be effected by making those documents available in .pdf format on the EL website.
14. Now produced and shown to me and marked "DW-3" is a true copy of the order obtained by EL in these proceedings dated 15 November 2011.
15. Now produced and shown to me and marked "DW-4" is a true and correct copy of the notice dated 16 November 2011 posted on the EL Website notifying investors of the court action.

### **First application for approval of remuneration**

16. On 21 September 2012, I applied to the Court in these proceedings for an order approving my remuneration for the period 21 November 2011 to 31 August 2012. I also made a separate application regarding service of that application and the supporting material on the investors of the EIF.
17. On 11 October 2012, this Honourable Court ordered that service of the Court documents (including the application filed on 21 September 2012 and the supporting affidavit of myself and any further Court documents to be relied upon) be effected in the manner sought in that application.
18. Now produced and shown to me and marked "DW-5" is a true copy of the order obtained in these proceedings dated 11 October 2012.
19. I seek the same orders in this present application.

### **Cost of service of application and supporting material**

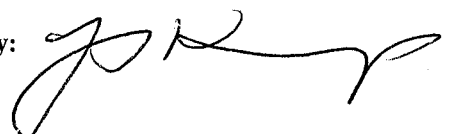
20. In order to serve each of the approximately 1,600 investors of the EIF we would need to outsource the task of printing and compiling all of the relevant material given the size of the material and the number of investors.
21. I estimate the cost of outsourcing the printing for service of the current application for the approval of my remuneration and supporting affidavit to be approximately \$80,000.
22. In respect of any future applications to be made by me for the approval of my remuneration, it is likely that similar costs would be incurred in outsourcing the printing for service of each of those applications and the supporting affidavits.
23. Given that there are approximately 1,600 investors in the EIF, it is not only impractical but costly and time consuming to serve the application and supporting documents on each investor in the manner prescribed by the *Uniform Civil Procedure Rules 1999* (Qld).

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Signed:



Taken by:



### Communication with investors of the EIF

24. During the course of the receivership I have prepared reports to the investors of the EIF updating them as to the ongoing winding up of the EIF.
25. I publish these reports in PDF on the EL website and the EIF website of "www.equitrustincomefund.com.au" (EIF website).
26. Now produced and shown to me and marked "DW-6" is a true copy of each of my reports to investors.
27. In each of these reports (save for my report dated 21 February 2012) I include a summary of my remuneration and expenses.
28. In my fourth, fifth, sixth, seventh, eighth, tenth, eleventh and twelfth report to investors dated 16 May 2012, 21 June 2012, 26 July 2012, 30 August 2012, 4 October 2012, 4 January 2013, 28 February 2013 and 18 April 2013 respectively, I *inter alia* state my intention to apply to Court to seek approval of my fees and that I will notify the creditors and investors of the application date.
29. In addition to my reports, the reports of the liquidators of EL and the receivers and managers of EL are also published on the EL website.

### Service

30. Given that:
  - (a) there are approximately 1,600 investors in the EIF and that it would be impractical and costly to serve the current application and supporting documents on each investor in the manner prescribed by the *Uniform Civil Procedure Rules 1999* (Qld);
  - (b) pursuant to an Order dated 15 November 2011 obtained by EL in these proceedings, service of the Court documents have previously been effected by making those documents available in .pdf format on the EL website;
  - (c) pursuant to an Order dated 11 October 2012 obtained in these proceedings, service of an application of this nature has previously been effected in the manner proposed in the present application;
  - (d) during the course of the receivership I have prepared reports to the investors of the EIF updating them as to the ongoing winding up of the EIF and published those reports on both the EL and the EIF websites as well as sending copies to each of the investors last known address; and
  - (e) the reports of the liquidators of EL and the receivers and managers of EL are also published on the EL website,

I verily believe that by notifying the investors of the EIF of the application and serving the documents in respect of same in the manner sought in this application, that the fact of the application for approval of my remuneration and the documents will come to the attention of the investors of the EIF.

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Signed:

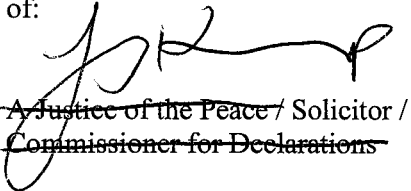
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Taken by:



**ALL THE FACTS** and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

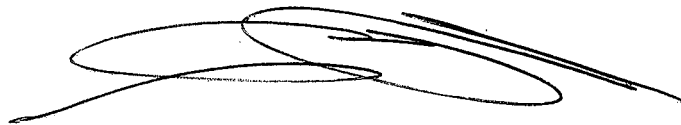
**SWORN** by **DAVID WHYTE** on this 15<sup>th</sup>  
day of May 2013 at Brisbane in the presence  
of:



~~A Justice of the Peace / Solicitor /  
Commissioner for Declarations~~

**Jacqueline Suzanne Kemp**  
Solicitor

)  
)  
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)  
)  
)



**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

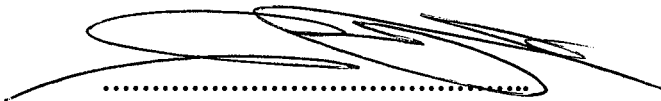
Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITIRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729**

**CERTIFICATE OF EXHIBIT**

**INDEX TO EXHIBITS**

Exhibits "DW-1" to DW-6" to the affidavit of DAVID WHYTE sworn at Brisbane on this 15<sup>th</sup> day of May 2013.

<b>Exhibit</b>	<b>Description</b>	<b>Page No.</b>
<b>DW-1</b>	Orders of Justice Applegarth of 21 November 2011 and 23 November 2011 and Reasons for Judgment	1-32
<b>DW-2</b>	Order of Justice Dalton of 29 February 2012	33-34
<b>DW-3</b>	Order of Justice Applegarth dated 15 November 2011	35-38
<b>DW-4</b>	Notice posted by EL on the EL Website dated 16 November 2011	39-40
<b>DW-5</b>	Order of Justice Phillipides dated 11 October 2012	41-43
<b>DW-6</b>	Copy of reports to investors	44-176



Deponent



Solicitor

Certificate of Exhibit  
Filed on behalf of the Court Appointed Receiver  
Form 47 R.435

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201204781

"DW-1"

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SUPREME COURT OF QUEENSLAND

1 NOV 2011

FILED BRISBANE

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 10478/2011

In the matter of **EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

Before: Justice Applegarth

Date: 21 November 2011

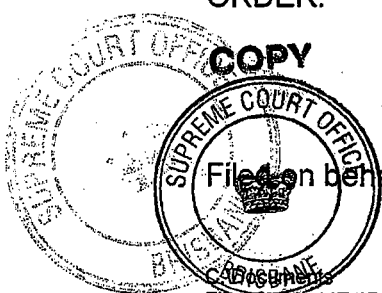
Initiating document: Application filed 15 November 2011, and oral application made by the Australian Securities and Investments Commission on 21 November 2011.

**THE ORDER OF THE COURT IS THAT:**

1. Pursuant to section 601ND (1)(a) of the *Corporations Act 2001* (Cth) (the "Act"):-
  - (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999 ("EIF");
  - (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999 ("EPCIF").
2. David Whyte ("**Mr Whyte**") be appointed pursuant to section 601NF(1) of the Act to take responsibility for ensuring that:-
  - (a) the EIF is wound up in accordance with its constitution; and
  - (b) the EPCIF is wound up in accordance with its constitution.
3. Pursuant to section 601NF(2), that Mr Whyte:-

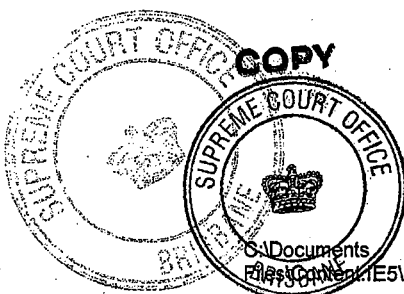
ORDER:

TUCKER & COWEN  
Solicitors  
Level 15  
15 Adelaide Street  
Brisbane, Qld, 4000.  
Tele: (07) 300 300 00  
Fax: (07) 300 300 33



Filed on behalf of the Applicants

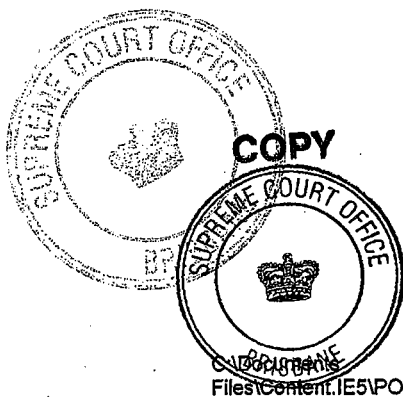
- (a) have access to the books and records of Equititrust Limited which concern the EIF and the EPCIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in effecting the winding up of the EIF;
  - (c) be indemnified out of the assets of the EPCIF in respect of any proper expenses or costs incurred in effecting the winding up of the EPCIF;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration; and
  - (e) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
4. Pursuant to sections 1101B(1) and 1101B(5) of the Act, Mr Whyte be appointed as:-
- (a) a receiver of the property of the EIF; and
  - (b) a receiver of the property of the EPCIF,
- until 4:00pm on Wednesday 23 November 2011, or further earlier order.
5. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Limited or the EIF.
6. That by 4pm on Tuesday 22 November 2011, Equititrust Limited publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
7. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with section 601NF(2) of the Act.





8. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
9. The oral application of ASIC be adjourned to 10:00am on Wednesday 23 November 2011.

Signed:



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SUPREME COURT  
OF QUEENSLAND

23 NOV 2011

SUPREME COURT OF QUEENSLAND

FILED  
BRISBANE

REGISTRY: Brisbane  
NUMBER: BS 10478 of 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

Respondents: THE MEMBERS OF THE EQUITITRUST INCOME FUND  
ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST  
PRIORITY CLASS INCOME FUND ARSN 089 079 729

ORDER

Before: Justice Applegarth

Date: 23 November 2011

Initiating document: Application filed 15 November 2011 and Oral Application made 21  
November 2011

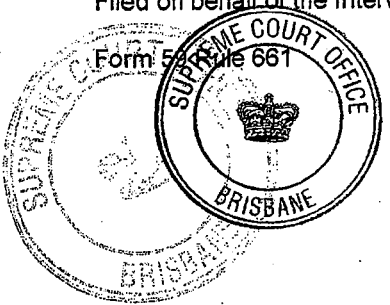
THE ORDER OF THE COURT IS THAT:

1. Pursuant to s.1101B(1) of the *Corporations Act 2001* (Cth) (**the Act**) David Whyte (**Mr Whyte**) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (**EIF**); and
  - (b) a receiver of the property of the Equititrust Priority Class Income Fund (**EPCIF**).
2. Pursuant to s.601NF(2) of the Act David Whyte (**Mr Whyte**) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (**EIF**); and
  - (b) a receiver of the property of the Equititrust Priority Class Income Fund (**EPCIF**).

ORDER  
Filed on behalf of the Intervener

Australian Securities & Investments Commission  
Hugh Copley, Litigation Counsel

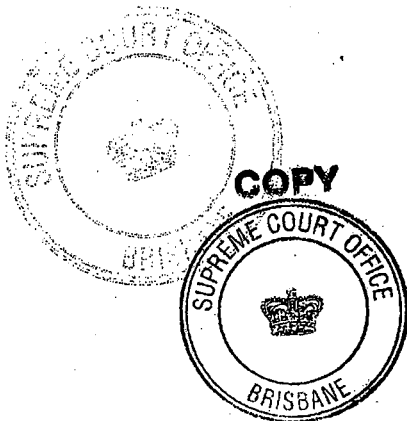
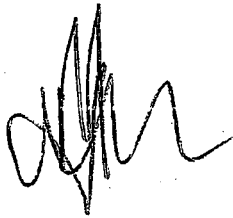
Level 20, 240 Queen Street, Brisbane Qld 4000  
Tel: (07) 3867 4700  
Fax: (07) 3867 4725  
Ref: K Rodgers (11-40025)



3. Pursuant to s.1101B(1) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 1 above, the powers set out in s.420 of the Act in addition to the powers set out in s.1101B(8)(a) to (c) of the Act.
4. Pursuant to s.601NF(2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 2 above, the powers set out in s.420 of the Act and the powers set out in s.1101B(8)(a) to (c) of the Act.
5. Pursuant to s.1101B(1) of the Act, Mr Whyte in respect of the appointment made in Order 1 above:
  - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
  - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
6. Pursuant to s.601NF(2) of the Act, Mr Whyte in respect of the appointment made in Order 2 above:
  - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
  - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
7. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Ltd or the property of the EIF.



8. That by 4pm on Thursday 24 November 2011, Equititrust Ltd publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to its members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
9. That the parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
10. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with s.601NF(2) of the Act.



# SUPREME COURT OF QUEENSLAND

CITATION: *Re Equititrust Ltd* [2011] QSC 353

PARTIES: **EQUITITRUST LTD**  
**ACN 061 383 944**  
(applicant)  
v  
**THE MEMBERS OF THE EQUITITRUST INCOME  
FUND AND THE EQUITITRUST PRIORITY CLASS  
INCOME FUND**  
(respondents)

FILE NO: BS 10478 of 2011

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING  
COURT: Supreme Court at Brisbane

DELIVERED ON: 23 November 2011

DELIVERED AT: Brisbane

HEARING DATE: 21 and 23 November 2011

JUDGE: Applegarth J

ORDERS: **Orders for two registered schemes to be wound up pursuant to s 601ND of the *Corporations Act 2001 (Cth)*, for the appointment of a person to take responsibility for ensuring that each registered scheme is wound up and for the same person to be appointed as a receiver of the property of each scheme.**

CATCHWORDS: CORPORATIONS – MANAGED INVESTMENTS – WINDING UP – where company applied to Court for the winding up of two registered schemes of which it was the responsible entity and for the appointment of a temporary responsible entity – where circumstances of urgency exist due to impending lapse of insurance for officers of company – where directors indicated that they would resign upon lapse of insurance – where the administration of the schemes had broken down and the schemes’ purposes could no longer be accomplished – where the company was in breach of the *Corporations Act 2001 (Cth)* and of conditions of its financial services licence – whether the Court had jurisdiction to appoint a temporary responsible entity – whether the Court should order the winding up of the schemes – whether the Court should appoint a receiver to the property of each scheme

*Corporations Act 2001 (Cth)* s 601FA, s 601FN, s 601FP, 601ND, s 601NF, s 1101B

*Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 cited  
*Capelli v Shepard* (2010) 264 ALR 167; [2010] VSCA 2 cited

*Re Crust 'N' Crumb Bakers (Wholesale) Pty Ltd* [1992] 2 Qd R 76 cited

*Joye v Beach Petroleum N.L.* (1996) 67 FCR 275 cited  
*Mier v FN Management Pty Ltd* [2006] 1 Qd R 339; [2005] QCA 408 discussed

*Re PWL Ltd; Ex parte PWL Ltd (formerly Palandri Wines Ltd) (No 2)* [2008] WASC 232 cited

*Re Rubicon Asset Management Ltd* (2009) 74 ACSR 346; [2009] NSWSC 1068 discussed

*Re Stacks Managed Investments Ltd* (2005) 219 ALR 532; [2005] NSWSC 753 discussed

*Westfield Management Ltd v AMP Capital Nominees Ltd* [2011] NSWSC 1015 cited

*Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34; [2000] VSC 300 cited

COUNSEL: P L O'Shea SC and J W Peden for the applicant  
A S Martin SC and G M Drew for certain members  
D R W Tucker (solicitor) for a member, Tucker SF Pty Ltd  
T P Sullivan SC and S R R Cooper for the Australian Securities and Investments Commission intervening  
D D Keane instructed directly by Lion Advantage Ltd, an applicant for appointment as a temporary responsible entity (21 November 2011)  
J W Peden for the applicant and Mr Mark McIvor (23 November 2011)

SOLICITORS: Nyst Lawyers for the applicant  
Piper Alderman for certain members  
Tucker & Cowen for Tucker SF Pty Ltd  
Australian Securities and Investments Commission for the intervener  
Nyst Lawyers for Mr Mark McIvor (23 November 2011)

- [1] On Monday, 21 November 2011 I made certain orders following a hearing which was held on short notice and in circumstances of urgency. These are my reasons for making those orders. The circumstances of urgency included the fact that two insurance policies covering officers of Equititrust Ltd (the company) were due to expire at 3.00 pm that day. They were unlikely to be renewed and alternative insurance could not be sourced. In those circumstances, the recently-appointed directors of the company were not prepared to remain on the board and proposed to resign shortly before 3.00 pm.

- [2] By an originating application filed on 15 November 2011 the company sought the following two orders:

- “1. The Equititrust Income Fund be wound up pursuant to section 601ND of the *Corporations Act* (Cth) 2001;
2. The Equititrust Priority Class Income Fund be wound up pursuant to section 601ND of the *Corporations Act* (Cth) 2001.”

It also sought an order pursuant to s 601FN of the *Corporations Act* (Cth) 2001 (“the Act”) that:

“Equititrust Limited be replaced as the Responsible Entity of the Equititrust Income Fund and the Equititrust Priority Class Income Fund (**‘Funds’**) by a temporary Responsible Entity, with that entity to wind-up the Funds and take steps to call a meeting of members to ratify its appointment”.

The company also sought an order pursuant to s 601NF that a committee consisting of Mr Jeff McDermid, Mr Paul Vincent and Mr Nick Combis be appointed to take responsibility for ensuring that the funds are wound up in accordance with their constitutions and that appropriate directions be made to effect that winding up.

- [3] Upon the hearing of the application the company initially sought only an order pursuant to s 601FN of the Act that it be replaced as the responsible entity of the two funds. However, it submitted that if I did not appoint a temporary responsible entity to replace it, I should order that the funds be wound up.
- [4] The Australian Securities and Investments Commission (ASIC) intervened in the proceeding and made an oral application for the appointment of a receiver to the funds pursuant to s 1101B of the Act.

#### **The application for the appointment of a temporary responsible entity**

- [5] There was a jurisdictional impediment to the making of an order under s 601FN for the appointment of a temporary responsible entity. That section entitles ASIC or a member of a registered scheme to apply to the Court for the appointment of a temporary responsible entity of a scheme under s 601FP if the scheme “does not have a responsible entity that meets the requirements of s 601FA”. Section 601FA requires the responsible entity of a registered scheme to be a public company that holds an Australian financial services licence authorising it to operate a managed investment scheme. At the time of the company’s application and at the time of the hearing it met both of these requirements. The fact that it was in breach of the terms of its financial services licence and faced the prospect of having that licence terminated or suspended did not alter the fact that it still held its licence.
- [6] This jurisdictional impediment was, in part, the result of the company seeking from ASIC and obtaining an adjournment until 22 November 2011 of a hearing to show cause why its licence should not be terminated.
- [7] Counsel for ASIC helpfully drew my attention to Regulation 5C.2.02 of the *Corporations Regulations* 2001 (Cth), although the company did not make any

application under that regulation. For the reasons given by ASIC, it is questionable whether that regulation provides a source of power for the Court to appoint a temporary responsible entity other than in the circumstances provided for in s 601FL or s 601FN.

- [8] In the result, the Court's power to appoint a temporary responsible entity upon an application under s 601FN was not invoked.
- [9] This makes it unnecessary to address the question of whether the appointment of a temporary responsible entity was in the interests of the members, and a contentious issue as to whether the replacement of the company by such an entity would result in a reconversion of subordinated units held by the company in its own right, and a decrease in the value of units held by other members.

### **The application under s 601ND to wind up the funds**

- [10] The company submitted that if I did not appoint a temporary responsible entity to replace it as the responsible entity for each fund, then I should make the orders sought in paragraphs 1 and 2 of its originating application for each of the funds to be wound up pursuant to s 601ND. ASIC supported this application. So did a member of the Equititrust Income Fund, Tucker SF Pty Ltd. The only opposition to making orders under s 601ND came from seven members for whom Mr Martin SC and Mr Drew of counsel appeared. The basis for that opposition was to enable members to call a meeting and to vote upon a proposal to wind up the Income Fund pursuant to s 601NB of the Act.
- [11] It is necessary to outline certain factual matters by way of background to explain why I reached the conclusion that it was just and equitable to make an order directing the responsible entity to wind up each fund, and why I considered that such an order should be made promptly rather than delayed for some uncertain period to allow the members to vote on a resolution to wind up the Income Fund.
- [12] The company is the responsible entity of three managed schemes, two of which are registered. The third, being the Equititrust Premium Fund ("EPF"), is not registered and is not required to be registered under the Act. The two registered managed investment schemes are known as the Equititrust Income Fund ("EIF") and the Equititrust Priority Class Income Fund ("EPCIF"). The EIF has some 1,400 members and net assets in excess of \$100,000,000. The EPCIF has only five members, all apparently associated with the company's sole shareholder, Mr McIvor. EPCIF holds 13,636,478 units in the EPF.
- [13] As its name suggests, the EIF was intended to be an "income fund" which provided monthly interest payments on most investments and the redemption of capital. Where a member invests for a period of 12 months the entitlement to redemption arises on the anniversary of the allotment of units after a request is made to redeem. The fund no longer achieves its purposes. The fund has been frozen since October 2008 in that no redemptions of units have been permitted since then. Since April 2011 the fund has ceased paying interest to members.
- [14] The company was beset by discord between directors and the company's sole shareholder, Mr McIvor, during 2011. It is unnecessary to describe fully the nature of the discord. An application was brought by the superannuation fund of a former director, Mr Tucker, seeking an order for the winding up of the EIF. The



application was adjourned on the basis of certain undertakings, given by Mr McIvor to the Court, not to seek to appoint any new director or remove any existing director from the board of the company without giving notice to the existing board and to ASIC, and seeking leave of the Court. These undertakings were given on 27 October 2011 in circumstances in which the company had been placed in the hands of a newly appointed board of directors. The newly appointed board comprised Mr Paul Vincent, Mr Jeff McDermid, Mr Troy Bingham and Mr Warwick Powell. Mr Vincent is a Fellow of the Institute of Chartered Accountants, and has 30 years experience as a Chartered Accountant. He and his fellow directors familiarised themselves with the operations of the company and considered how the funds might best be wound up. The new board considered the best realisation strategies.

- [15] On 12 October 2011 a differently constituted board had unanimously resolved:
- (a) that Equititrust Limited as the responsible entity of the Equititrust Income Fund considers that the purpose of the Equititrust Income Fund cannot be accomplished (within the meaning of s 601NC(1) of the *Corporations Act*).
  - (b) that Equititrust Limited as responsible entity of the Equititrust Income Fund take steps to wind up the Equititrust Income Fund within the meaning of s 601NC(1) and in accordance with its constitution.
  - (c) that the chief executive officer prepare notices to give to members of the scheme and to ASIC in accordance with s 601NC(2) of the *Corporations Act*.

A similar resolution was passed the same day in respect of the EPCIF, namely that its purpose cannot be accomplished and that it should be wound up.

- [16] The new board would have preferred to continue with the process of winding up that had been instigated, being a process provided for under s 601NC of the Act. However, the expiry and non-renewal of insurance policies on 21 November 2011 prompted them to have the company apply for winding up orders pursuant to s 601ND.
- [17] Mr Vincent, in an affidavit sworn on 18 November 2011, assessed the approximate financial position of the company as at 31 October 2011 as follows:

- a. ETL [Equititrust Ltd] has assets in its own right worth approximately \$26,498,000;
- b. ETL has liabilities in its own right in the approximate sum of \$26,470,000;
- c. ETL has assets that it holds for the EIF in the approximate sum of \$120 million;
- d. ETL has liabilities in its capacity as responsible entity for the EIF in the approximate sum of \$9 million;
- e. ETL has therefore net assets in the EIF in the approximate sum of \$111 million;

- f. ETL has liabilities in its capacity as Responsible Entity for EPF in the approximate sum of \$12.5 million;
- g. ETL has assets that it holds for the EPF of approximately \$13 million;
- h. ETL has therefore net assets in the EPF in the approximate sum of \$0.5 million.”

[18] The company has borrowings on its own behalf and also on behalf of the funds. The secured lenders include the Commonwealth Bank, the National Australia Bank and the Bank of Scotland International. The borrowings are secured by various real property mortgages and charges over assets of the company in its own right and also over assets of the funds. The total borrowings are approximately \$17 million, owed by EIF as to \$9 million and by EPF (the unregulated fund) as to \$8 million. The company’s assets and liabilities are more fully summarised in Mr Vincent’s affidavit sworn on 18 November 2011. That affidavit was supplemented by an affidavit sworn on 21 November 2011 which corrected paragraph 6 of the earlier affidavit by stating that the company in its capacity as responsible entity for the EPCIF holds 13,636,478 units in the EPF.

[19] Importantly for present purposes, according to Mr Vincent’s assessment the EIF has net assets of about \$111 million.

[20] Based upon his work as a director since his appointment, Mr Vincent was “clearly of the view that the Funds should be wound up”. His reasons were summarised as follows:

- “a. the Funds have been frozen since October 2008, in that no redemptions of units have been permitted since then;
- b. since April 2011, the Funds have ceased paying interest on the units to members of the Funds;
- c. the disharmony between Mr Tucker and Mr Kennedy on the one hand and Mr McIvor on the other hand over the past 12 months or so, as more fully described in the affidavits of Mr Tucker, Mr Kennedy and Mr McIvor filed in BS9534/2011, has destabilised the Funds to such a degree that it is extremely unlikely that the Funds could regain the possibility of resuming trading;
- d. the vast majority of the loans owed to ETL as responsible entity for the EIF are in default and require intensive management so as to maximise the value realisable from those loans;
- e. as indicated in paragraph 8 of my earlier affidavit, I have received widespread support from members for the winding up and no objections. I am aware of an indication, by correspondence from Piper Alderman as solicitors for a number of members who have mooted a potential class action against ETL and its former directors, that there may be some opposition

to the winding up, but I have not yet seen the details of any such opposition and am accordingly unable to comment on the reasons for such opposition; and

- f. against this background, it is clear to me that the purpose for which each of the EIF and EPCIF were established can not be accomplished.”

- [21] Mr Vincent and his fellow directors reached the conclusion that it is in the best interests of members of the EIF and the EPCIF that each fund be wound up forthwith.
- [22] It is unnecessary to canvass the board’s preference for the appointment of a temporary responsible entity pursuant to s 601FP to enable the winding up to proceed subject to oversight by a committee. Mr Vincent’s affidavit indicated that if a responsible entity was not able to be appointed to replace the company as the responsible entity by Monday, 21 November 2011, then the board recommended that an independent insolvency practitioner be appointed to wind up each fund in accordance with the provisions of its constitution.
- [23] The assessment by Mr Vincent and his fellow-directors of what is in the best interests of members of each fund was undertaken in difficult circumstances. I accepted the considered view of the new board that it was in the best interests of members of each fund that each fund be wound up forthwith.
- [24] As noted, the only opposition to such an order was advanced by counsel on behalf of a small number of members who, according to their Notice of Appearance, hold units in the EIF totalling \$2,433,743.11. Those members also obtained leave to file an application seeking a variety of orders including a declaration that certain notices given pursuant to s 601NC of the Act were invalid and an order pursuant to s 252E(1) of the Act that a meeting of the members of the EIF be called to consider and vote on an extraordinary resolution directing the responsible entity to wind up the EIF. I took into account the submissions made on behalf of these members as to the desirability of allowing the members to meet and consider a resolution to wind up the EIF. I was not in a position to make any assessment of the merit of a submission made by Mr Tucker to the effect that the opposition to an order to wind up the funds forthwith was to achieve some collateral advantage in connection with foreshadowed proceedings against the company and its former officers. I declined these members’ application to adjourn the company’s application and decided to make orders directing that each fund be wound up pursuant to s 601ND because such a course appeared to be in the best interests of members of the funds. Any advantage in allowing the members to vote on a resolution to wind up the EIF at a yet-to-be convened meeting at some uncertain future date was outweighed by the disadvantages associated with delaying orders for the winding up of each fund.
- [25] In addition to the matters supporting a winding up forthwith identified by Mr Vincent is the fact that the board intended to resign prior to 3.00 pm on Monday, 21 November 2011 in the event that the company was unable to obtain insurance coverage. Such a course would leave the company without directors unless and until Mr McIvor obtained a release from the undertakings given in relation to the appointment of directors. There is evidence from former directors of the company that Mr McIvor does not wish the company to properly pursue a winding up of the

funds. There was no proposal for directors who were independent of Mr McIvor to be appointed as directors. The task of winding up the funds, including the recovery of loans upon which there has been default, should be undertaken by an independent person who is appointed pursuant to s 601NF to take responsibility for ensuring that each fund is wound up in accordance with its constitution, and any orders made under subsection 601NF(2).

[26] Part 5C.9 of the Act creates a framework for the winding up of registered schemes. In general terms, a registered scheme may be wound up:

- (a) as required by the scheme's constitution pursuant to s 601NA;
- (b) at the direction of members after a members' meeting to consider and vote on an extraordinary resolution directing the responsible entity to wind up the scheme, as envisaged by s 601NB;
- (c) pursuant to s 601NC, if the scheme's purpose is either accomplished or cannot be accomplished after the responsible entity gives members of the scheme and ASIC the written notice provided for in s 601NC(2) and if no meeting is called within 28 days of the responsible entity giving the notice to the members;
- (d) pursuant to s 601ND, by order of the Court either on the ground that the Court thinks that it is just and equitable to make an order directing the responsible entity to wind up the scheme or because of an unsatisfied judgment against the responsible entity in its capacity as the scheme's responsible entity.

[27] The company resolved in accordance with s 601NC that the funds should be wound up. Winding up under s 601NC could not commence until 25 November 2011 at the earliest, being 28 days after certain notices were given to members. However, a number of members requested a meeting of members to consider the proposed winding up of the EIF and to vote on an extraordinary resolution directing that the fund be wound up pursuant to s 601NB of the Act.

[28] In short, the company's proposal that the funds be wound up pursuant to s 601NC had been overtaken by events, and such a winding up would not commence until some uncertain future date, depending upon the calling of a meeting and the validity of certain notices. A winding up at the direction of members in accordance with s 601NB could not commence until the calling of a members' meeting to consider and vote on such a resolution. The date upon which such a meeting would occur was uncertain and the pending resignation of directors made uncertain the means by which such a meeting would be held. All parties, including ASIC, appeared to agree that the funds should be wound up. I was not persuaded that there was any particular advantage to the members of the fund by a delay in the commencement of the winding up of the funds. The circumstances that had arisen by 21 November 2011 made it appropriate to direct that each fund be wound up forthwith.

[29] Section 601ND(1)(a) authorises the Court to order that the responsible entity of a registered scheme wind up the scheme if the Court thinks it is "just and equitable to make the order". The principles concerning the winding up of companies on the

just and equitable ground inform the application of this provision.<sup>1</sup> A registered scheme may be wound up on the just and equitable ground because the administration and original arrangement have broken down.<sup>2</sup> The Court may wind up a registered scheme on the just and equitable ground if it is in the public interest to do so.<sup>3</sup>

[30] The evidence before me, particularly Mr Vincent's evidence, and the parties' submissions persuaded me that it was just and equitable to make orders directing the applicant, as responsible entity, to wind up each fund. The principal reasons for that conclusion are those contained in Mr Vincent's affidavit and which I have earlier quoted. They may be summarised as follows:

- (a) The administration of the funds has broken down and the funds' purposes cannot be accomplished;
- (b) Repayments to investors have been frozen since October 2008 and the funds ceased making monthly interest payments to members on 1 April 2011;
- (c) Disharmony and disputes between members of the board of the company and Mr McIvor prior to the recent appointment of new board members destabilised the administration of the funds with the result that it is extremely unlikely that the funds could resume trading;
- (d) The vast majority of the loans owed to the company as responsible entity for the EIF are in default and require proper management so as to maximise the realisation of funds for the benefit of members;
- (e) The company is in breach of the conditions of its Australian financial services licence, including by a failure to lodge audited accounts, and the company was also likely to be in breach of the conditions of its licence upon the expiry of necessary insurance coverage;
- (f) The members of the recently appointed board were due to resign prior to 3.00 pm on 21 November 2011, whereupon the proper administration of the funds would be jeopardised;
- (g) The appointment of an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under subsection 601NF(2) appears to be in the best interests of members of each fund;
- (h) The winding up of the EIF appears to have received widespread support from members, and no member contended that the funds should not be wound up.

<sup>1</sup> *Capelli v Shepard* (2010) 264 ALR 167 at 190, [2010] VSCA 2 at [104]; *Westfield Management Ltd v AMP Capital Nominees Ltd* [2011] NSWSC 1015 at [124]; *Re PWL Ltd; Ex parte PWL Ltd (formerly Palandri Wines Ltd) (No 2)* [2008] WASC 232 at [44].

<sup>2</sup> *Capelli v Shepard* (2010) 264 ALR 167 at 186, [2010] VSCA 2 at [86]; *Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 at [63].

<sup>3</sup> *Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 at [64]; *Re Rubicon Asset Management Ltd* (2009) 74 ACSR 346 at 351, [2009] NSWSC 1068 at [23].

[31] For these reasons, I made orders on the afternoon of Monday, 21 November 2011 pursuant to s 601ND of the Act that:

- (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999; and
- (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999.

**Appointment of a person to take responsibility for the winding up of the funds**

[32] Section 601ND empowers the Court, by order, to direct the responsible entity to wind up the scheme. Section 601NE provides that the responsible entity must ensure that the scheme is wound up in accordance with its constitution and any orders under subsection 601NF(2) if, among other things, the Court makes an order directing it to wind up the scheme. Section 601NF provides:

**“601NF Other orders about winding up**

- (1) The Court may, by order, appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders under subsection (2) if the Court thinks it necessary to do so (including for the reason that the responsible entity has ceased to exist or is not properly discharging its obligations in relation to the winding up).
- (2) The Court may, by order, give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so (including for the reason that the provisions in the scheme’s constitution are inadequate or impracticable).
- (3) An order under subsection (1) or (2) may be made on the application of
  - (a) the responsible entity; or
  - (b) a director of the responsible entity; or
  - (c) a member of the scheme; or
  - (d) ASIC.”

[33] In the circumstances that presented themselves on 21 November 2011, including the jurisdictional impediment to the appointment of a temporary responsible entity pursuant to s 601FN and the pending resignation of recently appointed members of the company’s board, I considered it necessary to appoint a person to take responsibility for ensuring that each fund was wound up in accordance with its constitution and any orders made under subsection 601NF(2). No party argued against such a course. The pending resignation of the company’s directors made it necessary to appoint an independent person to take responsibility to wind up each fund. The parties accepted that an independent insolvency practitioner be appointed to wind up each fund. Different persons had indicated their preparedness to be

appointed. After hearing submissions I decided to appoint Mr David Whyte, who is an experienced insolvency practitioner.

#### **Powers conferred by s 601NF**

[34] Given the time constraints that applied in hearing the application and making appropriate orders on Monday, 21 November 2011, I was not in a position fully to consider that day the extent of the powers conferred upon Mr Whyte by virtue of his appointment to take responsibility for ensuring that each fund is wound up in accordance with its constitution, and the extent of the Court's power to make orders pursuant to s 601NF(2) to facilitate the performance of his responsibility to ensure that each fund is wound up in accordance with its constitution. Having heard submissions, my provisional view was that orders might be made pursuant to s 601NF(2) directing that Mr Whyte act as a receiver of the property held by the company as:

- (a) responsible entity of the EIF; and
- (b) responsible entity of the EPCIF

However, I deferred making any orders pursuant to s 601NF in this regard so that I might consider relevant authorities concerning the power to make such orders pursuant to s 601NF.

#### **Appointment of a receiver pursuant to s 1101B of the Act**

[35] Soon after the commencement of the hearing on 21 November 2011, ASIC made an oral application pursuant to s 1101B of the Act for an order appointing a receiver of the property of each fund. The evidence and submissions indicated that the company had contravened the Act and one condition of its Australian financial services licence, and that upon the expiry of its insurance coverage would have contravened another condition. In the circumstances that I have earlier related concerning the need to appoint a person to take responsibility for ensuring that the funds were wound up, and in the absence of a specific order that Mr Whyte act as a receiver of the property of each fund, I made an interim order under s 1101B appointing him:

- (a) a receiver of the property of EIF; and
- (b) a receiver of the property of EPCIF

until 4.00 pm on Wednesday, 23 November 2011 or further earlier order. I was satisfied that such an order would not unfairly prejudice any person, and that such an order was in the interests of the members of each fund.

#### **Further orders**

[36] I have now had an opportunity to consider whether in lieu of a further order pursuant to s 1101B, or in addition to an order made under that section, Mr Whyte should be ordered pursuant to s 601NF to act as a receiver of the property of each fund and whether an order should be made as to the powers which he has to act as receiver.

- [37] I have set out the text of s 601NF above. The exercise of the power to appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders made under subsection 601NF(2) may arise for consideration in a wide variety of circumstances. For example, the originating application in this matter envisaged the appointment pursuant to s 601NF of a capable and competent temporary responsible entity pursuant to s 601NF to wind up the funds and for a committee consisting of Mr McDermid, Mr Vincent and a partner of Mr Vincent to be appointed to s 601NF to oversee the winding up. In other circumstances a responsible entity will not exist or will not be capable of winding up the registered scheme under the oversight of a person appointed pursuant to s 601NF. Section 601NF(1) contemplates such situations. One such situation is where the responsible entity “has ceased to exist”. As ASIC submits, in such a case, unless a person appointed under s 601NF is empowered to deal with the assets of the scheme, that person will have no means to effect the winding up and the appointment would be rendered meaningless.
- [38] The terms of s 601NF(1) by which the Court may, by order, appoint a person “to take responsibility for ensuring” a registered scheme is wound up may be thought to necessarily carry with the appointment the authority to do such things as are necessary to wind up the registered scheme in accordance with its constitution and any orders made under subsection (2). McPherson SPJ (as his Honour then was) in *Re Crust ‘N’ Crumb Bakers (Wholesale) Pty Ltd*<sup>4</sup> stated that:

“Winding up is a process that consists of collecting the assets, realising and reducing them to money, dealing with proofs of creditors by admitting or rejecting them, and distributing the net proceeds, after providing for costs and expenses, to the persons entitled.”

This statement has been approved by the Court of Appeal in *Mier v FN Management Pty Ltd*<sup>5</sup> and by the Full Court of the Federal Court in *Joye v Beach Petroleum N.L.*<sup>6</sup> Accordingly, an appointment pursuant to s 601NF may be said itself to authorise the appointed person to cause assets to be collected, realised and other steps taken so as to wind up the scheme in accordance with its constitution and any orders made under s 601NF(2). In general terms, the constitution of the EIF provides for the winding up to involve the conversion of the funds’ assets to money and, after the payment of debts, the payment to members in proportion to the amount of the members’ interests in the scheme.

- [39] Depending upon the circumstances of a particular case, the responsibility for ensuring that a registered scheme is wound up may involve the appointed person ensuring that the responsible entity undertakes these kind of tasks. In other circumstances, for example, because the responsible entity has ceased to exist or is incapable of doing these tasks, the appointed person may need to undertake them or engage someone else to do so.
- [40] The nature and extent of the powers which s 601NF confers upon an appointed person by virtue of his or her appointment is not clear from the terms of the statute. The matter is not clarified or illuminated by the Explanatory Memorandum to the

<sup>4</sup> [1992] 2 Qd R 76 at 78.

<sup>5</sup> [2006] 1 Qd R 339 at 347, [2005] QCA 408 at [15].

<sup>6</sup> (1996) 67 FCR 275 at 287, 290.



*Managed Investments Bill 1997 (Cth)* which simply stated in respect of proposed s 601NF (which is in identical terms to s 601NF as enacted) that:

“The Court may make other such orders as it sees fit.”

But the section, as enacted, is not in such simple terms. Instead, it provides for the appointment of a person pursuant to s 601NF(1), and goes on to provide that the Court may “by order” give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so. I note that subsection 601NF(2) is not simply a power to give directions.<sup>7</sup> It contemplates the Court making orders, not simply directions. The orders that might be made under s 601NF(2) are not confined to directions about winding up the scheme in accordance with its constitution. The section does not specify all of the circumstances under which it may be necessary to give directions, but the circumstances include the fact that the provisions in the scheme’s constitution are inadequate or impracticable.

- [41] The terms of s 601NF might be contrasted with the terms of s 601EE(2) in respect of unregistered managed investment schemes. Section 601EE(2) provides in such a case that the Court may make “any orders it considers appropriate for the winding up of the scheme.”
- [42] In *Re Stacks Managed Investments Ltd*,<sup>8</sup> White J compared s 601NF(2) with s 601EE(2) and considered the authorities in relation to s 601EE(2). Section 601EE(2) was said to empower the Court “to fashion the winding-up process.”<sup>9</sup> By contrast, s 601NF(2) gave power to make directions about how a registered scheme is to be wound up, where the winding up may already be on foot and should be provided for by the scheme’s constitution.
- [43] In that matter the plaintiff wished to have insolvency practitioners appointed as persons to take responsibility for ensuring that the scheme was wound up. The plaintiff sought the conferral of a wide range of powers on such persons. These included the power to conduct examinations in the same way that liquidators of companies have those powers. White J observed that the plaintiff had adapted the provisions of the *Corporations Act* dealing with the winding up of companies to the circumstances of the scheme. The plaintiff contended that powers could be conferred on the responsible persons, obligations imposed on third parties, and rights of creditors restricted to bring the winding up of the scheme into line with the winding up of companies.<sup>10</sup> His Honour observed that Part 5C.9 provides for the winding up of a registered scheme in accordance with its constitution and any order the Court might make under s 601NF(2). Where the scheme is a trust, what is envisaged by the winding up of a scheme is the realisation of its property, the payment by the responsible entity of liabilities incurred on behalf of the scheme or the retention by it of funds with which to meet its liabilities, the ascertainment of the members’ entitlements, and the distribution of the trust assets to the members in accordance with their entitlements.<sup>11</sup> The winding up of a trust was said to be quite a different thing from winding up a company, with the liquidation of a company being a matter governed by statute. His Honour observed that none of the detailed

<sup>7</sup> cf. the power of a Court to give directions under a provision such as the *Trusts Act 1973*, s 96 (Qld).  
<sup>8</sup> (2005) 219 ALR 532, [2005] NSWSC 753.

<sup>9</sup> Ibid at 541, [37].

<sup>10</sup> Ibid at 537, [19].

<sup>11</sup> Ibid at 542, [42].

provisions of the *Corporations Act* that relate to the liquidation of a company applied to the winding up of a scheme.

- [44] The facts of that case are materially different to this proceeding. The plaintiff in that case sought the appointment of registered liquidators to provide the expertise which the plaintiff did not have in handling administrations. White J observed that the responsible entity was entitled under s 601FB to appoint those persons as its agents, or otherwise engage those persons, to do what the plaintiff was authorised to do in connection with the scheme. There was no necessity for an order under s 601NF(1). His Honour observed that such an order might be necessary if the plaintiff were failing in its duty to wind up the scheme, but there was no suggestion of that.
- [45] As to the proper scope for orders to be made under s 601NF(2), White J noted that the power was limited to giving directions about “how a registered scheme is to be wound up”. It did not authorise the Court “to confer additional powers upon a responsible entity to which third parties would be made subject, or to interfere with the rights which third parties would otherwise enjoy.”<sup>12</sup> His Honour went on to conclude that Parliament deliberately did not apply the regime for the winding up of companies to the winding up of registered schemes and that he did not read the power to give directions in s 601NF(2) “in the wide way for which the plaintiff contends as, in effect, permitting the court, by order, to impose a new legislative regime on the winding up of a particular scheme, and thereby affecting the rights of and imposing duties on third parties.”<sup>13</sup> I respectfully agree with these conclusions.
- [46] It is necessary, however, for me to consider whether s 601NF authorises the making of orders which are of a different kind.
- [47] In *Re Rubicon Asset Management Ltd*,<sup>14</sup> McDougall J was likewise concerned with the scope of the power to make orders pursuant to s 601NF(2). The matter in issue was a direction that the costs of winding up be borne by the responsible entity. The power to give such a direction was found to exist. The direction was not one which would take away any right that a third party had, or would subject a third party to any form of compulsory process for production of documents or examination. The order sought by the plaintiffs in that case was made. McDougall J noted that in *Re Stacks Managed Investments* White J gave as an example of what was authorised by s 601NF(2) “the making of directions of a kind which would be made in an administration suit for the purpose of settling the entitlements of members”. McDougall J stated that White J was not intending to give an exhaustive account of the width of the statutory power. Like McDougall J and White J, I do not propose to canvass the full extent of the power to give directions under s 601NF(2). My present concern is whether s 601NF authorises the Court by order to give a direction about how a registered scheme is to be wound up by giving a direction that the person to take responsibility for ensuring that the registered scheme is wound up has the power to act as a receiver of the property held by the company as responsible entity of the fund.

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<sup>12</sup> Ibid at 544, [52].

<sup>13</sup> Ibid at 545, [55].

<sup>14</sup> (2009) 74 ACSR 346, [2009] NSWSC 1068.

- [48] In *Mier v FN Management Pty Ltd*<sup>15</sup>, Keane JA (as his Honour then was, and with whom McMurdo P and Douglas J agreed) was concerned with the power conferred by s 601EE(2) in relation to the getting in, realisation and distribution of the property of an unregistered managed investment scheme. Because the Act did not explicitly lay down a method for the winding up of an unregistered scheme, Keane JA stated that it must be assumed that, in general, the Court would be guided by analogies with the law relating to the winding up of companies, partnerships and trusts when deciding on the appropriate procedure for the winding up of a scheme. His Honour went on to observe that the best analogy might be thought to be the winding up procedure applicable to a registered scheme and continued:

“Unfortunately for present purposes, the Act, beyond directing that a registered scheme be wound up in accordance with its constitution, also **leavè the detail of the winding up of a registered scheme in the hands of the Court**, which may make such orders as it ‘thinks necessary to do so’.”<sup>16</sup> (emphasis added)

- [49] In *Capelli v Shepard*<sup>17</sup> the Victorian Court of Appeal made a passing comment in the context of a submission that the Court might give directions about whether the scheme property included certain trees. The Court did not think it appropriate to exercise the power under s 601NF(2) as suggested. Its first reason was that the question was not in terms raised in the appeal. Its second reason was that the Court was “not at all confident that a power such as this might be used to affect rights to property.” The Court observed that it “may be that ‘directions as to how a registered scheme is to be wound up’ are limited to procedural rather than substantive matters.” The Court did not develop this point or attempt to define the difference between procedural and substantive matters.
- [50] I am not concerned with an application of the kind that White J rejected in *Re Stacks Managed Investments Ltd*. The application does not seek an order that would give the person appointed pursuant to s 601NF(1) powers in relation to the property of third parties. The application does not seek to adapt and impose detailed provisions dealing with the winding up of companies to the circumstances of a registered scheme.
- [51] I am concerned with a question of whether s 601NF authorises the person who I have appointed to take responsibility for ensuring the funds are wound up to act as a receiver of the property of each fund. There may be doubt as to whether the appointment itself confers such a power. It may be thought necessary to make an order pursuant to s 601NF(2) directing the appointed person to act as receiver since such an order is one which gives directions about “how a registered scheme is to be wound up”. Such an order will be made only if the Court thinks it necessary to do so. For example, the occasion to make such an order may arise if the responsible entity is either unable or unwilling to wind up the scheme, or itself to appoint a person to collect the property of the scheme, realise it and otherwise undertake the winding up of the scheme in accordance with its constitution.
- [52] I am satisfied that in an appropriate case s 601NF(2) gives the Court power, by order, to give directions that the person appointed to take responsibility for ensuring

<sup>15</sup> [2006] 1 Qd R 339, [2005] QCA 408.

<sup>16</sup> Ibid at 348-349, [18] (footnotes omitted).

<sup>17</sup> (2010) 264 ALR 167 at 197, [2010] VSCA 2 at [146].

a registered scheme is wound up act as a receiver of the property of the scheme. The Court may exercise the power if it thinks it necessary to do so and one such circumstance might be if the property of the scheme was in jeopardy because the responsible entity was unable or unwilling to collect the property, realise it and do the other things necessary to wind up the scheme.

- [53] The present application is concerned with property that is held on trust. The person that I have appointed pursuant to s 601NF to take responsibility for ensuring that each fund is wound up in accordance with its constitution is required to ensure that a trust is wound up, but cannot necessarily rely upon the responsible entity itself to perform that task. In the analogous situation of a private trust in which trustees fail to get in trust property, a receiver may be appointed on the application of one of the trustees or of any beneficiary where the appointment is required for the safety of the trust property (the basis of the jurisdiction being the jeopardy of that property).<sup>18</sup> The Court may appoint a receiver of trust property where that is necessary for the well-being of the trust.<sup>19</sup> The Court will appoint a receiver of trust property where that property is in jeopardy through misconduct, waste, improper disposition, breach of a trustee's duty or the unsuitable character of the trustee.<sup>20</sup> The case in favour of appointment of a receiver must be a strong one but in assessing the risk to the trust the Court will apply a qualitative judgment.<sup>21</sup> In my view, the exercise of the power conferred by s 601NF(2) to order that the person who has been appointed to take responsibility for ensuring that the registered scheme is wound up act as a receiver of the scheme's property should be exercised with a similar caution, and only where a strong case is made out for the need for such an order.
- [54] Having now had the opportunity to consider the authorities cited to me at the hearing on 21 November 2011, I consider that s 601NF(2) provides a source of power to make an order giving directions that Mr Whyte act as a receiver of the property of each fund.
- [55] On the morning of Wednesday, 23 November 2011, I heard submissions as to whether it is appropriate to extend Mr Whyte's appointment as a receiver pursuant to s 1101B and to make a similar order pursuant to s 601NF(2). I decided to make such orders and my reasons for doing so follow.
- [56] In this matter the Court has directed the responsible entity, namely the company, to wind up each scheme. In the circumstances earlier outlined, it was necessary to appoint an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under subsection 601NF(2).
- [57] The appointment of a receiver of the property of each fund pursuant to s 1101B on ASIC's application and also pursuant to s 601NF(2) was supported by ASIC, and the members of the funds for whom Mr Martin SC and Mr Tucker respectively appeared. On this morning's hearing it was opposed by the company and by Mr McIvor for whom Mr Peden of Counsel appeared. Following the resignation of Mr

<sup>18</sup> *Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34 at 47, [2000] VSC 300 at [66]; J.D. Heydon and M.J. Leeming, *Jacobs' Law of Trusts in Australia*, 7th ed (Chatswood: LexisNexis Butterworths, 2006) at 625, [2305].

<sup>19</sup> *Ibid.*

<sup>20</sup> *Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34 at 52, [2000] VSC 300 at [84].

<sup>21</sup> *Ibid.*

Vincent, Mr McDermid, Mr Bingham and Mr Powell at 2.50 pm on Monday, Mr McIvor as sole shareholder of the company appointed himself, his wife Ms Stacey McIvor and Mr Ross Honeyman as directors.

- [58] Whereas on Monday, 21 November, the company did not oppose the appointment of Mr Whyte as a receiver of the property of the funds, it now does so. Mr Peden submitted on its behalf and on behalf of Mr McIvor that there was no need to appoint Mr Whyte as a receiver pursuant to s 1101B(1) or s 601NF(2).
- [59] ASIC made submissions as to why there was such a need. ASIC's submissions were adopted by Mr Martin SC on behalf of the members he represents. Mr Tucker also supported Mr Whyte's appointment as a receiver for essentially the same reasons.
- [60] ASIC placed particular reliance upon the affidavits upon which it previously relied, and on its previous submissions in this proceeding and in proceeding BS9694 of 2011, being a proceeding which it brought against the company. In summary, ASIC submits that there is no dispute that the company is in breach of a condition of its Australian financial services licence—that it hold a minimum amount of net tangible assets (“NTA”)—and has breached provisions of the Act requiring the company to lodge audited financial reports for each fund and audited reports of its compliance with the compliance plans for both funds. The affidavit material upon which ASIC relies, particularly an affidavit of Ms Gentles, and ASIC's written submissions detail the circumstances of these breaches.
- [61] ASIC was sufficiently concerned by the company's breaches of its licence and breaches of sections of the Act that it issued a Notice of Hearing under s 915C of the Act requiring the company to show cause as to why its licence should not be cancelled. Prior to that hearing it brought proceedings against the company, as did Tucker SF Pty Ltd. The material upon which ASIC relied included the matters that I have earlier addressed, and also identified substantial concerns as to how the company operated or proposed to operate each fund, the instability of the company's board and Mr McIvor's ability to change the board of the company at any time and without notice.
- [62] The affidavit of Ms Gentles is a substantial document, and contains material which justified ASIC's concern that Mr McIvor may not deal with the assets of the EIF in the best interests of members. The material relied upon by ASIC that supported its concern in this regard included documents that recorded the concerns of the board of the company in September and October 2011 about Mr McIvor's conduct. This included the then board's view that Mr McIvor “was responsible for making all of the current problem loans”. It also included claims that he had demonstrated extremely poor judgment in recent times (evidenced by emails attached to an affidavit filed in proceedings brought against the company by a borrower that had acquired a unit in the EIF and commenced proceedings to wind up the company). It included the directors' view that Mr McIvor had continued to deal on an unauthorised basis with some borrowers. Mr McIvor was said to be in ongoing conflict with the board and senior management and to have made a series of threats against staff.
- [63] Exhibits to Ms Gentles's affidavit provided evidence from a former chairman, a former director and a former CEO of the company about the exercise by Mr McIvor

of his ability to change the company's personnel and directors without notice and without consultation.

- [64] ASIC sought relief in the proceedings that it brought against the company and submitted on that occasion that such relief was appropriate in circumstances where:
- (a) the company was, by its own admission, in breach of the NTA requirements imposed by its licence;
  - (b) the company had failed, despite specific requests by ASIC, to notify ASIC of its current NTA position;
  - (c) the company had failed to lodge audited financial reports allowing ASIC to make an assessment of its financial position;
  - (d) the company had breached provisions of the Act in failing to lodge audited financial reports and audited reports of its compliance with compliance plans for both funds;
  - (e) the board of the company had been in a state of upheaval, with Mr McIvor apparently focused on ways to develop the assets of EIF, rather than simply proceeding with an orderly winding up.

These matters were said to pose an increased risk that the company might seek to operate the EIF in a manner which was not in the best interests of members.

- [65] On 27 October 2011, Martin J made consent orders in relation to the operation of the EIF and the EPCIF on ASIC's application.
- [66] In the application brought by Tucker SF Pty Ltd there were many allegations of misconduct by Mr McIvor. Mr McIvor's affidavit sworn 26 October 2011 stated that in respect of Mr Tucker's numerous allegations against him:

"I am deliberately not responding to those allegations as I do not consider them relevant to the present application. My response to those matters will occur in the fullness of time. By not responding to them in this affidavit I should not be taken as accepting the correctness of what Mr Tucker has said."

I am not in a position to resolve the allegations made by Mr Tucker against Mr McIvor.

- [67] The concerns raised by ASIC include concerns based upon facts, about which there is no dispute, relating to the company's failure to comply with the conditions of its licence and the requirements of the Act.
- [68] Mr McIvor gave undertakings to the Court on 26 October 2011 that he would not appoint a new director to the board of the company, or remove a director or seek to remove a director from its board without giving seven days' notice to the existing board and to ASIC, and seeking the leave of the Court after expiry of that notice. He also gave an undertaking that he would not seek to interfere with the conduct of the board in its business and the discharge of its responsibilities on the basis that it was clear that he was entitled to put properly documented proposals before the

board for its consideration. Mr McIvor stated that he gave these undertakings to “safeguard any concerns which may be held regarding the independence of the Board and Board members being subject to influence”.

[69] Following the resignation of the directors on Monday, I released Mr McIvor from these undertakings so that the company would have directors. There is no indication that Mr McIvor will not remain a director of the company. There is no indication that he intends to resign as a director and replace himself with other directors who are clearly independent of him. There is no evidence that independent directors would be prepared to assume such a role, and with the expiry of relevant insurance policies there is every reason to suppose that independent directors would not be willing to accept appointment in the absence of the kind of insurance cover that Mr Vincent and his fellow directors were unable to obtain.

[70] The matters raised by ASIC in the proceedings commenced by it, and also in these proceedings, raise serious concerns about the ability of the company while it remains under Mr McIvor’s control, and while he remains a director:

- (a) to operate each fund in a manner that will comply with the Act and the conditions of its Australian financial services licence; and
- (b) to act in a manner which is in the best interests of the members of each fund.

I am not persuaded that the company will wind up the funds in a manner that is in the best interests of their members. On the contrary, the matters relied upon by ASIC and the members who support the appointment of Mr Whyte as a receiver raise a strong case that the appointment of a receiver is necessary to ensure that each scheme is wound up in accordance with its constitution and any orders made under subsection 601NF(1).

[71] Whereas the company on Monday did not oppose the making of orders for the appointment of a receiver, it now submits that such an appointment is premature and unfairly prejudicial to the interests of members. It and Mr McIvor submit that I should not assume that there will be problems in the orderly conduct of the winding up that I have ordered, that the company should be given the opportunity to wind up each scheme in accordance with its constitution and that Mr Whyte should only be appointed as a receiver if and when problems arise. They submit that it is not in the interests of members for Mr Whyte as receiver to assert control over the property of the funds and that the property of the funds should be left in the control of the company as a responsible entity, subject to the responsibility that Mr Whyte has by virtue of his appointment pursuant to s 601NF to take responsibility for ensuring that each scheme is wound up in accordance with its constitution.

[72] I do not accept this submission. I conclude that the best interests of most members of the funds, and the winding up of each scheme in accordance with its constitution, will be served by the appointment of Mr Whyte as a receiver. Such an appointment will avoid confusion and possible disputes over the control of property. Placing the property of the funds under the control of Mr Whyte as a receiver is likely to facilitate its realisation and the winding up of each fund for the benefit of its members. The appointment of Mr Whyte as receiver does not preclude him from having employees of the company (past, present and future) undertake tasks that are required to wind up each fund. As I mentioned more than once during the course of

argument, the best interests of members would appear to be served by relying upon the knowledge, skill and experience of persons who are familiar with the company's affairs, including persons who have taken steps to realise its property in the best interests of members. I am not, however, persuaded that the property of each fund should be left under the control of the company, subject only to the oversight of Mr Whyte by virtue of an appointment under s 601NF(1). The company's history of non-compliance with its statutory obligations, breaches of the conditions of its licence and the evidence pointed to by ASIC in relation to Mr McIvor present a strong case for the appointment of a receiver of each fund's property. The orderly conduct of the winding up of each fund will be facilitated by clarification of the fact that Mr Whyte is not only responsible for ensuring that each scheme is wound up in accordance with its constitution and any orders under subsection 601NF(2), but that he has the power to do so, including the power of a receiver to take control of the property to which he has been appointed receiver and to deal with that property in a way that facilitates the winding up of each fund in a manner, and within a timeframe, that realises the property of each fund in the best interests of members.

- [73] I am not satisfied that Mr Whyte will be able to ensure that each fund is wound up in a timely, efficient and cost-effective manner unless he is appointed as a receiver of the property of each fund. I consider that it is in the interests of the members that the property of the funds be under his control.
- [74] In general, the circumstances that made it necessary to appoint an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under s 601NF(2) also persuade me that it is in the best interests of each fund that the same person be appointed as receiver of its property. I am persuaded that the appointment of a receiver is necessary for the well-being of the property which is held on trust by the company, and to ensure that the winding up of each fund occurs in accordance with its constitution and any orders made under s 601NF(2).
- [75] Mr Peden also submitted that I should not appoint Mr Whyte as a receiver because such an order would cut across the legislative framework governing the winding up of a registered scheme. I do not agree with that submission.
- [76] First, insofar as an appointment as receiver pursuant to s 1101B(1) is concerned, the company's contravention of the Act and its contravention of conditions of its Australian financial services licence justify the appointment of a receiver in the circumstances. There is nothing inconsistent with the legislative framework for the winding up of a registered scheme in exercising a power conferred under s 1101B. Such an order may aid the winding up of a registered scheme.
- [77] Secondly, I do not consider that the legislative framework of Part 5C.9 precludes the appointment of a receiver pursuant to s 601NF(2) if it is necessary to do so. I have concluded in the circumstances of this matter that an order giving a direction that Mr Whyte be appointed as receiver of the property is necessary.
- [78] I raised during argument the issue of whether it was necessary for Mr Whyte to be appointed as a receiver pursuant to s 1101B(1) and also pursuant to s 601NF(2) of the Act. However, the parties supporting his appointment favoured such a course, and I intend to make such orders. To the extent that there may be some doubt concerning the extent of the Court's power to appoint a receiver pursuant to



s 601NF(2), I consider that the best interests of the members will be protected by making an order under s 1101B(1) of the Act. Even with an appointment as receiver under s 1101B(1), I think that it is necessary also to appoint Mr Whyte as a receiver pursuant to s 601NF(2). Such an appointment makes clear that one source of his power to act as receiver is s 601NF. It is appropriate that, in carrying out his responsibility for ensuring that the registered scheme is wound up in accordance with its constitution, he have powers that are sourced in the section of the Act that imposes that responsibility. Further, the possibility exists that in the future the Court may rescind or vary the order made under s 1101B, or suspend its operation, pursuant to s 1101B(11). If that occurs Mr Whyte should continue to have the powers and responsibilities associated with appointment as a receiver pursuant to s 601NF(2).

- [79] Mr Whyte's appointment as receiver should not be perceived to be based solely upon the contraventions by the company which attract the operation of s 1101B. It should be clear that Mr Whyte is also being appointed a receiver of the property of each fund because such an appointment is thought necessary to facilitate the performance of his responsibility for ensuring that each scheme is wound up in accordance with its constitution. The winding up of each fund will be facilitated by an order that indicates that one purpose of the appointment of Mr Whyte as receiver of the property of each fund is to facilitate the fund being wound up in accordance with its constitution. Mr Whyte, in discharging his responsibilities which arise by virtue of his appointment under s 601NF(1), will have the power to receive the property of each fund, and the directors of the company, its employees and third parties should understand that a source of the power which he is given to facilitate the responsibility imposed upon him by s 601NF(1) is s 601NF(2). He should have the power of a receiver and the order should state that one source of that power is an order made under s 601NF(2).
- [80] If I had acceded to the submissions made by the company and Mr McIvor this morning and not appointed Mr Whyte as a receiver, then there would have been scope for dispute and disagreement between Mr Whyte and individuals in control of the company, including Mr McIvor, concerning the control of the property of each fund. I consider that the appointment of Mr Whyte as a receiver will reduce the scope for such disputes.
- [81] In short, an order pursuant to s 601NF(2) directing that Mr Whyte be appointed as a receiver of the property of the EIF and a receiver of the property of the EPCIF is in the best interests of members and is necessary to facilitate the winding up of each fund.
- [82] A copy of the orders made by me on 21 November 2011 and a copy of the orders made by me today are set out as annexures to these reasons.

**SUPREME COURT OF QUEENSLAND**

**REGISTRY:** Brisbane  
**NUMBER:** 10478/11

In the matter of **EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

**ORDER**

Before: Justice Applegarth

Date: 21 November 2011

Initiating document: Application filed 15 November 2011, and oral application made by the Australian Securities and Investments Commission on 21 November 2011

**THE ORDER OF THE COURT IS THAT:**

1. Pursuant to section 601ND (1)(a) of the *Corporations Act 2001* (Cth) (the “Act”):-
  - (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999 (“EIF”);
  - (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999 (“EPCIF”).
2. David Whyte (“**Mr Whyte**”) be appointed pursuant to section 601NF(1) of the Act to take responsibility for ensuring that:-
  - (a) the EIF is wound up in accordance with its constitution; and
  - (b) the EPCIF is wound up in accordance with its constitution.
3. Pursuant to section 601NF(2), that Mr Whyte:-
  - (a) have access to the books and records of Equititrust Limited which concern the EIF and the EPCIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in effecting the winding up of the EIF;

- (c) be indemnified out of the assets of the EPCIF in respect of any proper expenses or costs incurred in effecting the winding up of the EPCIF;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration; and
  - (e) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
4. Pursuant to sections 1101B(1) and 1101B(5) of the Act, Mr Whyte be appointed as:-
- (a) a receiver of the property of the EIF; and
  - (b) a receiver of the property of the EPCIF,
- until 4:00pm on Wednesday 23 November 2011, or further earlier order.
5. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Limited or the EIF.
6. That by 4pm on Tuesday 22 November 2011, Equititrust Limited publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
7. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with section 601NF(2) of the Act.
8. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
9. The oral application of ASIC be adjourned to 10:00am on Wednesday 23 November 2011.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 10478/11

**IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND  
ARSN 089 079 854 AND THE MEMBERS OF THE  
EQUITITRUST PRIORITY CLASS INCOME FUND ARSN  
089 079 729**

**ORDER**

Before: Justice Applegarth

Date: 23 November 2011

Initiating document: Application filed 15 November 2011 and Oral Application made 21 November 2011

THE ORDER OF THE COURT IS THAT:

1. Pursuant to s.1101B(1) of the *Corporations Act 2001* (Cth) (*the Act*) David Whyte (*Mr Whyte*) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and
  - (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).
2. Pursuant to s.601NF(2) of the Act David Whyte (*Mr Whyte*) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and

- (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).
3. Pursuant to s.1101B(1) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 1 above, the powers set out in s.420 of the Act in addition to the powers set out in s.1101B(8)(a) to (c) of the Act.
  4. Pursuant to s.601NF(2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 2 above, the powers set out in s.420 of the Act and the powers set out in s.1101B(8)(a) to (c) of the Act.
  5. Pursuant to s.1101B(1) of the Act, Mr Whyte in respect of the appointment made in Order 1 above:
    - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
    - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
    - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
    - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
  6. Pursuant to s.601NF(2) of the Act, Mr Whyte in respect of the appointment made in Order 2 above:
    - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
    - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
    - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
    - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.

7. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Ltd or the property of the EIF.
8. That by 4pm on Thursday 24 November 2011, Equititrust Ltd publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to its members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
9. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this application, to be assessed on the standard basis, out of the EIF.
10. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with s.601NF(2) of the Act.

"DW-2"

SUPREME COURT OF QUEENSLAND

Duplicate

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729**

ORDER

Before: Justice Dalton

Date: 29 February 2012

Initiating document: Application filed 24 February 2012

In this order, "Receiver" means Mr David Whyte, in his capacity as receiver of the property of the Equititrust Income Fund ARSN 089 079 854 (EIF) and as the person responsible for ensuring the EIF is wound up in accordance with its constitution pursuant to the Orders of Justice Applegarth of 21 November 2011 and 23 November 2011 in these proceedings (Orders),

THE COURT DIRECTS THAT:

1. Without derogating in any way from the Receiver's appointment or the Receiver's powers pursuant to the Orders, the Receiver is authorised to:
  - (a) take all steps necessary to ensure the realisation of property of EIF held by Equititrust Limited as Responsible Entity of the EIF (EL as RE of the EIF) by exercising any legal right of EL as RE of the EIF in relation to the property, including but not limited to:
    - (i) providing instructions to solicitors, valuers, estate agents or other consultants as are necessary to negotiate and/or finalise the sale of the property;
    - (ii) providing a response as appropriate to matters raised by receivers of property of EL as RE of the EIF to which receivers have been appointed;
    - (iii) dealing with any creditors with security over the property of the EIF including in order to obtain releases of security as is necessary to ensure the completion of the sale of property;



Order Filed on behalf of the Court Appointed Receiver

FORM NO. R.661

29 FEB 2012

GADENS LAWYERS  
Level 25, 240 Queen Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No.: 07 3229 5850  
SZC:JSK:201110996

- (iv) appointing receivers, entering into possession as mortgagee or exercising any power of sale; and
- (v) executing contracts, transfers, releases, or any such other documents as are required to carry out any of the above;
- (b) bring, defend or maintain any proceedings on behalf of EIF in the name of EL as is necessary for the winding up of the EIF in accordance with clause 9 of its constitution, including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions;
- (c) take all steps necessary to effect the implementation of a NAB bank guarantee facility and the replacement of the existing CBA bank guarantee facilities including:
  - (i) providing instructions to solicitors as are necessary to negotiate and finalise the facilities and/or the security documentation required for a replacement bank guarantee facility from the NAB and the repayment of the CBA facilities and the release of any security held by the CBA;
  - (ii) dealing with NAB and CBA direct to provide for the replacement of the bank guarantees and finalise the documentation in relation to same; and
  - (iii) executing any and all facility and/or security documentation on behalf of EL as RE of the EIF or all such other legal documents as are necessary to ensure the security documentation is finalised and the CBA bank guarantee facilities replaced by the NAB bank guarantee facility.

THE ORDER OF THE COURT IS THAT:

2. That the parties appearing on this application, save for ASIC, the National Australia Bank and the receivers Messrs Colwell and Moloney, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.

Signed:



DEPUTY REGISTRAR



"DW-3"

67

SUPREME COURT  
OF QUEENSLAND

SUPREME COURT OF QUEENSLAND

18 NOV 2011

REGISTRY: Brisbane

FILED

NUMBER: BS 10478/2011

BRISBANE

IN THE MATTER OF EQUITRUST LIMITED A.C.N. 061 383 944

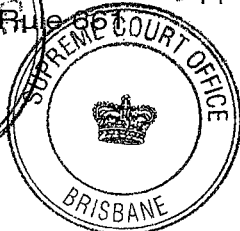
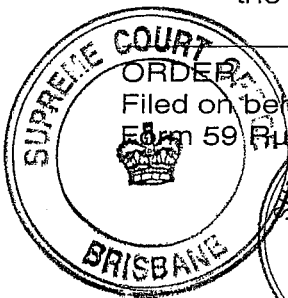
Applicant: EQUITRUST LIMITED A.C.N. 061 383 944

ORDER

Before: Applegarth J  
Date: 15 November 2011  
Initiating document: Application filed 15 November 2011

THE ORDER OF THE COURT IS THAT:

1. Notification of the originating application BS 10478/2011 to members of the Equitrust Income Fund and Equitrust Priority Class Income Fund be provided to such members by:-
  - (a) a prominent advertisement of the application being published in the Australian Newspaper, the Courier Mail, the Gold Coast Bulletin;
  - (b) notification of the application being made in a prominent location on the Equitrust Limited website; and
  - (c) a mail out being posted by ordinary post to all members at their last known addresses.
2. The form of advertisement and notification be in substantially the same form as Annexure "A" hereto.
3. Service of the Court documents, including the originating application, the supporting affidavit of Mr Paul Vincent sworn 15 November 2011



ORDER  
Filed on behalf of Applicant  
Form 59 Rule 36

Nyst Lawyers  
16 Nerang Street  
Southport Qld 4215  
Telephone (07) 5509 2400

and any Order made in respect of this application, be effected by those Court documents being made available in .pdf format on the website of the applicant, being [www.equititrust.com.au](http://www.equititrust.com.au), by 12.00pm on Wednesday 16 November 2011.

4. Service of any further Court documents to be relied upon by the applicant in support of the application be effected by those Court documents being made available in .pdf format on the website of the applicant, being [www.equititrust.com.au](http://www.equititrust.com.au), by 4:00pm on Thursday 17 November 2011.
5. Time for service of the originating application and supporting affidavits be abridged such that the hearing of the originating application may proceed on Monday, 21 November 2011.
6. Costs reserved.

Signed:



DEPUTY REGISTRAR



"A"

To members of:

**Equititrust Income Fund and Equititrust Priority Class Income Fund (the "Funds")**

Take notice that at 10am on Monday, 21 November 2011 Equititrust Limited will be applying to the Queensland Supreme Court (Law Courts Complex, George Street, Brisbane) for orders that:

1. The Equititrust Income Fund be wound up pursuant to section 601ND of the *Corporations Act (Cth) 2001*;
2. The Equititrust Priority Class Income Fund be wound up pursuant to section 601ND of the *Corporations Act (Cth) 2001*;
3. Pursuant to section 601FN of the *Corporations Act (Cth) 2001* Equititrust Limited be replaced as the Responsible Entity of the Equititrust Income Fund and the Equititrust Priority Class Income Fund by a temporary Responsible Entity, with that entity to wind-up the Funds and take steps to call a meeting of members to ratify its appointment; and
4. That a committee consisting of Mr Jeff McDermid, Mr Paul Vincent and Mr Nick Combis be appointed pursuant to section 601NF of the *Corporations Act (Cth) 2001* to take responsibility for ensuring that the Funds are wound up in accordance with their constitutions and that appropriate directions be made to effect that.

These Orders will crystallise and bring forward the winding-up of the Funds, albeit by an alternate mechanism to that which was previously contemplated by the Board of Equititrust itself and as notified to members in the notice dated 21 October 2011 and supplemented on 3 November 2011. The alternate mechanism would see the court order that the Funds be wound-up by the temporary Responsible Entity appointed on Monday, 21 November 2011. Should this transpire there will be no opportunity or need for members to call a general meeting of the scheme.

Further details may be found at [www.equititrust.com.au](http://www.equititrust.com.au), including copies of court documents filed in respect of the above application.

The Board of Equititrust Limited is of the view that investor interests would be best served and a greater return to investors derived through an orderly realisation of the property assets.

Equititrust Limited is faced with a number of obstacles moving forward including a likely lack of insurance after Monday, 21 November 2011 and consequential breach of the conditions of the Australian Financial Services Licence, dealing with its own creditors and defending a mooted class action brought by investors.

Against this background, and advice having been taken, the Board has considered the following issues:-

- (i) The best interests of members of the Funds;
- (ii) Issues relating to the obtaining of insurance moving forward;
- (iii) The future solvency of Equititrust Limited in its own right;
- (iv) The potential appointment of a voluntary administrator to Equititrust Limited;
- (v) The potential appointment of a liquidator to Equititrust Limited;



- (vi) Issues relating to Equititrust Limited maintaining its Australian Financial Services Licence (and the need for such a licence in order to wind down the Funds);
- (vii) An issue regarding the reconversion of subordinated units in EIF and EPF;
- (viii) The costs and expenses of the appointment of external party or parties to Equititrust Limited; and
- (ix) The impact of a forced or fire sale strategy being adopted in relation to the realisation of the real property assets.

The issue in relation to the reconversion of subordinated units in EIF and EPF is the potential for a reconversion of 40,000,000 sub-ordinated units in EIF held by Equititrust Limited in its own right. If this happens it may diminish the EIF unit price by approximately 20%.

The Board is also conscious of the potential impact upon the EIF unit price should an external insolvency practitioner be appointed to Equititrust Limited. This could precipitate financiers appointing receivers, with a detrimental impact upon members as a result of fees charged by the practitioners, and with the possible result of assets being realised for less than their best possible price.

Having considered the above factors the Board has formed the view that it is in the best interests of members of the Funds to apply to the Court for:-

- (a) the appointment of a temporary responsible entity to the Funds;
- (b) the EIF and EPCIF to be wound up pursuant to Section 601ND of the Act; and
- (c) a committee consisting of Mr Jeff McDermid, Mr Paul Vincent and Mr Nick Combis be appointed pursuant to Section 601NF of the Act to take responsibility for ensuring that the EIF and EPCIF are wound up in accordance with their constitutions and appropriate directions of the Court to give effect to that.

The Board is yet to identify the potential temporary responsible entity. It is considering several options and hopes to be in a position shortly to identify one.

Dated: 16 November 2011

**Jeff McDermid**  
Chairman  
Equititrust Limited.



"DW-4"



## EQUITITRUST CAPITAL

16 November 2011

To members of:

### **Equititrust Income Fund and Equititrust Priority Class Income Fund (the "Funds")**

Take notice that at 10am on Monday, 21 November 2011 Equititrust Limited will be applying to the Queensland Supreme Court (Law Courts Complex, George Street, Brisbane) for orders that:

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2. The Equititrust Priority Class Income Fund be wound up pursuant to section 601ND of the *Corporations Act (Cth) 2001*;
3. Pursuant to section 601FN of the *Corporations Act (Cth) 2001* Equititrust Limited be replaced as the Responsible Entity of the Equititrust Income Fund and the Equititrust Priority Class Income Fund by a temporary Responsible Entity, with that entity to wind-up the Funds and take steps to call a meeting of members to ratify its appointment; and
4. That a committee consisting of Mr Jeff McDermid, Mr Paul Vincent and Mr Nick Combis be appointed pursuant to section 601NF of the *Corporations Act (Cth) 2001* to take responsibility for ensuring that the Funds are wound up in accordance with their constitutions and that appropriate directions be made to effect that.

These Orders will crystallise and bring forward the winding-up of the Funds, albeit by an alternate mechanism to that which was previously contemplated by the Board of Equititrust itself and as notified to members in the notice dated 21 October 2011 and supplemented on 3 November 2011. The alternate mechanism would see the court order that the Funds be wound-up by the temporary Responsible Entity appointed on Monday, 21 November 2011. Should this transpire there will be no opportunity or need for members to call a general meeting of the scheme.

Further details may be found at [www.equititrust.com.au](http://www.equititrust.com.au), including copies of court documents filed in respect of the above application.

The Board of Equititrust Limited is of the view that investor interests would be best served and a greater return to investors derived through an orderly realisation of the property assets.

Equititrust Limited is faced with a number of obstacles moving forward including a likely lack of insurance after Monday, 21 November 2011 and consequential breach of the conditions of the Australian Financial Services Licence, dealing with its own creditors and defending a mooted class action brought by investors.

Against this background, and advice having been taken, the Board has considered the following issues:-

- (i) The best interests of members of the Funds;
- (ii) Issues relating to the obtaining of insurance moving forward;
- (iii) The future solvency of Equititrust Limited in its own right;
- (iv) The potential appointment of a voluntary administrator to Equititrust Limited;

- (v) The potential appointment of a liquidator to Equititrust Limited;
- (vi) Issues relating to Equititrust Limited maintaining its Australian Financial Services Licence (and the need for such a licence in order to wind down the Funds);
- (vii) An issue regarding the reconversion of subordinated units in EIF and EPF;
- (viii) The costs and expenses of the appointment of external party or parties to Equititrust Limited; and
- (ix) The impact of a forced or fire sale strategy being adopted in relation to the realisation of the real property assets.

The issue in relation to the reconversion of subordinated units in EIF and EPF is the potential for a reconversion of 40,000,000 sub-ordinated units in EIF held by Equititrust Limited in its own right. If this happens it may diminish the EIF unit price by approximately 20%.

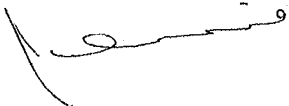
The Board is also conscious of the potential impact upon the EIF unit price should an external insolvency practitioner be appointed to Equititrust Limited. This could precipitate financiers appointing receivers, with a detrimental impact upon members as a result of fees charged by the practitioners, and with the possible result of assets being realised for less than their best possible price.

Having considered the above factors the Board has formed the view that it is in the best interests of members of the Funds to apply to the Court for:-

- (a) the appointment of a temporary responsible entity to the Funds;
- (b) the EIF and EPCIF to be wound up pursuant to Section 601ND of the Act; and
- (c) a committee consisting of Mr Jeff McDermid, Mr Paul Vincent and Mr Nick Combis be appointed pursuant to Section 601NF of the Act to take responsibility for ensuring that the EIF and EPCIF are wound up in accordance with their constitutions and appropriate directions of the Court to give effect to that.

The Board is yet to identify the potential temporary responsible entity. It is considering several options and hopes to be in a position shortly to identify one.

Yours sincerely



Jeff McDermid  
Chairman  
**EQUITITRUST LTD**



"DW-5"

**Duplicate**

**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

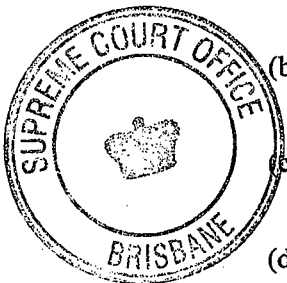
Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729**

**ORDER**

Before: Justice Philippides  
Date: 11 October 2012  
Initiating Document: Application filed 21 September 2012

**THE ORDER OF THE COURT IS THAT:**

1. Leave is granted to amend the interlocutory application filed by the court appointed receiver, David Whyte, on 21 September 2012;
2. That notice of the substantive application filed by Mr Whyte dated 21 September 2012 (**the application**) be effected on the members of the Equititrust Income Fund ARSN 089 079 854 (**EIF**) by:
  - (a) placing an advertisement of the application in The Australian, The Courier Mail and the Gold Coast Bulletin newspapers;
  - (b) posting a notice of the application in a prominent location on the Equititrust Limited website of [www.equititrust.com.au](http://www.equititrust.com.au);
  - (c) posting a notice of the application in a prominent location on the Equititrust Income Fund website of [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au); and
  - (d) sending a notice by ordinary post to all members at their last known address,
3. That the form of the advertisement and respective notices be in substantially the same form as the notice set-out in "Annexure A" to the application and this Order;
4. That service of the application and supporting affidavit of David Whyte dated 19 September 2012 be deemed effected on each of the members of the Equititrust Income Fund five (5) days after those documents are made available in PDF on the websites of "[www.equititrust.com.au](http://www.equititrust.com.au)" and "[www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au)".



Order  
Filed on behalf of the court appointed receiver  
Form 59 R. 661

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201204781

BNEDOCs Order - Interlocutory Application 10478\_11

5. That service of any further documents to be relied upon by the court appointed receiver in respect of the application and any Order made in respect of the application be deemed effected on each of the members of the Equititrust Income Fund five (5) days after those documents are made available in PDF on the websites of "www.equititrust.com.au" and "www.equititrustincomefund.com.au".
6. Costs reserved.

Signed:

A handwritten signature in black ink, consisting of several overlapping loops and a long vertical stroke at the top.



**ANNEXURE A**

**TO THE MEMBERS OF:**

**EQUITITRUST INCOME FUND ARSN 089 079 854 ("EIF")**

TAKE NOTICE that David Whyte, the court appointed receiver of the EIF, has applied to the Supreme Court of Queensland for an order that the amount that Mr Whyte is entitled to claim as remuneration in respect of time spent by him and by any servants or agents of BDO who have performed work in the winding up of the EIF and the receivership of the EIF for the period 22 November 2011 to 31 August 2012 be fixed in the amount of \$841,000.60 (inclusive of GST).

This application is set down to be heard by the Supreme Court at Brisbane on 25 October 2012 at 10am.

Copies of the court documents in respect of this application will be available on the Equititrust Limited website of "[www.equititrust.com.au](http://www.equititrust.com.au)" and the Equititrust Income Fund website of "[www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au)".

Dated: 2012

"DW-6"

**TO THE INVESTOR AS ADDRESSED**

1 February 2012

**EQUITITRUST INCOME FUND ARSN 089 079 854 ("EIF")  
(RECEIVER APPOINTED) ("The Fund")****1. Introduction/Court Order**

As you will be aware from previous correspondence and Equititrust Ltd's website, I was appointed as interim Receiver on 21 November 2011 and on 23 November 2011 as Receiver of the Fund assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution.

I attach a copy of the judgement in this respect which includes the two court orders setting out the terms of the appointments.

In summary, the Court has ordered that the Fund be wound up in accordance with its constitution. The constitution provides that the procedure for the winding up of the Fund is that the Manager must convert to money all Assets, deduct all proper costs and then distribute the money to each Member in proportion to the Member's interests in the Scheme.

The making of the orders followed an application by Equititrust Ltd (the responsible entity of the Fund) to the Supreme Court of Queensland to appoint a temporary replacement responsible entity to the Fund and if this was not approved to appoint a liquidator to wind up the Fund. The application was brought by the then directors of the responsible entity.

The judge refused the application for a temporary replacement responsible entity and ordered the Fund be wound up pursuant to the terms of its constitution as detailed in the attached court orders.

On 21 November 2011 the then directors of the responsible entity resigned during the course of the judge hearing the application. As that left the responsible entity without any directors and as there was a hearing in Sydney that day in relation to a winding up application against Equititrust Ltd with no one available to provide instructions, Mark Mclvor, Stacey Mclvor and Ross Honeyman were appointed as directors. Stacey Mclvor subsequently resigned as a director on 16 December 2011 and, according to forms lodged with the ASIC, David Hickie was appointed on 12 January 2012.

This report summarises the key issues which have arisen since my appointment and the key steps taken by me since my appointment.

**2. Secured creditors**

There are two secured creditors that have the ability to appoint Receivers over the Fund assets at any time and who continue to reserve their rights in relation to same.



Notwithstanding their ongoing rights in this respect, I have agreed with both banks, subject to certain conditions, to allow ongoing payments in respect of Fund expenses for the purposes of the winding up of the Fund. The first secured creditor has insisted on repayment at the earliest opportunity. Therefore, in order to allow for the orderly winding up of the Fund the bank with second priority has agreed to replace the first ranking secured creditor's bank guarantees totalling approximately \$1.1M. It is hoped that the documentation of this arrangement will occur shortly.

The total debt to the banks, including the bank guarantees, is approximately \$9.5M.

### **3. Staff/Consultants and Services Agreement**

Immediately following my appointment, I reviewed the staffing levels (including consultants) with the CEO of Equititrust Limited and identified that substantial savings could be made in relation to the ongoing costs in this respect.

In the circumstances, I requested the CEO and Mark McIvor prepare a proposal for a planned reduction in staff/consultants and other costs for the purposes of the winding up for my approval.

Prior to my appointment the total expenses for the four months ended 31 October 2011 were \$2.059M in this respect (an average of \$514k per month and over \$6M per annum).

Since my appointment and as a result of the review undertaken the costs were reduced to \$147K per month with further reductions expected as properties are realised and further savings can be identified.

As the staff and consultants were not engaged directly by Equititrust Limited, it was agreed to document the arrangements by way of a services agreement between Equititrust Limited, GCP (HQ) Pty Ltd ("GCP")(the service provider), the Receiver and the previous service provider, ECG Administration Pty Ltd ("ECG").

As, prior to my appointment, there was no written agreement entered into regarding the provision of services, it was agreed to transfer all staff and consultants to GCP (a company setup by the CEO).

The agreement, which was executed on 20 December 2011, also provides that no amendments can be made to the staff/consultants engaged without my approval. Notwithstanding this, Mark McIvor advised the CEO that he had terminated him on 13 January 2012 and without any consultation with me. I am presently considering the position in this respect.

### **4. Draft Audited Accounts for the year ended 30 June 2011**

Excerpts from the Fund's draft audited accounts as at 30 June 2011 follow in Sections 4.1 to 4.3 below. These figures are subject to review and sign-off by the Responsible Entity and auditors and may materially change. The Receiver has not audited or otherwise reviewed the figures for accuracy and does not accept any responsibility for the figures or any reliance placed on the figures.

The adopted value of the assets may materially change and are not fully supported by professional valuations.

#### 4.1 Statement of comprehensive income

	2011	2010
	\$	\$
<b>Revenue</b>		
Interest income	30,327,145	36,378,860
<b>Total revenue</b>	<b>30,327,145</b>	<b>36,378,860</b>
<b>Expenses</b>		
Impairment losses - mortgage loans	(167,510,994)	(1,855,596)
Management fees - Responsible Entity	(2,810,045)	(4,460,638)
Scheme expenses reimbursed to Responsible Entity	(6,077,334)	-
Other expenses	(62,948)	-
<b>Total expenses</b>	<b>(176,461,321)</b>	<b>(6,316,234)</b>
<b>Profit/(loss) from operating activities before finance costs</b>	<b>(146,134,176)</b>	<b>30,062,626</b>
<b>Finance costs</b>		
Interest expense	(3,388,056)	(3,094,533)
Distributions to investors	(9,718,837)	(16,436,359)
Return on Responsible Entity's subordinated investment	-	(10,531,734)
<b>Total finance costs</b>	<b>(13,106,893)</b>	<b>(30,062,626)</b>
<b>Decrease in obligations to unit holders</b>	<b>(159,241,069)</b>	<b>-</b>
Represented by:		
Absorption by subordinated unitholders	40,000,000	-
Absorption by ordinary unitholders	119,241,069	-
<b>Net comprehensive income</b>	<b>-</b>	<b>-</b>

I comment on the key issues arising from the above, as follows:

- The impairment losses for the year are \$167M (2010 \$1.8M);

- The management fee of 1.5% of gross assets plus GST is not payable to the Responsible Entity (Equititrust Ltd) when interest distributions are not being paid to investors. I understand payments ceased in February 2011 in this respect. The previous board had agreed to waive the \$2.8M fee for the year ended 30 June 2011 as previously advised to investors however the current board has sought to reinstate this. I have asked Mark McIvor to provide an explanation in this respect however his reply is awaited;
- When the management fee is no longer payable then pursuant to the Fund's constitution, the Responsible Entity is entitled to reimbursement of expenses. Expenses totalled \$6M in the 2011 financial year in this respect compared to the management fee in the 2010 year of \$4.46M;
- Due to the subordinated nature of the Responsible Entity's \$40M investment, the first \$40M of impairment losses was absorbed by the Responsible Entity with the balance of \$119M attributable to ordinary investors.

#### 4.2 Statement of Financial Position

	2011	2010
	\$	\$
<b>Assets</b>		
Cash and cash equivalents	77,321	19,800,774
Other receivables	144,038	1,668,485
Mortgage loans and accrued interest	106,480,922	259,675,256
<b>Total assets</b>	<b>106,702,281</b>	<b>281,144,515</b>
<b>Liabilities</b>		
Financial liabilities measured at amortised cost:		
Overdraft	233,444	-
Accounts payable	3,850,821	1,417,578
Distributions payable	140,407	1,970,639
Interest bearing liabilities	18,083,722	35,000,000
<b>Total liabilities (excluding net assets attributable to investors)</b>	<b>22,308,394</b>	<b>38,388,217</b>
<b>Net assets attributable to investors - liability</b>	<b>84,393,787</b>	<b>242,756,198</b>
<b>Net assets</b>	<b>100</b>	<b>100</b>
<b>Equity</b>	<b>100</b>	<b>100</b>

I comment on the key issues arising from the above, as follows:

- Mortgage loans and investments were written down to \$106M at the year end with net assets attributable to investors of \$84M (2010 \$242M);
- The secured creditors were reduced from \$35M to \$18M during the year. Since the year end, NAB's facilities have been reduced from \$15M to \$8.4M.

### 4.3 Statement of Cash Flows

	2011	2010
	\$	\$
<b>Cash flows from operating activities</b>		
Interest received - mortgage loans	5,283,080	32,705,888
Interest received - cash and cash equivalents	259,176	457,432
Distributions paid to investors	(11,549,069)	(17,342,774)
Interest paid	(3,388,056)	(3,225,131)
Return on Responsible Entity's subordinated investment	-	(13,244,244)
Management fee	-	(4,070,936)
Scheme expenses	(6,338,459)	-
Net cash flows (used in)/from operating activities	(15,733,328)	(4,719,765)
<b>Cash flows from investing activities</b>		
Advances on existing mortgage loans	(16,054,689)	(44,427,143)
Mortgage loans repaid	27,868,740	89,069,931
Net cash (used in) investing activities	11,814,051	44,642,788
<b>Cash flow from financing activities</b>		
Proceeds from issue of redeemable units - investors	3,034,319	6,914,051
Payments on redemption of redeemable units - investors	(2,155,661)	(10,675,129)
Proceeds from borrowings	2,583,722	-
Repayment of borrowings	(19,500,000)	(29,000,000)
Net cash from financing activities	(16,037,620)	(32,761,078)
Net increase in cash and cash equivalents	(19,956,897)	7,161,945
Cash and cash equivalents at 1 July	19,800,774	12,638,829
<b>Cash and cash equivalents at 30 June</b>	<b>(156,123)</b>	<b>19,800,774</b>

I comment on the key issues arising from the above, as follows:

- Interest received on mortgage loans was \$5M (2010 \$32M) with mortgage loans repaid of \$27.8M (2010 \$89M);
- Borrowings were reduced by a net amount of \$17.5M (2010 \$29M).

#### **4.4 Investors Unit Price of \$0.44 as at 30 June 2011**

As notified by Equititrust Ltd on 22 December 2011, on the recommendation of its auditors KPMG and as adopted by the board, it was agreed to write-down the mortgage loans with the result that the investors' unit price was calculated at \$0.44.

For further details, please visit the company's website [www.equititrust.com.au](http://www.equititrust.com.au).

This does not take into account future operating costs and Receivers fees and therefore the likely final return is likely to be less. An estimated return as at 31 December 2011 is included at Section 6 below.

### **5. Loan Book Realisation Strategy**

In determining the most appropriate realisation strategy for each property asset, there are a number of competing priorities and issues to consider, so as to realise the optimum return to investors, as follows:

- Both secured creditors (loans/bank guarantees totalling \$9.5M) seeking repayment as soon as possible;
- Other loans to the Fund looking for repayment. M M Holdings Pty Ltd ATF The Mclvor Superannuation Fund is currently owed approximately \$2.6M in this respect;
- The unsecured creditors of the Fund which total \$8.8M as at 31 December 2011, including rates and land taxes of \$7.2M. A number of these creditors are pressing for payment. There are competing priorities to ensure the terms of the bank facilities are maintained and to ensure other creditors do not take enforcement action;
- The holding costs of the assets, including rates, land tax, time value of money, ongoing overheads to realise assets. Whilst the costs of managing the Fund have reduced from approximately \$6M per annum to less than \$1.5M (plus Receiver's fees - see section 7 below), they remain sizeable;
- Any opportunities available to add value to the asset, e.g. improving the DA, developing the property, adding to the marketability of the property, resolving outstanding issues that are detrimental to potential purchasers. The ability to spend funds on these issues is currently restricted due to the secured creditors' position and other creditors pressing for payment.

I have reviewed and discussed the realisation strategies with the loan officers, the CEO and Mark Mclvor and have taken into account the issues noted above. The results of this review are that a number of sale campaigns are to commence shortly with the current status of the portfolio, as follows:

- Two contracts of sale have been entered into totalling \$1.15M although both are currently subject to finance;
- Negotiations are taking place in relation to two conditional offers received totalling \$4.725M;
- Steps are being taken to market properties with an estimated selling price of between \$27.8M and \$34.2M;

- There are ongoing sales at an industrial sub division although progress is slow. This strategy needs further consideration with a view to progressing further sales;
- The three remaining properties with estimated selling prices totalling between \$46M and \$59M require consultancy advice to develop the most appropriate realisation strategy. There are significant challenges to overcome in relation to these assets which ultimately will have a material effect on the amount recovered for investors.

In addition to the realisation of the physical assets, there are a number of ongoing legal actions to recover funds for the benefit of investors.

The realisation of the loan book will be commented on in more detail in future reports and as and when realisations are made in this respect.

## 6. Estimated Outcome to Investors as at 31 December 2011

	Low \$000's	High \$000's
<b>Total estimated selling prices</b>	<b>93,315</b>	<b>119,065</b>
Less: Selling costs - marketing and agents fees (3.5%)	(3,266)	(4,167)
Secured creditors	(12,100)	(12,100)
Land Tax and Rates	(7,200)	(7,200)
Other unsecured creditors	(1,600)	(1,600)
Receivers fees	(115)	(115)
<b>Estimated net amount available to investors as at 31 December 2011</b>	<b>69,034</b>	<b>93,883</b>
Total investors units	203,635	203,635
<b>Estimated return in the dollar</b>	<b>\$0.34</b>	<b>\$0.46</b>

The estimated selling prices have been prepared and provided to me by management based on their knowledge of the files, previous valuations held and feedback from sales campaigns, selling agents and other property experts. These may materially change and will be reviewed on a regular basis.

The above table does not take into account future operating costs, interest on bank loans until repaid in full, future Receivers fees and rates and land tax after 31 December 2011. It also excludes any legal recoveries against borrowers, valuers or other third parties.



## **7. Receiver's Remuneration and Expenses**

Fees incurred from the date of my appointment on 21 November 2011 until 29 January 2012 (ten weeks) are \$175,708.50 plus GST and outlays as detailed in the attached remuneration summary.

My fees will be subject to approval by the court in due course.

I note that Equititrust Limited have appealed the judgement pursuant to which I was appointed as receiver and person responsible for ensuring the Fund is wound up in accordance with the constitution of the Fund. Substantial costs and fees have been incurred in my dealing with the issues raised by Equititrust Limited as to the nature and extent of my appointment. No date has yet been set for the hearing of the appeal. Notwithstanding the appeal by Equititrust Limited I will continue to act pursuant to the orders made that the Fund be wound up.

## **8. ASIC Investigations/Suspension of Australian Financial Services Licence**

On 20 October 2011, ASIC officers exercised search warrants at the offices of the Responsible Entity in relation to documents relevant to ASIC's investigation of historical matters. A number of the seized documents are the subject of claims for legal professional privilege.

I have met with ASIC in this regard and agreed a protocol to protect investors interests in this respect.

ASIC has advised me that if there are any concerns or issues investors would wish to raise, they should contact ASIC's hotline on 1300 300 630.

### ***ASIC consent order***

On 27 October 2011, ASIC obtained orders by consent of the Responsible Entity from the Supreme Court. These orders include that until the Responsible Entity ceases to be in breach of clause 6 of its Australian Financial Services Licence (which related to net tangible assets of the Responsible Entity) and lodges outstanding audited annual financial reports and compliance audits for the Schemes for which it is Responsible Entity, the Responsible Entity is subject to a range of restraints including, inter alia, modifying the Constitution of the Scheme, issuing of new interest in the Scheme, and entering into related party transactions without providing ASIC with 21 days notice.

### ***Suspension of Australian Financial Services Licence***

On 7 December 2011, the Australian Financial Services Licence of the Responsible Entity was suspended by ASIC until 6 December 2012. Notwithstanding this suspension the Responsible Entity may continue to act as responsible entity of the Scheme in order to effect the winding up of the Scheme. The Responsible Entity remains subject to its relevant ongoing obligations while it continues to be the Responsible Entity.

## **9. Responsible Entity Insurance**

Insurance policies of the Responsible Entity expired on 21 November 2011, resulting in the Responsible Entity being in breach of its Australian Financial Services Licence. As at the date of this report, the directors of the Responsible Entity have not been successful in arranging alternative appropriate insurance.

## 10. Social Security Update

As noted on Equititrust's website on 29 September 2011 and 22 December 2011, the responsible entity has been in correspondence with the Department of Families, Housing, Community Services and Indigenous Affairs to request an exemption from social security deeming rules to assist pensioners who are income and asset tested and hold investments in the EIF.

The Minister has declined to assist although investors should keep Centrelink informed of any changes in unit value so that their position can be reassessed.

Any investors experiencing severe financial hardship should contact Centrelink on 13 23 00.

## 11. Ongoing Reporting


My intention is to provide monthly reports to investors in relation to the ongoing progress of the receivership. In order to save costs, future reports will be posted on the updates page of the website [www.equititrust.com.au](http://www.equititrust.com.au).

Please note that prior to finalising this report I provided a copy of the report to Equititrust Limited as Responsible Entity for it to comment on the content of the report. I have not received any written comments from Equititrust Ltd regarding the contents of the report.

## 12. Queries

Should you have any queries in the above respect, please contact Andrew Want on (07) 3237 5711 or Jayden Coulston of this office on (07) 3237 5890.

Yours faithfully



David Whyte  
Receiver

Enc.

**REMUNERATION SUMMARY**  
**Equitrust Income Fund (Receiver Appointed)**  
**21 November 2011 to 29 January 2012**

Employee	Position	Rate	Total		Administration		Assets		Creditors		Employees		Investigators		Traders										
			Units	Total \$	Units	\$	Units	\$	Units	\$	Units	\$	Units	\$	Units	\$									
Fielding, Andrew	Partner	545	0.20	109.00	0.20	327.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00									
Newman, Helen	Partner	545	0.60	327.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00									
Whyte, David	Partner	545	248.50	124,392.50	9.80	5,341.00	33.90	18,475.50	31.70	17,276.50	0.00	109.00	0.00	0.00	157.60	85,892.00									
Bruske, David	Manager	375	76.20	28,575.90	14.30	5,362.50	51.30	19,237.50	0.90	337.50	0.00	0.00	0.00	9.70	3,637.50										
Wart, Andrew	Senior Accountant II	260	51.80	13,468.00	48.20	12,532.00	1.10	286.00	1.50	390.00	0.00	0.00	0.00	0.00	0.00	0.00									
Coulston, Jayden	Accountant I	210	44.40	9,324.00	6.90	1,449.00	6.60	1,386.00	0.30	63.00	0.00	0.00	0.10	21.00	105.00										
Penbrooke, Elie	Accountant I	210	44.40	9,324.00	2.30	483.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	105.00										
<b>TOTAL</b>				<b>126,708.50</b>		<b>47,201.20</b>		<b>25,603.50</b>		<b>31,201.18</b>		<b>18,087.00</b>		<b>5,401.10</b>		<b>2,909.50</b>		<b>167.80</b>		<b>89,634.50</b>					
				<b>TOTALING GST</b>	<b>17,570.85</b>					<b>123.95</b>					<b>536.88</b>					<b>534.17</b>					
				<b>AVERAGE HOURLY RATE</b>	<b>438.27</b>					<b>311.10</b>					<b>525.20</b>					<b>545.00</b>					<b>534.17</b>

**DISBURSEMENT REPORT**  
**Equitrust Income Fund (Receiver Appointed)**  
**21 November 2011 to 29 January 2012**

Item	Amount
NSW Power of Attorney Transfer fee	90.45
Travel - Mileage	1,059.04
Mobile Internet	53.63
Postage	6.88
Search Fee	274.45
Sub Total	1,484.45
GST	148.45
<b>TOTAL</b>	<b>1,632.90</b>

SUPREME COURT OF QUEENSLAND

*Duplicate*

REGISTRY: Brisbane  
NUMBER: 10478/2011

In the matter of **EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

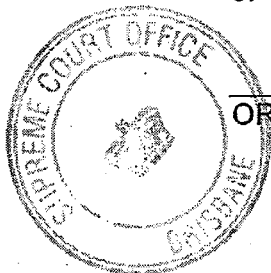
Before: Justice Applegarth

Date: 21 November 2011

Initiating document: Application filed 15 November 2011, and oral application made by the Australian Securities and Investments Commission on 21 November 2011

**THE ORDER OF THE COURT IS THAT:**

1. Pursuant to section 601ND (1)(a) of the *Corporations Act 2001* (Cth) (the "Act"):-
  - (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999 ("EIF");
  - (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999 ("EPCIF").
2. David Whyte ("Mr Whyte") be appointed pursuant to section 601NF(1) of the Act to take responsibility for ensuring that:-
  - (a) the EIF is wound up in accordance with its constitution; and
  - (b) the EPCIF is wound up in accordance with its constitution.
3. Pursuant to section 601NF(2), that Mr Whyte:-



ORDER:

Filed on behalf of the Applicants

TUCKER & COWEN  
Solicitors  
Level 15  
15 Adelaide Street  
Brisbane, Qld, 4000.  
Tele: (07) 300 300 00  
Fax: (07) 300 300 33

- (a) have access to the books and records of Equititrust Limited which concern the EIF and the EPCIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in effecting the winding up of the EIF;
  - (c) be indemnified out of the assets of the EPCIF in respect of any proper expenses or costs incurred in effecting the winding up of the EPCIF;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration; and
  - (e) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
4. Pursuant to sections 1101B(1) and 1101B(5) of the Act, Mr Whyte be appointed as:-
- (a) a receiver of the property of the EIF; and
  - (b) a receiver of the property of the EPCIF,
- until 4:00pm on Wednesday 23 November 2011, or further earlier order.
5. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Limited or the EIF.
6. That by 4pm on Tuesday 22 November 2011, Equititrust Limited publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
7. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with section 601NF(2) of the Act.
8. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
9. The oral application of ASIC be adjourned to 10:00am on Wednesday 23 November 2011.

Signed:

A handwritten signature in black ink, appearing to be a stylized name or set of initials, enclosed within a circular scribble.

*Duplicate*

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: BS 10478 of 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND  
ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST  
PRIORITY CLASS INCOME FUND ARSN 089 079 729**

**ORDER**

Before: Justice Applegarth

Date: 23 November 2011

Initiating document: Application filed 15 November 2011 and Oral Application made 21 November 2011

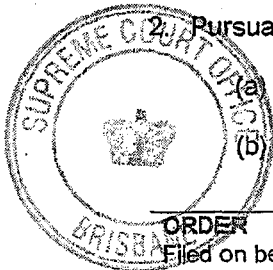
THE ORDER OF THE COURT IS THAT:

1. Pursuant to s.1101B(1) of the *Corporations Act 2001* (Cth) (*the Act*) David Whyte (*Mr Whyte*) be appointed as:

- (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and
- (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).

2. Pursuant to s.601NF(2) of the Act David Whyte (*Mr Whyte*) be appointed as:

- (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and
- (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).



ORDER  
Filed on behalf of the Intervener

Australian Securities & Investments Commission  
Hugh Copley, Litigation Counsel

Form 59 Rule 661

Level 20, 240 Queen Street, Brisbane Qld 4000  
Tel: (07) 3867 4700  
Fax: (07) 3867 4725  
Ref: K Rodgers (11-40025)

3. Pursuant to s.1101B(1) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 1 above, the powers set out in s.420 of the Act in addition to the powers set out in s.1101B(8)(a) to (c) of the Act.
4. Pursuant to s.601NF(2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 2 above, the powers set out in s.420 of the Act and the powers set out in s.1101B(8)(a) to (c) of the Act.
5. Pursuant to s.1101B(1) of the Act, Mr Whyte in respect of the appointment made in Order 1 above:
  - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
  - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
6. Pursuant to s.601NF(2) of the Act, Mr Whyte in respect of the appointment made in Order 2 above:
  - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EPCIF;
  - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
7. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Ltd or the property of the EIF.



8. That by 4pm on Thursday 24 November 2011, Equititrust Ltd publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to its members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
9. That the parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
10. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with s.601NF(2) of the Act.

Registrar:

A handwritten signature in black ink, consisting of a large, stylized letter 'A' with a vertical line extending downwards from its right side.

# SUPREME COURT OF QUEENSLAND

CITATION: *Re Equititrust Ltd* [2011] QSC 353

PARTIES: **EQUITITRUST LTD**  
ACN 061 383 944  
(applicant)  
v  
**THE MEMBERS OF THE EQUITITRUST INCOME  
FUND AND THE EQUITITRUST PRIORITY CLASS  
INCOME FUND**  
(respondents)

FILE NO: BS 10478 of 2011

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING  
COURT: Supreme Court at Brisbane

DELIVERED ON: 23 November 2011

DELIVERED AT: Brisbane

HEARING DATE: 21 and 23 November 2011

JUDGE: Applegarth J

ORDERS: **Orders for two registered schemes to be wound up pursuant to s 601ND of the *Corporations Act 2001 (Cth)*, for the appointment of a person to take responsibility for ensuring that each registered scheme is wound up and for the same person to be appointed as a receiver of the property of each scheme.**

CATCHWORDS: CORPORATIONS – MANAGED INVESTMENTS – WINDING UP – where company applied to Court for the winding up of two registered schemes of which it was the responsible entity and for the appointment of a temporary responsible entity – where circumstances of urgency exist due to impending lapse of insurance for officers of company – where directors indicated that they would resign upon lapse of insurance – where the administration of the schemes had broken down and the schemes’ purposes could no longer be accomplished – where the company was in breach of the *Corporations Act 2001 (Cth)* and of conditions of its financial services licence – whether the Court had jurisdiction to appoint a temporary responsible entity – whether the Court should order the winding up of the schemes – whether the Court should appoint a receiver to the property of each scheme

*Corporations Act 2001 (Cth) s 601FA, s 601FN, s 601FP, 601ND, s 601NF, s 1101B*

*Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 cited  
*Capelli v Shepard* (2010) 264 ALR 167; [2010] VSCA 2 cited  
*Re Crust 'N' Crumb Bakers (Wholesale) Pty Ltd* [1992] 2 Qd R 76 cited  
*Joye v Beach Petroleum N.L.* (1996) 67 FCR 275 cited  
*Mier v FN Management Pty Ltd* [2006] 1 Qd R 339; [2005] QCA 408 discussed  
*Re PWL Ltd; Ex parte PWL Ltd (formerly Palandri Wines Ltd) (No 2)* [2008] WASC 232 cited  
*Re Rubicon Asset Management Ltd* (2009) 74 ACSR 346; [2009] NSWSC 1068 discussed  
*Re Stacks Managed Investments Ltd* (2005) 219 ALR 532; [2005] NSWSC 753 discussed  
*Westfield Management Ltd v AMP Capital Nominees Ltd* [2011] NSWSC 1015 cited  
*Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34; [2000] VSC 300 cited

COUNSEL: P L O'Shea SC and J W Peden for the applicant  
 A S Martin SC and G M Drew for certain members  
 D R W Tucker (solicitor) for a member, Tucker SF Pty Ltd  
 T P Sullivan SC and S R R Cooper for the Australian Securities and Investments Commission intervening  
 D D Keane instructed directly by Lion Advantage Ltd, an applicant for appointment as a temporary responsible entity (21 November 2011)  
 J W Peden for the applicant and Mr Mark McIvor (23 November 2011)

SOLICITORS: Nyst Lawyers for the applicant  
 Piper Alderman for certain members  
 Tucker & Cowen for Tucker SF Pty Ltd  
 Australian Securities and Investments Commission for the intervener  
 Nyst Lawyers for Mr Mark McIvor (23 November 2011)

- [1] On Monday, 21 November 2011 I made certain orders following a hearing which was held on short notice and in circumstances of urgency. These are my reasons for making those orders. The circumstances of urgency included the fact that two insurance policies covering officers of Equititrust Ltd (the company) were due to expire at 3.00 pm that day. They were unlikely to be renewed and alternative insurance could not be sourced. In those circumstances, the recently-appointed directors of the company were not prepared to remain on the board and proposed to resign shortly before 3.00 pm.

- [2] By an originating application filed on 15 November 2011 the company sought the following two orders:

- “1. The Equititrust Income Fund be wound up pursuant to section 601ND of the *Corporations Act* (Cth) 2001;
2. The Equititrust Priority Class Income Fund be wound up pursuant to section 601ND of the *Corporations Act* (Cth) 2001.”

It also sought an order pursuant to s 601FN of the *Corporations Act* (Cth) 2001 (“the Act”) that:

“Equititrust Limited be replaced as the Responsible Entity of the Equititrust Income Fund and the Equititrust Priority Class Income Fund (‘Funds’) by a temporary Responsible Entity, with that entity to wind-up the Funds and take steps to call a meeting of members to ratify its appointment”.

The company also sought an order pursuant to s 601NF that a committee consisting of Mr Jeff McDermid, Mr Paul Vincent and Mr Nick Combis be appointed to take responsibility for ensuring that the funds are wound up in accordance with their constitutions and that appropriate directions be made to effect that winding up.

- [3] Upon the hearing of the application the company initially sought only an order pursuant to s 601FN of the Act that it be replaced as the responsible entity of the two funds. However, it submitted that if I did not appoint a temporary responsible entity to replace it, I should order that the funds be wound up.
- [4] The Australian Securities and Investments Commission (ASIC) intervened in the proceeding and made an oral application for the appointment of a receiver to the funds pursuant to s 1101B of the Act.

#### **The application for the appointment of a temporary responsible entity**

- [5] There was a jurisdictional impediment to the making of an order under s 601FN for the appointment of a temporary responsible entity. That section entitles ASIC or a member of a registered scheme to apply to the Court for the appointment of a temporary responsible entity of a scheme under s 601FP if the scheme “does not have a responsible entity that meets the requirements of s 601FA”. Section 601FA requires the responsible entity of a registered scheme to be a public company that holds an Australian financial services licence authorising it to operate a managed investment scheme. At the time of the company’s application and at the time of the hearing it met both of these requirements. The fact that it was in breach of the terms of its financial services licence and faced the prospect of having that licence terminated or suspended did not alter the fact that it still held its licence.
- [6] This jurisdictional impediment was, in part, the result of the company seeking from ASIC and obtaining an adjournment until 22 November 2011 of a hearing to show cause why its licence should not be terminated.
- [7] Counsel for ASIC helpfully drew my attention to Regulation 5C.2.02 of the *Corporations Regulations* 2001 (Cth), although the company did not make any

application under that regulation. For the reasons given by ASIC, it is questionable whether that regulation provides a source of power for the Court to appoint a temporary responsible entity other than in the circumstances provided for in s 601FL or s 601FN.

- [8] In the result, the Court's power to appoint a temporary responsible entity upon an application under s 601FN was not invoked.
- [9] This makes it unnecessary to address the question of whether the appointment of a temporary responsible entity was in the interests of the members, and a contentious issue as to whether the replacement of the company by such an entity would result in a reconversion of subordinated units held by the company in its own right, and a decrease in the value of units held by other members.

### **The application under s 601ND to wind up the funds**

- [10] The company submitted that if I did not appoint a temporary responsible entity to replace it as the responsible entity for each fund, then I should make the orders sought in paragraphs 1 and 2 of its originating application for each of the funds to be wound up pursuant to s 601ND. ASIC supported this application. So did a member of the Equititrust Income Fund, Tucker SF Pty Ltd. The only opposition to making orders under s 601ND came from seven members for whom Mr Martin SC and Mr Drew of counsel appeared. The basis for that opposition was to enable members to call a meeting and to vote upon a proposal to wind up the Income Fund pursuant to s 601NB of the Act.
- [11] It is necessary to outline certain factual matters by way of background to explain why I reached the conclusion that it was just and equitable to make an order directing the responsible entity to wind up each fund, and why I considered that such an order should be made promptly rather than delayed for some uncertain period to allow the members to vote on a resolution to wind up the Income Fund.
- [12] The company is the responsible entity of three managed schemes, two of which are registered. The third, being the Equititrust Premium Fund ("EPF"), is not registered and is not required to be registered under the Act. The two registered managed investment schemes are known as the Equititrust Income Fund ("EIF") and the Equititrust Priority Class Income Fund ("EPCIF"). The EIF has some 1,400 members and net assets in excess of \$100,000,000. The EPCIF has only five members, all apparently associated with the company's sole shareholder, Mr McIvor. EPCIF holds 13,636,478 units in the EPF.
- [13] As its name suggests, the EIF was intended to be an "income fund" which provided monthly interest payments on most investments and the redemption of capital. Where a member invests for a period of 12 months the entitlement to redemption arises on the anniversary of the allotment of units after a request is made to redeem. The fund no longer achieves its purposes. The fund has been frozen since October 2008 in that no redemptions of units have been permitted since then. Since April 2011 the fund has ceased paying interest to members.
- [14] The company was beset by discord between directors and the company's sole shareholder, Mr McIvor, during 2011. It is unnecessary to describe fully the nature of the discord. An application was brought by the superannuation fund of a former director, Mr Tucker, seeking an order for the winding up of the EIF. The

application was adjourned on the basis of certain undertakings, given by Mr McIvor to the Court, not to seek to appoint any new director or remove any existing director from the board of the company without giving notice to the existing board and to ASIC, and seeking leave of the Court. These undertakings were given on 27 October 2011 in circumstances in which the company had been placed in the hands of a newly appointed board of directors. The newly appointed board comprised Mr Paul Vincent, Mr Jeff McDermid, Mr Troy Bingham and Mr Warwick Powell. Mr Vincent is a Fellow of the Institute of Chartered Accountants, and has 30 years experience as a Chartered Accountant. He and his fellow directors familiarised themselves with the operations of the company and considered how the funds might best be wound up. The new board considered the best realisation strategies.

- [15] On 12 October 2011 a differently constituted board had unanimously resolved:
- (a) that Equititrust Limited as the responsible entity of the Equititrust Income Fund considers that the purpose of the Equititrust Income Fund cannot be accomplished (within the meaning of s 601NC(1) of the *Corporations Act*).
  - (b) that Equititrust Limited as responsible entity of the Equititrust Income Fund take steps to wind up the Equititrust Income Fund within the meaning of s 601NC(1) and in accordance with its constitution.
  - (c) that the chief executive officer prepare notices to give to members of the scheme and to ASIC in accordance with s 601NC(2) of the *Corporations Act*.

A similar resolution was passed the same day in respect of the EPCIF, namely that its purpose cannot be accomplished and that it should be wound up.

- [16] The new board would have preferred to continue with the process of winding up that had been instigated, being a process provided for under s 601NC of the Act. However, the expiry and non-renewal of insurance policies on 21 November 2011 prompted them to have the company apply for winding up orders pursuant to s 601ND.
- [17] Mr Vincent, in an affidavit sworn on 18 November 2011, assessed the approximate financial position of the company as at 31 October 2011 as follows:

- “a. ETL [Equititrust Ltd] has assets in its own right worth approximately \$26,498,000;
- b. ETL has liabilities in its own right in the approximate sum of \$26,470,000;
- c. ETL has assets that it holds for the EIF in the approximate sum of \$120 million;
- d. ETL has liabilities in its capacity as responsible entity for the EIF in the approximate sum of \$9 million;
- e. ETL has therefore net assets in the EIF in the approximate sum of \$111 million;

- f. ETL has liabilities in its capacity as Responsible Entity for EPF in the approximate sum of \$12.5 million;
  - g. ETL has assets that it holds for the EPF of approximately \$13 million;
  - h. ETL has therefore net assets in the EPF in the approximate sum of \$0.5 million.”
- [18] The company has borrowings on its own behalf and also on behalf of the funds. The secured lenders include the Commonwealth Bank, the National Australia Bank and the Bank of Scotland International. The borrowings are secured by various real property mortgages and charges over assets of the company in its own right and also over assets of the funds. The total borrowings are approximately \$17 million, owed by EIF as to \$9 million and by EPF (the unregulated fund) as to \$8 million. The company’s assets and liabilities are more fully summarised in Mr Vincent’s affidavit sworn on 18 November 2011. That affidavit was supplemented by an affidavit sworn on 21 November 2011 which corrected paragraph 6 of the earlier affidavit by stating that the company in its capacity as responsible entity for the EPCIF holds 13,636,478 units in the EPF.
- [19] Importantly for present purposes, according to Mr Vincent’s assessment the EIF has net assets of about \$111 million.
- [20] Based upon his work as a director since his appointment, Mr Vincent was “clearly of the view that the Funds should be wound up”. His reasons were summarised as follows:
- “a. the Funds have been frozen since October 2008, in that no redemptions of units have been permitted since then;
  - b. since April 2011, the Funds have ceased paying interest on the units to members of the Funds;
  - c. the disharmony between Mr Tucker and Mr Kennedy on the one hand and Mr McIvor on the other hand over the past 12 months or so, as more fully described in the affidavits of Mr Tucker, Mr Kennedy and Mr McIvor filed in BS9534/2011, has destabilised the Funds to such a degree that it is extremely unlikely that the Funds could regain the possibility of resuming trading;
  - d. the vast majority of the loans owed to ETL as responsible entity for the EIF are in default and require intensive management so as to maximise the value realisable from those loans;
  - e. as indicated in paragraph 8 of my earlier affidavit, I have received widespread support from members for the winding up and no objections. I am aware of an indication, by correspondence from Piper Alderman as solicitors for a number of members who have mooted a potential class action against ETL and its former directors, that there may be some opposition

to the winding up, but I have not yet seen the details of any such opposition and am accordingly unable to comment on the reasons for such opposition; and

- f. against this background, it is clear to me that the purpose for which each of the EIF and EPCIF were established can not be accomplished.”

- [21] Mr Vincent and his fellow directors reached the conclusion that it is in the best interests of members of the EIF and the EPCIF that each fund be wound up forthwith.
- [22] It is unnecessary to canvass the board's preference for the appointment of a temporary responsible entity pursuant to s 601FP to enable the winding up to proceed subject to oversight by a committee. Mr Vincent's affidavit indicated that if a responsible entity was not able to be appointed to replace the company as the responsible entity by Monday, 21 November 2011, then the board recommended that an independent insolvency practitioner be appointed to wind up each fund in accordance with the provisions of its constitution.
- [23] The assessment by Mr Vincent and his fellow-directors of what is in the best interests of members of each fund was undertaken in difficult circumstances. I accepted the considered view of the new board that it was in the best interests of members of each fund that each fund be wound up forthwith.
- [24] As noted, the only opposition to such an order was advanced by counsel on behalf of a small number of members who, according to their Notice of Appearance, hold units in the EIF totalling \$2,433,743.11. Those members also obtained leave to file an application seeking a variety of orders including a declaration that certain notices given pursuant to s 601NC of the Act were invalid and an order pursuant to s 252E(1) of the Act that a meeting of the members of the EIF be called to consider and vote on an extraordinary resolution directing the responsible entity to wind up the EIF. I took into account the submissions made on behalf of these members as to the desirability of allowing the members to meet and consider a resolution to wind up the EIF. I was not in a position to make any assessment of the merit of a submission made by Mr Tucker to the effect that the opposition to an order to wind up the funds forthwith was to achieve some collateral advantage in connection with foreshadowed proceedings against the company and its former officers. I declined these members' application to adjourn the company's application and decided to make orders directing that each fund be wound up pursuant to s 601ND because such a course appeared to be in the best interests of members of the funds. Any advantage in allowing the members to vote on a resolution to wind up the EIF at a yet-to-be convened meeting at some uncertain future date was outweighed by the disadvantages associated with delaying orders for the winding up of each fund.
- [25] In addition to the matters supporting a winding up forthwith identified by Mr Vincent is the fact that the board intended to resign prior to 3.00 pm on Monday, 21 November 2011 in the event that the company was unable to obtain insurance coverage. Such a course would leave the company without directors unless and until Mr McIvor obtained a release from the undertakings given in relation to the appointment of directors. There is evidence from former directors of the company that Mr McIvor does not wish the company to properly pursue a winding up of the



funds. There was no proposal for directors who were independent of Mr McIvor to be appointed as directors. The task of winding up the funds, including the recovery of loans upon which there has been default, should be undertaken by an independent person who is appointed pursuant to s 601NF to take responsibility for ensuring that each fund is wound up in accordance with its constitution, and any orders made under subsection 601NF(2).

[26] Part 5C.9 of the Act creates a framework for the winding up of registered schemes. In general terms, a registered scheme may be wound up:

- (a) as required by the scheme's constitution pursuant to s 601NA;
- (b) at the direction of members after a members' meeting to consider and vote on an extraordinary resolution directing the responsible entity to wind up the scheme, as envisaged by s 601NB;
- (c) pursuant to s 601NC, if the scheme's purpose is either accomplished or cannot be accomplished after the responsible entity gives members of the scheme and ASIC the written notice provided for in s 601NC(2) and if no meeting is called within 28 days of the responsible entity giving the notice to the members;
- (d) pursuant to s 601ND, by order of the Court either on the ground that the Court thinks that it is just and equitable to make an order directing the responsible entity to wind up the scheme or because of an unsatisfied judgment against the responsible entity in its capacity as the scheme's responsible entity.

[27] The company resolved in accordance with s 601NC that the funds should be wound up. Winding up under s 601NC could not commence until 25 November 2011 at the earliest, being 28 days after certain notices were given to members. However, a number of members requested a meeting of members to consider the proposed winding up of the EIF and to vote on an extraordinary resolution directing that the fund be wound up pursuant to s 601NB of the Act.

[28] In short, the company's proposal that the funds be wound up pursuant to s 601NC had been overtaken by events, and such a winding up would not commence until some uncertain future date, depending upon the calling of a meeting and the validity of certain notices. A winding up at the direction of members in accordance with s 601NB could not commence until the calling of a members' meeting to consider and vote on such a resolution. The date upon which such a meeting would occur was uncertain and the pending resignation of directors made uncertain the means by which such a meeting would be held. All parties, including ASIC, appeared to agree that the funds should be wound up. I was not persuaded that there was any particular advantage to the members of the fund by a delay in the commencement of the winding up of the funds. The circumstances that had arisen by 21 November 2011 made it appropriate to direct that each fund be wound up forthwith.

[29] Section 601ND(1)(a) authorises the Court to order that the responsible entity of a registered scheme wind up the scheme if the Court thinks it is "just and equitable to make the order". The principles concerning the winding up of companies on the

just and equitable ground inform the application of this provision.<sup>1</sup> A registered scheme may be wound up on the just and equitable ground because the administration and original arrangement have broken down.<sup>2</sup> The Court may wind up a registered scheme on the just and equitable ground if it is in the public interest to do so.<sup>3</sup>

[30] The evidence before me, particularly Mr Vincent's evidence, and the parties' submissions persuaded me that it was just and equitable to make orders directing the applicant, as responsible entity, to wind up each fund. The principal reasons for that conclusion are those contained in Mr Vincent's affidavit and which I have earlier quoted. They may be summarised as follows:

- (a) The administration of the funds has broken down and the funds' purposes cannot be accomplished;
- (b) Repayments to investors have been frozen since October 2008 and the funds ceased making monthly interest payments to members on 1 April 2011;
- (c) Disharmony and disputes between members of the board of the company and Mr McIvor prior to the recent appointment of new board members destabilised the administration of the funds with the result that it is extremely unlikely that the funds could resume trading;
- (d) The vast majority of the loans owed to the company as responsible entity for the EIF are in default and require proper management so as to maximise the realisation of funds for the benefit of members;
- (e) The company is in breach of the conditions of its Australian financial services licence, including by a failure to lodge audited accounts, and the company was also likely to be in breach of the conditions of its licence upon the expiry of necessary insurance coverage;
- (f) The members of the recently appointed board were due to resign prior to 3.00 pm on 21 November 2011, whereupon the proper administration of the funds would be jeopardised;
- (g) The appointment of an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under subsection 601NF(2) appears to be in the best interests of members of each fund;
- (h) The winding up of the EIF appears to have received widespread support from members, and no member contended that the funds should not be wound up.

<sup>1</sup> *Capelli v Shepard* (2010) 264 ALR 167 at 190, [2010] VSCA 2 at [104]; *Westfield Management Ltd v AMP Capital Nominees Ltd* [2011] NSWSC 1015 at [124]; *Re PWL Ltd; Ex parte PWL Ltd (formerly Palandri Wines Ltd) (No 2)* [2008] WASC 232 at [44].

<sup>2</sup> *Capelli v Shepard* (2010) 264 ALR 167 at 186, [2010] VSCA 2 at [86]; *Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 at [63].

<sup>3</sup> *Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd* [2001] WASC 339 at [64]; *Re Rubicon Asset Management Ltd* (2009) 74 ACSR 346 at 351, [2009] NSWSC 1068 at [23].

- [31] For these reasons, I made orders on the afternoon of Monday, 21 November 2011 pursuant to s 601ND of the Act that:
- (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999; and
  - (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999.

**Appointment of a person to take responsibility for the winding up of the funds**

- [32] Section 601ND empowers the Court, by order, to direct the responsible entity to wind up the scheme. Section 601NE provides that the responsible entity must ensure that the scheme is wound up in accordance with its constitution and any orders under subsection 601NF(2) if, among other things, the Court makes an order directing it to wind up the scheme. Section 601NF provides:

**“601NF Other orders about winding up**

- (1) The Court may, by order, appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders under subsection (2) if the Court thinks it necessary to do so (including for the reason that the responsible entity has ceased to exist or is not properly discharging its obligations in relation to the winding up).
  - (2) The Court may, by order, give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so (including for the reason that the provisions in the scheme’s constitution are inadequate or impracticable).
  - (3) An order under subsection (1) or (2) may be made on the application of
    - (a) the responsible entity; or
    - (b) a director of the responsible entity; or
    - (c) a member of the scheme; or
    - (d) ASIC.”
- [33] In the circumstances that presented themselves on 21 November 2011, including the jurisdictional impediment to the appointment of a temporary responsible entity pursuant to s 601FN and the pending resignation of recently appointed members of the company’s board, I considered it necessary to appoint a person to take responsibility for ensuring that each fund was wound up in accordance with its constitution and any orders made under subsection 601NF(2). No party argued against such a course. The pending resignation of the company’s directors made it necessary to appoint an independent person to take responsibility to wind up each fund. The parties accepted that an independent insolvency practitioner be appointed to wind up each fund. Different persons had indicated their preparedness to be

appointed. After hearing submissions I decided to appoint Mr David Whyte, who is an experienced insolvency practitioner.

#### **Powers conferred by s 601NF**

[34] Given the time constraints that applied in hearing the application and making appropriate orders on Monday, 21 November 2011, I was not in a position fully to consider that day the extent of the powers conferred upon Mr Whyte by virtue of his appointment to take responsibility for ensuring that each fund is wound up in accordance with its constitution, and the extent of the Court's power to make orders pursuant to s 601NF(2) to facilitate the performance of his responsibility to ensure that each fund is wound up in accordance with its constitution. Having heard submissions, my provisional view was that orders might be made pursuant to s 601NF(2) directing that Mr Whyte act as a receiver of the property held by the company as:

- (a) responsible entity of the EIF; and
- (b) responsible entity of the EPCIF

However, I deferred making any orders pursuant to s 601NF in this regard so that I might consider relevant authorities concerning the power to make such orders pursuant to s 601NF.

#### **Appointment of a receiver pursuant to s 1101B of the Act**

[35] Soon after the commencement of the hearing on 21 November 2011, ASIC made an oral application pursuant to s 1101B of the Act for an order appointing a receiver of the property of each fund. The evidence and submissions indicated that the company had contravened the Act and one condition of its Australian financial services licence, and that upon the expiry of its insurance coverage would have contravened another condition. In the circumstances that I have earlier related concerning the need to appoint a person to take responsibility for ensuring that the funds were wound up, and in the absence of a specific order that Mr Whyte act as a receiver of the property of each fund, I made an interim order under s 1101B appointing him:

- (a) a receiver of the property of EIF; and
- (b) a receiver of the property of EPCIF

until 4.00 pm on Wednesday, 23 November 2011 or further earlier order. I was satisfied that such an order would not unfairly prejudice any person, and that such an order was in the interests of the members of each fund.

#### **Further orders**

[36] I have now had an opportunity to consider whether in lieu of a further order pursuant to s 1101B, or in addition to an order made under that section, Mr Whyte should be ordered pursuant to s 601NF to act as a receiver of the property of each fund and whether an order should be made as to the powers which he has to act as receiver.

- [37] I have set out the text of s 601NF above. The exercise of the power to appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders made under subsection 601NF(2) may arise for consideration in a wide variety of circumstances. For example, the originating application in this matter envisaged the appointment pursuant to s 601NF of a capable and competent temporary responsible entity pursuant to s 601NF to wind up the funds and for a committee consisting of Mr McDermid, Mr Vincent and a partner of Mr Vincent to be appointed to s 601NF to oversee the winding up. In other circumstances a responsible entity will not exist or will not be capable of winding up the registered scheme under the oversight of a person appointed pursuant to s 601NF. Section 601NF(1) contemplates such situations. One such situation is where the responsible entity "has ceased to exist". As ASIC submits, in such a case, unless a person appointed under s 601NF is empowered to deal with the assets of the scheme, that person will have no means to effect the winding up and the appointment would be rendered meaningless.
- [38] The terms of s 601NF(1) by which the Court may, by order, appoint a person "to take responsibility for ensuring" a registered scheme is wound up may be thought to necessarily carry with the appointment the authority to do such things as are necessary to wind up the registered scheme in accordance with its constitution and any orders made under subsection (2). McPherson SPJ (as his Honour then was) in *Re Crust 'N' Crumb Bakers (Wholesale) Pty Ltd*<sup>4</sup> stated that:

"Winding up is a process that consists of collecting the assets, realising and reducing them to money, dealing with proofs of creditors by admitting or rejecting them, and distributing the net proceeds, after providing for costs and expenses, to the persons entitled."

This statement has been approved by the Court of Appeal in *Mier v FN Management Pty Ltd*<sup>5</sup> and by the Full Court of the Federal Court in *Joye v Beach Petroleum N.L.*<sup>6</sup> Accordingly, an appointment pursuant to s 601NF may be said itself to authorise the appointed person to cause assets to be collected, realised and other steps taken so as to wind up the scheme in accordance with its constitution and any orders made under s 601NF(2). In general terms, the constitution of the EIF provides for the winding up to involve the conversion of the funds' assets to money and, after the payment of debts, the payment to members in proportion to the amount of the members' interests in the scheme.

- [39] Depending upon the circumstances of a particular case, the responsibility for ensuring that a registered scheme is wound up may involve the appointed person ensuring that the responsible entity undertakes these kind of tasks. In other circumstances, for example, because the responsible entity has ceased to exist or is incapable of doing these tasks, the appointed person may need to undertake them or engage someone else to do so.
- [40] The nature and extent of the powers which s 601NF confers upon an appointed person by virtue of his or her appointment is not clear from the terms of the statute. The matter is not clarified or illuminated by the Explanatory Memorandum to the

<sup>4</sup> [1992] 2 Qd R 76 at 78.

<sup>5</sup> [2006] 1 Qd R 339 at 347, [2005] QCA 408 at [15].

<sup>6</sup> (1996) 67 FCR 275 at 287, 290.

*Managed Investments Bill 1997 (Cth)* which simply stated in respect of proposed s 601NF (which is in identical terms to s 601NF as enacted) that:

“The Court may make other such orders as it sees fit.”

But the section, as enacted, is not in such simple terms. Instead, it provides for the appointment of a person pursuant to s 601NF(1), and goes on to provide that the Court may “by order” give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so. I note that subsection 601NF(2) is not simply a power to give directions.<sup>7</sup> It contemplates the Court making orders, not simply directions. The orders that might be made under s 601NF(2) are not confined to directions about winding up the scheme in accordance with its constitution. The section does not specify all of the circumstances under which it may be necessary to give directions, but the circumstances include the fact that the provisions in the scheme’s constitution are inadequate or impracticable.

- [41] The terms of s 601NF might be contrasted with the terms of s 601EE(2) in respect of unregistered managed investment schemes. Section 601EE(2) provides in such a case that the Court may make “any orders it considers appropriate for the winding up of the scheme.”
- [42] In *Re Stacks Managed Investments Ltd*,<sup>8</sup> White J compared s 601NF(2) with s 601EE(2) and considered the authorities in relation to s 601EE(2). Section 601EE(2) was said to empower the Court “to fashion the winding-up process.”<sup>9</sup> By contrast, s 601NF(2) gave power to make directions about how a registered scheme is to be wound up, where the winding up may already be on foot and should be provided for by the scheme’s constitution.
- [43] In that matter the plaintiff wished to have insolvency practitioners appointed as persons to take responsibility for ensuring that the scheme was wound up. The plaintiff sought the conferral of a wide range of powers on such persons. These included the power to conduct examinations in the same way that liquidators of companies have those powers. White J observed that the plaintiff had adapted the provisions of the *Corporations Act* dealing with the winding up of companies to the circumstances of the scheme. The plaintiff contended that powers could be conferred on the responsible persons, obligations imposed on third parties, and rights of creditors restricted to bring the winding up of the scheme into line with the winding up of companies.<sup>10</sup> His Honour observed that Part 5C.9 provides for the winding up of a registered scheme in accordance with its constitution and any order the Court might make under s 601NF(2). Where the scheme is a trust, what is envisaged by the winding up of a scheme is the realisation of its property, the payment by the responsible entity of liabilities incurred on behalf of the scheme or the retention by it of funds with which to meet its liabilities, the ascertainment of the members’ entitlements, and the distribution of the trust assets to the members in accordance with their entitlements.<sup>11</sup> The winding up of a trust was said to be quite a different thing from winding up a company, with the liquidation of a company being a matter governed by statute. His Honour observed that none of the detailed

<sup>7</sup> cf. the power of a Court to give directions under a provision such as the *Trusts Act 1973*, s 96 (Qld).  
<sup>8</sup> (2005) 219 ALR 532, [2005] NSWSC 753.

<sup>9</sup> Ibid at 541, [37].

<sup>10</sup> Ibid at 537, [19].

<sup>11</sup> Ibid at 542, [42].

provisions of the *Corporations Act* that relate to the liquidation of a company applied to the winding up of a scheme.

- [44] The facts of that case are materially different to this proceeding. The plaintiff in that case sought the appointment of registered liquidators to provide the expertise which the plaintiff did not have in handling administrations. White J observed that the responsible entity was entitled under s 601FB to appoint those persons as its agents, or otherwise engage those persons, to do what the plaintiff was authorised to do in connection with the scheme. There was no necessity for an order under s 601NF(1). His Honour observed that such an order might be necessary if the plaintiff were failing in its duty to wind up the scheme, but there was no suggestion of that.
- [45] As to the proper scope for orders to be made under s 601NF(2), White J noted that the power was limited to giving directions about “how a registered scheme is to be wound up”. It did not authorise the Court “to confer additional powers upon a responsible entity to which third parties would be made subject, or to interfere with the rights which third parties would otherwise enjoy.”<sup>12</sup> His Honour went on to conclude that Parliament deliberately did not apply the regime for the winding up of companies to the winding up of registered schemes and that he did not read the power to give directions in s 601NF(2) “in the wide way for which the plaintiff contends as, in effect, permitting the court, by order, to impose a new legislative regime on the winding up of a particular scheme, and thereby affecting the rights of and imposing duties on third parties.”<sup>13</sup> I respectfully agree with these conclusions.
- [46] It is necessary, however, for me to consider whether s 601NF authorises the making of orders which are of a different kind.
- [47] In *Re Rubicon Asset Management Ltd*,<sup>14</sup> McDougall J was likewise concerned with the scope of the power to make orders pursuant to s 601NF(2). The matter in issue was a direction that the costs of winding up be borne by the responsible entity. The power to give such a direction was found to exist. The direction was not one which would take away any right that a third party had, or would subject a third party to any form of compulsory process for production of documents or examination. The order sought by the plaintiffs in that case was made. McDougall J noted that in *Re Stacks Managed Investments* White J gave as an example of what was authorised by s 601NF(2) “the making of directions of a kind which would be made in an administration suit for the purpose of settling the entitlements of members”. McDougall J stated that White J was not intending to give an exhaustive account of the width of the statutory power. Like McDougall J and White J, I do not propose to canvass the full extent of the power to give directions under s 601NF(2). My present concern is whether s 601NF authorises the Court by order to give a direction about how a registered scheme is to be wound up by giving a direction that the person to take responsibility for ensuring that the registered scheme is wound up has the power to act as a receiver of the property held by the company as responsible entity of the fund.

<sup>12</sup> Ibid at 544, [52].

<sup>13</sup> Ibid at 545, [55].

<sup>14</sup> (2009) 74 ACSR 346, [2009] NSWSC 1068.

- [48] In *Mier v FN Management Pty Ltd*<sup>15</sup>, Keane JA (as his Honour then was, and with whom McMurdo P and Douglas J agreed) was concerned with the power conferred by s 601EE(2) in relation to the getting in, realisation and distribution of the property of an unregistered managed investment scheme. Because the Act did not explicitly lay down a method for the winding up of an unregistered scheme, Keane JA stated that it must be assumed that, in general, the Court would be guided by analogies with the law relating to the winding up of companies, partnerships and trusts when deciding on the appropriate procedure for the winding up of a scheme. His Honour went on to observe that the best analogy might be thought to be the winding up procedure applicable to a registered scheme and continued:

“Unfortunately for present purposes, the Act, beyond directing that a registered scheme be wound up in accordance with its constitution, also **leaves the detail of the winding up of a registered scheme in the hands of the Court**, which may make such orders as it ‘thinks necessary to do so’.”<sup>16</sup> (emphasis added)

- [49] In *Capelli v Shepard*<sup>17</sup> the Victorian Court of Appeal made a passing comment in the context of a submission that the Court might give directions about whether the scheme property included certain trees. The Court did not think it appropriate to exercise the power under s 601NF(2) as suggested. Its first reason was that the question was not in terms raised in the appeal. Its second reason was that the Court was “not at all confident that a power such as this might be used to affect rights to property.” The Court observed that it “may be that ‘directions as to how a registered scheme is to be wound up’ are limited to procedural rather than substantive matters.” The Court did not develop this point or attempt to define the difference between procedural and substantive matters.
- [50] I am not concerned with an application of the kind that White J rejected in *Re Stacks Managed Investments Ltd*. The application does not seek an order that would give the person appointed pursuant to s 601NF(1) powers in relation to the property of third parties. The application does not seek to adapt and impose detailed provisions dealing with the winding up of companies to the circumstances of a registered scheme.
- [51] I am concerned with a question of whether s 601NF authorises the person who I have appointed to take responsibility for ensuring the funds are wound up to act as a receiver of the property of each fund. There may be doubt as to whether the appointment itself confers such a power. It may be thought necessary to make an order pursuant to s 601NF(2) directing the appointed person to act as receiver since such an order is one which gives directions about “how a registered scheme is to be wound up”. Such an order will be made only if the Court thinks it necessary to do so. For example, the occasion to make such an order may arise if the responsible entity is either unable or unwilling to wind up the scheme, or itself to appoint a person to collect the property of the scheme, realise it and otherwise undertake the winding up of the scheme in accordance with its constitution.
- [52] I am satisfied that in an appropriate case s 601NF(2) gives the Court power, by order, to give directions that the person appointed to take responsibility for ensuring

<sup>15</sup> [2006] 1 Qd R 339, [2005] QCA 408.

<sup>16</sup> Ibid at 348-349, [18] (footnotes omitted).

<sup>17</sup> (2010) 264 ALR 167 at 197, [2010] VSCA 2 at [146].



a registered scheme is wound up act as a receiver of the property of the scheme. The Court may exercise the power if it thinks it necessary to do so and one such circumstance might be if the property of the scheme was in jeopardy because the responsible entity was unable or unwilling to collect the property, realise it and do the other things necessary to wind up the scheme.

- [53] The present application is concerned with property that is held on trust. The person that I have appointed pursuant to s 601NF to take responsibility for ensuring that each fund is wound up in accordance with its constitution is required to ensure that a trust is wound up, but cannot necessarily rely upon the responsible entity itself to perform that task. In the analogous situation of a private trust in which trustees fail to get in trust property, a receiver may be appointed on the application of one of the trustees or of any beneficiary where the appointment is required for the safety of the trust property (the basis of the jurisdiction being the jeopardy of that property).<sup>18</sup> The Court may appoint a receiver of trust property where that is necessary for the well-being of the trust.<sup>19</sup> The Court will appoint a receiver of trust property where that property is in jeopardy through misconduct, waste, improper disposition, breach of a trustee's duty or the unsuitable character of the trustee.<sup>20</sup> The case in favour of appointment of a receiver must be a strong one but in assessing the risk to the trust the Court will apply a qualitative judgment.<sup>21</sup> In my view, the exercise of the power conferred by s 601NF(2) to order that the person who has been appointed to take responsibility for ensuring that the registered scheme is wound up act as a receiver of the scheme's property should be exercised with a similar caution, and only where a strong case is made out for the need for such an order.
- [54] Having now had the opportunity to consider the authorities cited to me at the hearing on 21 November 2011, I consider that s 601NF(2) provides a source of power to make an order giving directions that Mr Whyte act as a receiver of the property of each fund.
- [55] On the morning of Wednesday, 23 November 2011, I heard submissions as to whether it is appropriate to extend Mr Whyte's appointment as a receiver pursuant to s 1101B and to make a similar order pursuant to s 601NF(2). I decided to make such orders and my reasons for doing so follow.
- [56] In this matter the Court has directed the responsible entity, namely the company, to wind up each scheme. In the circumstances earlier outlined, it was necessary to appoint an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under subsection 601NF(2).
- [57] The appointment of a receiver of the property of each fund pursuant to s 1101B on ASIC's application and also pursuant to s 601NF(2) was supported by ASIC, and the members of the funds for whom Mr Martin SC and Mr Tucker respectively appeared. On this morning's hearing it was opposed by the company and by Mr McIvor for whom Mr Peden of Counsel appeared. Following the resignation of Mr

<sup>18</sup> *Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34 at 47, [2000] VSC 300 at [66]; J.D. Heydon and M.J. Leeming, *Jacobs' Law of Trusts in Australia*, 7th ed (Chatswood: LexisNexis Butterworths, 2006) at 625, [2305].

<sup>19</sup> *Ibid.*

<sup>20</sup> *Yunghanns v Candoora No. 19 Pty Ltd (No 2)* (2000) 35 ACSR 34 at 52, [2000] VSC 300 at [84].

<sup>21</sup> *Ibid.*

Vincent, Mr McDermid, Mr Bingham and Mr Powell at 2.50 pm on Monday, Mr McIvor as sole shareholder of the company appointed himself, his wife Ms Stacey McIvor and Mr Ross Honeyman as directors.

- [58] Whereas on Monday, 21 November, the company did not oppose the appointment of Mr Whyte as a receiver of the property of the funds, it now does so. Mr Peden submitted on its behalf and on behalf of Mr McIvor that there was no need to appoint Mr Whyte as a receiver pursuant to s 1101B(1) or s 601NF(2).
- [59] ASIC made submissions as to why there was such a need. ASIC's submissions were adopted by Mr Martin SC on behalf of the members he represents. Mr Tucker also supported Mr Whyte's appointment as a receiver for essentially the same reasons.
- [60] ASIC placed particular reliance upon the affidavits upon which it previously relied, and on its previous submissions in this proceeding and in proceeding BS9694 of 2011, being a proceeding which it brought against the company. In summary, ASIC submits that there is no dispute that the company is in breach of a condition of its Australian financial services licence—that it hold a minimum amount of net tangible assets ("NTA")—and has breached provisions of the Act requiring the company to lodge audited financial reports for each fund and audited reports of its compliance with the compliance plans for both funds. The affidavit material upon which ASIC relies, particularly an affidavit of Ms Gentles, and ASIC's written submissions detail the circumstances of these breaches.
- [61] ASIC was sufficiently concerned by the company's breaches of its licence and breaches of sections of the Act that it issued a Notice of Hearing under s 915C of the Act requiring the company to show cause as to why its licence should not be cancelled. Prior to that hearing it brought proceedings against the company, as did Tucker SF Pty Ltd. The material upon which ASIC relied included the matters that I have earlier addressed, and also identified substantial concerns as to how the company operated or proposed to operate each fund, the instability of the company's board and Mr McIvor's ability to change the board of the company at any time and without notice.
- [62] The affidavit of Ms Gentles is a substantial document, and contains material which justified ASIC's concern that Mr McIvor may not deal with the assets of the EIF in the best interests of members. The material relied upon by ASIC that supported its concern in this regard included documents that recorded the concerns of the board of the company in September and October 2011 about Mr McIvor's conduct. This included the then board's view that Mr McIvor "was responsible for making all of the current problem loans". It also included claims that he had demonstrated extremely poor judgment in recent times (evidenced by emails attached to an affidavit filed in proceedings brought against the company by a borrower that had acquired a unit in the EIF and commenced proceedings to wind up the company). It included the directors' view that Mr McIvor had continued to deal on an unauthorised basis with some borrowers. Mr McIvor was said to be in ongoing conflict with the board and senior management and to have made a series of threats against staff.
- [63] Exhibits to Ms Gentles's affidavit provided evidence from a former chairman, a former director and a former CEO of the company about the exercise by Mr McIvor

of his ability to change the company's personnel and directors without notice and without consultation.

- [64] ASIC sought relief in the proceedings that it brought against the company and submitted on that occasion that such relief was appropriate in circumstances where:
- (a) the company was, by its own admission, in breach of the NTA requirements imposed by its licence;
  - (b) the company had failed, despite specific requests by ASIC, to notify ASIC of its current NTA position;
  - (c) the company had failed to lodge audited financial reports allowing ASIC to make an assessment of its financial position;
  - (d) the company had breached provisions of the Act in failing to lodge audited financial reports and audited reports of its compliance with compliance plans for both funds;
  - (e) the board of the company had been in a state of upheaval, with Mr McIvor apparently focused on ways to develop the assets of EIF, rather than simply proceeding with an orderly winding up.

These matters were said to pose an increased risk that the company might seek to operate the EIF in a manner which was not in the best interests of members.

- [65] On 27 October 2011, Martin J made consent orders in relation to the operation of the EIF and the EPCIF on ASIC's application.
- [66] In the application brought by Tucker SF Pty Ltd there were many allegations of misconduct by Mr McIvor. Mr McIvor's affidavit sworn 26 October 2011 stated that in respect of Mr Tucker's numerous allegations against him:

"I am deliberately not responding to those allegations as I do not consider them relevant to the present application. My response to those matters will occur in the fullness of time. By not responding to them in this affidavit I should not be taken as accepting the correctness of what Mr Tucker has said."

I am not in a position to resolve the allegations made by Mr Tucker against Mr McIvor.

- [67] The concerns raised by ASIC include concerns based upon facts, about which there is no dispute, relating to the company's failure to comply with the conditions of its licence and the requirements of the Act.
- [68] Mr McIvor gave undertakings to the Court on 26 October 2011 that he would not appoint a new director to the board of the company, or remove a director or seek to remove a director from its board without giving seven days' notice to the existing board and to ASIC, and seeking the leave of the Court after expiry of that notice. He also gave an undertaking that he would not seek to interfere with the conduct of the board in its business and the discharge of its responsibilities on the basis that it was clear that he was entitled to put properly documented proposals before the

board for its consideration. Mr McIvor stated that he gave these undertakings to "safeguard any concerns which may be held regarding the independence of the Board and Board members being subject to influence".

[69] Following the resignation of the directors on Monday, I released Mr McIvor from these undertakings so that the company would have directors. There is no indication that Mr McIvor will not remain a director of the company. There is no indication that he intends to resign as a director and replace himself with other directors who are clearly independent of him. There is no evidence that independent directors would be prepared to assume such a role, and with the expiry of relevant insurance policies there is every reason to suppose that independent directors would not be willing to accept appointment in the absence of the kind of insurance cover that Mr Vincent and his fellow directors were unable to obtain.

[70] The matters raised by ASIC in the proceedings commenced by it, and also in these proceedings, raise serious concerns about the ability of the company while it remains under Mr McIvor's control, and while he remains a director:

- (a) to operate each fund in a manner that will comply with the Act and the conditions of its Australian financial services licence; and
- (b) to act in a manner which is in the best interests of the members of each fund.

I am not persuaded that the company will wind up the funds in a manner that is in the best interests of their members. On the contrary, the matters relied upon by ASIC and the members who support the appointment of Mr Whyte as a receiver raise a strong case that the appointment of a receiver is necessary to ensure that each scheme is wound up in accordance with its constitution and any orders made under subsection 601NF(1).

[71] Whereas the company on Monday did not oppose the making of orders for the appointment of a receiver, it now submits that such an appointment is premature and unfairly prejudicial to the interests of members. It and Mr McIvor submit that I should not assume that there will be problems in the orderly conduct of the winding up that I have ordered, that the company should be given the opportunity to wind up each scheme in accordance with its constitution and that Mr Whyte should only be appointed as a receiver if and when problems arise. They submit that it is not in the interests of members for Mr Whyte as receiver to assert control over the property of the funds and that the property of the funds should be left in the control of the company as a responsible entity, subject to the responsibility that Mr Whyte has by virtue of his appointment pursuant to s 601NF to take responsibility for ensuring that each scheme is wound up in accordance with its constitution.

[72] I do not accept this submission. I conclude that the best interests of most members of the funds, and the winding up of each scheme in accordance with its constitution, will be served by the appointment of Mr Whyte as a receiver. Such an appointment will avoid confusion and possible disputes over the control of property. Placing the property of the funds under the control of Mr Whyte as a receiver is likely to facilitate its realisation and the winding up of each fund for the benefit of its members. The appointment of Mr Whyte as receiver does not preclude him from having employees of the company (past, present and future) undertake tasks that are required to wind up each fund. As I mentioned more than once during the course of

argument, the best interests of members would appear to be served by relying upon the knowledge, skill and experience of persons who are familiar with the company's affairs, including persons who have taken steps to realise its property in the best interests of members. I am not, however, persuaded that the property of each fund should be left under the control of the company, subject only to the oversight of Mr Whyte by virtue of an appointment under s 601NF(1). The company's history of non-compliance with its statutory obligations, breaches of the conditions of its licence and the evidence pointed to by ASIC in relation to Mr McIvor present a strong case for the appointment of a receiver of each fund's property. The orderly conduct of the winding up of each fund will be facilitated by clarification of the fact that Mr Whyte is not only responsible for ensuring that each scheme is wound up in accordance with its constitution and any orders under subsection 601NF(2), but that he has the power to do so, including the power of a receiver to take control of the property to which he has been appointed receiver and to deal with that property in a way that facilitates the winding up of each fund in a manner, and within a timeframe, that realises the property of each fund in the best interests of members.

- [73] I am not satisfied that Mr Whyte will be able to ensure that each fund is wound up in a timely, efficient and cost-effective manner unless he is appointed as a receiver of the property of each fund. I consider that it is in the interests of the members that the property of the funds be under his control.
- [74] In general, the circumstances that made it necessary to appoint an independent person to take responsibility for ensuring that each fund is wound up in accordance with its constitution and any orders made under s 601NF(2) also persuade me that it is in the best interests of each fund that the same person be appointed as receiver of its property. I am persuaded that the appointment of a receiver is necessary for the well-being of the property which is held on trust by the company, and to ensure that the winding up of each fund occurs in accordance with its constitution and any orders made under s 601NF(2).
- [75] Mr Peden also submitted that I should not appoint Mr Whyte as a receiver because such an order would cut across the legislative framework governing the winding up of a registered scheme. I do not agree with that submission.
- [76] First, insofar as an appointment as receiver pursuant to s 1101B(1) is concerned, the company's contravention of the Act and its contravention of conditions of its Australian financial services licence justify the appointment of a receiver in the circumstances. There is nothing inconsistent with the legislative framework for the winding up of a registered scheme in exercising a power conferred under s 1101B. Such an order may aid the winding up of a registered scheme.
- [77] Secondly, I do not consider that the legislative framework of Part 5C.9 precludes the appointment of a receiver pursuant to s 601NF(2) if it is necessary to do so. I have concluded in the circumstances of this matter that an order giving a direction that Mr Whyte be appointed as receiver of the property is necessary.
- [78] I raised during argument the issue of whether it was necessary for Mr Whyte to be appointed as a receiver pursuant to s 1101B(1) and also pursuant to s 601NF(2) of the Act. However, the parties supporting his appointment favoured such a course, and I intend to make such orders. To the extent that there may be some doubt concerning the extent of the Court's power to appoint a receiver pursuant to

s 601NF(2), I consider that the best interests of the members will be protected by making an order under s 1101B(1) of the Act. Even with an appointment as receiver under s 1101B(1), I think that it is necessary also to appoint Mr Whyte as a receiver pursuant to s 601NF(2). Such an appointment makes clear that one source of his power to act as receiver is s 601NF. It is appropriate that, in carrying out his responsibility for ensuring that the registered scheme is wound up in accordance with its constitution, he have powers that are sourced in the section of the Act that imposes that responsibility. Further, the possibility exists that in the future the Court may rescind or vary the order made under s 1101B, or suspend its operation, pursuant to s 1101B(11). If that occurs Mr Whyte should continue to have the powers and responsibilities associated with appointment as a receiver pursuant to s 601NF(2).

- [79] Mr Whyte's appointment as receiver should not be perceived to be based solely upon the contraventions by the company which attract the operation of s 1101B. It should be clear that Mr Whyte is also being appointed a receiver of the property of each fund because such an appointment is thought necessary to facilitate the performance of his responsibility for ensuring that each scheme is wound up in accordance with its constitution. The winding up of each fund will be facilitated by an order that indicates that one purpose of the appointment of Mr Whyte as receiver of the property of each fund is to facilitate the fund being wound up in accordance with its constitution. Mr Whyte, in discharging his responsibilities which arise by virtue of his appointment under s 601NF(1), will have the power to receive the property of each fund, and the directors of the company, its employees and third parties should understand that a source of the power which he is given to facilitate the responsibility imposed upon him by s 601NF(1) is s 601NF(2). He should have the power of a receiver and the order should state that one source of that power is an order made under s 601NF(2).
- [80] If I had acceded to the submissions made by the company and Mr McIvor this morning and not appointed Mr Whyte as a receiver, then there would have been scope for dispute and disagreement between Mr Whyte and individuals in control of the company, including Mr McIvor, concerning the control of the property of each fund. I consider that the appointment of Mr Whyte as a receiver will reduce the scope for such disputes.
- [81] In short, an order pursuant to s 601NF(2) directing that Mr Whyte be appointed as a receiver of the property of the EIF and a receiver of the property of the EPCIF is in the best interests of members and is necessary to facilitate the winding up of each fund.
- [82] A copy of the orders made by me on 21 November 2011 and a copy of the orders made by me today are set out as annexures to these reasons.

## SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 10478/11

In the matter of **EQUITITRUST LIMITED ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

## ORDER

Before: Justice Applegarth

Date: 21 November 2011

Initiating document: Application filed 15 November 2011, and oral application made by the Australian Securities and Investments Commission on 21 November 2011

## THE ORDER OF THE COURT IS THAT:

1. Pursuant to section 601ND (1)(a) of the *Corporations Act 2001* (Cth) (the "Act"):-
  - (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999 ("EIF");
  - (b) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999 ("EPCIF").
2. David Whyte ("Mr Whyte") be appointed pursuant to section 601NF(1) of the Act to take responsibility for ensuring that:-
  - (a) the EIF is wound up in accordance with its constitution; and
  - (b) the EPCIF is wound up in accordance with its constitution.
3. Pursuant to section 601NF(2), that Mr Whyte:-
  - (a) have access to the books and records of Equititrust Limited which concern the EIF and the EPCIF;
  - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in effecting the winding up of the EIF;

- (c) be indemnified out of the assets of the EPCIF in respect of any proper expenses or costs incurred in effecting the winding up of the EPCIF;
  - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration; and
  - (e) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the winding up of the EPCIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EPCIF in respect of such remuneration.
4. Pursuant to sections 1101B(1) and 1101B(5) of the Act, Mr Whyte be appointed as:-
- (a) a receiver of the property of the EIF; and
  - (b) a receiver of the property of the EPCIF,
- until 4:00pm on Wednesday 23 November 2011, or further earlier order.
5. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Limited or the EIF.
6. That by 4pm on Tuesday 22 November 2011, Equititrust Limited publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
7. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with section 601NF(2) of the Act.
8. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.
9. The oral application of ASIC be adjourned to 10:00am on Wednesday 23 November 2011.



## SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 10478/11**IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944**Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND  
ARSN 089 079 854 AND THE MEMBERS OF THE  
EQUITITRUST PRIORITY CLASS INCOME FUND ARSN  
089 079 729****ORDER**

Before: Justice Applegarth

Date: 23 November 2011

Initiating document: Application filed 15 November 2011 and Oral Application made 21  
November 2011**THE ORDER OF THE COURT IS THAT:**

1. Pursuant to s.1101B(1) of the *Corporations Act 2001* (Cth) (*the Act*) David Whyte (*Mr Whyte*) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and
  - (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).
2. Pursuant to s.601NF(2) of the Act David Whyte (*Mr Whyte*) be appointed as:
  - (a) a receiver of the property of the Equititrust Income Fund (*EIF*); and

- (b) a receiver of the property of the Equititrust Priority Class Income Fund (*EPCIF*).
3. Pursuant to s.1101B(1) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 1 above, the powers set out in s.420 of the Act in addition to the powers set out in s.1101B(8)(a) to (c) of the Act.
  4. Pursuant to s.601NF(2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 2 above, the powers set out in s.420 of the Act and the powers set out in s.1101B(8)(a) to (c) of the Act.
  5. Pursuant to s.1101B(1) of the Act, Mr Whyte in respect of the appointment made in Order 1 above:
    - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
    - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the *EPCIF*;
    - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
    - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the *EPCIF* at rates and amounts to be approved by the Court and be indemnified out of the assets of the *EPCIF* in respect of such remuneration.
  6. Pursuant to s.601NF(2) of the Act, Mr Whyte in respect of the appointment made in Order 2 above:
    - (a) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the EIF;
    - (b) be indemnified out of the assets of the EIF in respect of any proper expenses or costs incurred in acting as receiver of the property of the *EPCIF*;
    - (c) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the EIF at rates and amounts to be approved by the Court and be indemnified out of the assets of the EIF in respect of such remuneration;
    - (d) be entitled to claim remuneration in respect of the time spent by him and by any servants or agents of BDO who perform work in the receivership of the property of the *EPCIF* at rates and amounts to be approved by the Court and be indemnified out of the assets of the *EPCIF* in respect of such remuneration.

7. That nothing in this Order prejudices the rights of the National Australia Bank Limited, Commonwealth Bank of Australia Limited or Bank of Scotland International Ltd, pursuant to any securities any of them hold over Equititrust Ltd or the property of the EIF.
8. That by 4pm on Thursday 24 November 2011, Equititrust Ltd publish on its website ([www.equititrust.com.au](http://www.equititrust.com.au)), in pdf form, by way of notice to its members of the EIF and EPCIF a copy of this Order, which publication shall be sufficient notice to members of the EIF and EPCIF of this Order.
9. The parties appearing on this application, save for ASIC, be paid their costs of and incidental to this application, to be assessed on the standard basis, out of the EIF.
10. There be general liberty to apply to any person affected by these Orders, including liberty to apply for further directions in accordance with s.601NF(2) of the Act.

**TO INVESTORS**

21 February 2012

**EQUITITRUST INCOME FUND ARSN 089 079 854 (“EIF”)  
(RECEIVER APPOINTED) (“The Fund”)****1. Introduction**

I refer to my first report to investors dated 1 February 2012 in which, amongst other things, I advised that I would post monthly updates on the website [www.equitrust.com.au](http://www.equitrust.com.au) in relation to the progress of the winding up of the EIF.

There have been several significant developments over the last three weeks that warrant a further report at this time, and which I comment on as follows:

**2. Appointment of Voluntary Administrators to Wirrina Resort and Conference Centre Pty Ltd (“WRCC”)**

WRCC is a subsidiary of Wirrina Corporation Pty Ltd which is in turn a subsidiary of Equitrust Ltd (“Equitrust”) as responsible entity for the EIF.

Wirrina Corporation Pty Ltd is the mortgagee in respect of loans made to Sunset Cove Developments Pty Ltd and which were assigned from a subsidiary of Octaviar Ltd (formerly MFS) in 2010.

The loans and the security for the loans are held on behalf of the EIF. WRCC operated the resort and golf course at Wirrina Cove, South Australia.

Mark Mclvor is the sole director of WRCC.

As you are aware, I was appointed by the Court as Receiver of the assets of the EIF and the person responsible for ensuring that the fund is wound up in accordance with its constitution. Notwithstanding this and my prior written instructions not to do so, Mark Mclvor appointed David Ross, Blair Pleash and Richard Albarran of Hall Chadwick as Voluntary Administrators of WRCC on 3 February 2012 without any prior reference to me.

As a result of subsequent discussions with Mr Mclvor, I have formed the view that Mr Mclvor may have made this appointment without a full understanding of the legal structure of the resort and surrounding land and funding arrangements for the resort. This included that the Administrators had no right to trade the business as the liquor and gaming licences were in the name of Wirrina Corporation Pty Ltd.

Notwithstanding the appointment of administrators to WRCC, the resort and golf course is now continuing to trade through Wirrina Corporate Pty Ltd with my support as the Receiver.

### **3. Recent Contract of Sale**

An offer was recently received for one of the properties where Equititrust Ltd is mortgagee in possession. The EIF has the first mortgage over this property and Equititrust Ltd as responsible entity for the Equititrust Premium Fund ("EPF") has a second mortgage.

In considering an offer for the property, both Mr McIvor and another director of Equititrust, David Hickie sought to impose conditions in relation to the distribution of the net proceeds of sale. In my view they sought to prefer the interests of the EPF investors ahead of the EIF investors by proposing that approximately \$400,000 be paid to the EPF rather than all proceeds being paid to the EIF in accordance with the terms of the security documentation which recognise the EIF's first priority and entitlement to all net proceeds of sale.

I refused to accept the conditions they sought to impose. I (together with the administrators appointed to EL) have accepted an offer for the sale of the property with the full net proceeds of sale to be paid to the EIF.

I have raised with Mr McIvor and Mr Hickie my concern that their actions may be a breach of duty and would place them in a conflict of interest and have sought an explanation as to the reasons why they sought to impose the above discussed conditions. No response has been received.

### **4. Lack of Cooperation from Mark McIvor**

I wrote to Mr McIvor on 14 February 2012 expressing my concerns regarding his general lack of cooperation in the winding up of the EIF and continued failure to respond to correspondence and attend meetings to discuss important elements of the winding up. My concerns included those mentioned at Sections 2 and 3 above and the unauthorised termination of the CEO, Troy Bingham which was discussed in my first report to investors.

Mr McIvor has also sought to reinstate a management fee from the EIF to Equititrust of \$2.8M that was previously waived by the directors of Equititrust.

I am awaiting a written response.

### **5. Insolvency Appointments to Equititrust Ltd**

Richard Albarran, Glen Oldham and Blair Pleash of Hall Chadwick were appointed Voluntary Administrators of Equititrust by the board of directors on 15 February 2012 when it was resolved that the company is or is likely to become insolvent. The directors' powers were suspended upon the appointment of the Administrators.

Subsequently, on 16 February 2012, Will Colwell and Greg Moloney of Ferrier Hodgson were appointed as Receivers and Managers of the company by one of the secured creditors of the company.

These two appointments do not affect my appointment as Receiver of the assets of the EIF and as person responsible for ensuring that the Fund is wound up in accordance with its constitution.

I will therefore continue to act in accordance with the Court orders pursuant to which I was appointed. This includes ensuring that the Fund is wound up in accordance with the terms of its constitution, including the orderly realisation of its assets.

## **6. ECG Administration Pty Ltd (Administrators Appointed) (“ECGA”)**

Richard Albarran, Glen Oldham and Blair Pleash of Hall Chadwick were appointed Voluntary Administrators of ECGA on 5 February 2012. ECGA was the service provider to Equititrust in respect of the provision of staff/consultants, offices and equipment. It is the leaseholder of the premises at Chevron Island that Equititrust traded from.


As detailed in my first report to investors, there is a services agreement in place with GCP (HQ) Pty Ltd. This includes paying 50% of the rent payable by ECGA for the premises.

I am in discussions with the Administrators of ECGA to see if they have the funds to meet the other 50% of the rent. Arrangements may be required for the staff and consultants to be moved to alternative premises.

## **7. Queries**

Should you have any queries in the above respect, please contact Jayden Coulston on (07) 3237 5890 Andrew Want of this office on (07) 3237 5711.

Yours faithfully



David Whyte  
Receiver

Enc.

**TO INVESTORS**

27 March 2012

**EQUITITRUST INCOME FUND ARSN 089 079 854 ("EIF")  
(RECEIVER APPOINTED) ("The Fund")**

I refer to my previous two reports dated 1 February 2012 and 21 February 2012 and now provide my third update to investors on the progress of the winding up of the Fund by me as Court appointed receiver of the property of the Fund.

**1. Court Order**

Following the appointment by the board of Equititrust Limited of Blair Pleash, Richard Albarran and Glen Oldham of Hall Chadwick as Voluntary Administrators and Will Colwell and Greg Moloney of Ferrier Hodgson on 16 February 2012 as privately appointed Receivers and Managers of Equititrust Ltd (Administrators Appointed) (Receivers and Managers Appointed) ("EL") by NAB, it was agreed amongst the parties that in order to save any duplication of effort and costs that I would apply to the court for further directions to clarify the roles of the various insolvency practitioners appointed and for directions that I (as Court appointed receiver) should continue with the winding up of the Fund pursuant to the powers already granted to me by the Court.

The attached court order dated 29 February 2012 includes confirmation that I may:

- take all steps necessary to realise the property of the EIF, including executing documents on behalf of the responsible entity;
- bring, defend or maintain any proceedings on behalf of the EIF in the name of Equititrust Ltd (Administrators Appointed) (Receivers and Managers Appointed); and
- take all steps necessary to effect the NAB bank guarantee facility and replace the CBA bank guarantee facility (this is currently in course to replace the existing facility of approximately \$1.2M).

**2. Realisation of Assets**

As I have previously advised investors, the purpose of my appointment by the Court is to ensure that the Fund is wound up in accordance with its constitution. The constitution of the Fund provides that when the Fund is being wound up, all assets must be converted to money, all proper costs deducted and then a distribution made to each investor in proportion to the investor's interest in the Fund.

The process of the winding up of the Fund for the benefit of investors is well underway.

As this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify individual properties and/or their expected realisable values.

As noted above, the realisation of assets the subject of security in favour of the Fund is well underway. This process involves all real property assets charged with security in favour of the EIF (in respect of the defaulting loans) either already being on the market or about to have sale campaigns commenced (with the exception of two properties). With respect to the two properties not presently subject to sales campaigns, solicitors have been instructed to commence possession proceedings in respect of one of the properties and in respect of the other, I have asked three planning consultants/real estate advisors to provide their recommendations on whether or not a revised development application should be pursued before taking that property to the market.

Marketing costs of \$240,688 have been approved in respect of the commencement of eight sale campaigns to date. I am currently obtaining updated valuations on a number of properties. I will review the estimated outcome to investors on completion of valuations and ongoing offers received/market feedback.

I summarise in the table below the sales completed since my appointment, contracts on foot and current offers accepted awaiting execution of contracts:

	\$
Sales completed	3,148,866
Five contracts on foot	4,134,820
Four offers accepted, awaiting executed contracts	6,775,140

Of the five contracts on foot, \$2.75M is due to settle on 2 April 2012, \$500K is to be confirmed and the three others are due to settle between 30 November 2012 and 23 December 2012;

Of the offers accepted, two contracts are 30 days unconditional contracts, one is a 90 days unconditional contract and the other contract involves a 30 days due diligence clause followed by a 60 day settlement.

I will update investors on the progress on the sales in my monthly reports to investors. Given the contracts on foot and offers accepted, I am hopeful that the secured creditors of the Fund (NAB and CBA) will be paid in full by the end of June 2012. With the benefit of further sales of the properties currently on the market and where sale campaigns are to commence, I am hopeful I will be able to commence interim distributions to investors in the second half of this year.

### 3. Legal Proceedings

There are currently nine legal actions on foot although five are largely finalised with cost orders to be recovered in four of those matters.

Judgement was handed down on one matter on 13 March 2012 in the amount of \$401,554 plus interest and costs.

The remaining actions are expected to realise several million dollars for the benefit of investors although this may take some time to realise.

Additionally, as noted above I have instructed solicitors to commence possession proceedings in respect of one property. In addition instructions have been given in relation to two actions against



the same valuer for negligence and damages in excess of \$10M. Any amount recoverable in this latter respect will be sought against a professional indemnity insurance policy.

#### 4. Receipts and Payments

Summary of Receipts and Payments for the Receivership Period 21 November 2011 to 25 March 2012		
RECEIPTS		Amount (\$)
Transfer from pre-appointment bank account		653,867.63
Loan Recoveries:		
Rosea Pty Ltd	19,583.33	
Toowoomba (Foundry Shopping Centre) Pty Ltd	23,391.67	
Gamp Developments Pty Ltd	2,254,292.44	
Tweed Central Pty Ltd	550,116.27	
Hollyander Pty Ltd	344,457.88	3,191,841.59
<b>Total Receipts</b>		<b>3,845,709.22</b>
PAYMENTS		Amount (\$)
Bank Charges		138.20
Distressed Loan Funding:		
Checkling Pty Ltd (Receiver & Manager Appointed)	121,399.28	
Corymbia Corporation Pty Ltd	188,017.32	
CTP Pty Ltd	17,941.00	
East Coast Pty Ltd	40,867.61	
Gamp Developments Pty Ltd	75,116.47	
Gonfanon Pty Ltd (Receiver & Manager Appointed)	924.55	
Glenrowan Land Pty Ltd	4,215.00	
ICA (South Australia) Pty Ltd (Receiver & Manager Appointed)/Sunset Cove Developments Pty Ltd	312,392.48	
Kele Property Group (Port Macquarie) Pty Ltd	326.00	
Morvale Land Pty Ltd	19,535.05	
Mountbell Pty Ltd	51,990.76	
Newton, Kristine Lorraine	2,041.75	
Resort Corporation Pty Ltd (In Liquidation)	1,210.00	
Toowoomba (Foundry Shopping Centre) Pty Ltd	15,002.91	
Tweed Central Pty Ltd	65,668.04	
Valencia Grove Pty Ltd	6,305.75	
Western Lands Corporation Pty Ltd	45,500.00	
Windsor Turf Pty Ltd (Receiver & Manager Appointed)	121,506.57	1,089,960.54

Document Production - Printing/Copying		5,863.86
GST Paid		250,689.00
IT expenses		8,627.67
Legal Fees		239,250.97
Office rental		7,791.66
Purchase of office equipment		20,496.71
Reimbursement of expenses - Equititrust Limited		
Pre-appointment (prior to 21 November 2011)	653,867.63	
Post-appointment (subsequent to 21 November 2011)	305,682.62	959,550.25
Telephone/Fax/Internet		9,518.65
Wages and Salaries		25,640.37
<b>Total Payments</b>		<b>2,617,527.88</b>
Cash at Bank		<b>1,228,181.34</b>

## 5. Potential Proposed Change in Responsible Entity

A number of investors have queried with me what the effect a change in the responsible entity for the Fund would have and how this may affect the winding up of the Fund pursuant to the court orders of 21 and 23 November 2011 and 29 February 2012.

At the first meeting of creditors held by the Voluntary Administrators on 27 February 2012, Richard Albarran stated that his view was that the responsible entity should be changed. However it is my view that he did not fully articulate the reasons why he held this view or explain the key issues relating to this course of action.

In order for investors to be better informed, some of the key issues to consider in respect of a potential change in the responsible entity are, in my view, the following:

- The board of EL resolved at a meeting on 11 October 2011 to wind up the EIF;
- EL made an application to the court on 21 November 2011 requesting a replacement responsible entity however this application was refused by the judge;
- If the request was not granted, EL requested that the EIF be wound up by order of the Court (the Court made such an order);
- EL's Australian Financial Services Licence ("AFSL") is currently suspended however this does not prevent EL remaining as responsible entity during the course of the winding up of the fund;
- In the event there is a change in the responsible entity, there is a significant risk this will trigger EL's subordinated investment of \$40M to rank equally with ordinary investors. This would result in a reduction in the return to ordinary investors of approximately 17% and provide an estimated return to Equititrust Ltd of between \$11.3M and \$15.3M (based on the estimated recoveries contained in my letter to investors of 1 February 2012);
- Should the responsible entity be changed, this of itself will not affect my role as Receiver of the property of the Fund or as person responsible for ensuring the winding up of the Fund in accordance with its constitution;
- The court order in respect of my appointment is final (subject to an appeal, which has not been progressed);

- As previously advised, an appeal was lodged by EL on 19 December 2011 however has not been progressed. The appeal was not in respect of the orders made winding up the Fund but rather was to seek to clarify my powers in relation to same. In these circumstances, the winding up process continues.

Given the above comments, and particularly the estimated potential benefit of between \$11.3M and \$15.3M to EL to the detriment of ordinary investors of the EIF, I have queried why the Administrators view is to recommend a change in responsible entity and their reasons for making the comments at the first meeting of creditors. A response to my query is awaited in this respect.

## **6. Piper Alderman Class Action**

A number of investors have queried what they should do in relation to the proposed class action proposed by Piper Alderman in relation to potential claims against directors/former directors of EL and the auditors of the EIF. Investors have asked if they should join the class action.

I have considered whether or not, as Receiver of the assets of the EIF and person responsible for winding up the Fund, I am able to prosecute any such claims on behalf of investors. The current constitution of the EIF does not allow such a course of action by me. The correct plaintiff in any such action is the individual investor or a group of investors.

Investors should take their own legal advice as to what options may be open to them in respect of these claims.

## **7. Premises Move**

As advised in my letter of 15 March 2012, the staff and consultants engaged to assist me in the winding up of the Fund have moved to the following premises:

Postal Address: Equititrust Income Fund  
Wyndham Building  
Level 9, 1 Corporate Court  
BUNDALL QLD 4217

Phone: 07 5510 4870  
Fax: 07 5510 4907

The purpose of this office move was to save costs and to avoid interference with the staff and consultants by the board of EL and persons associated with them who still occupied the Chevron Island premises.

## **8. Services Agreement/Reduction in Overheads**

As advised in my first report to investors dated 1 February 2012, as the staff/consultants were engaged by ECGA (who also provided the premises, plant and equipment for the staff/consultants use). I entered into a services agreement covering these arrangements and in order to reduce overheads from an average of \$514K to \$147K per month.

The intention had been for the staff and consultants to be transferred to the new service provider, GCP (HQ) Pty Ltd however this had not been completed at the time of the Administrators appointment.

The staff and consultants retained to assist in the winding up of the Fund have now been terminated by the Administrators. I am now employing the majority of them direct as Receiver of the EIF to assist in the on-going winding up of the Fund.

Following ongoing reductions and the premises move, the monthly overhead costs have been reduced to between \$65K and \$70K per month. This will reduce further as property realisations are made and the loan book reduces.

## **9. Claim for Management Fee of \$2.8M for 2011 financial year**

As advised in my letters to investors dated 1 and 21 February 2012, the board of EL had sought to reinstate a management fee of \$2.8M from the EIF for the financial year ended 30 June 2011. Such a management fee had previously been waived by the previous board of EL. Further at an investors briefing on 23 September 2011, the then CEO of EL, David Kennedy advised the fee had "not been drawn and will not be".

Mr Mclvor on behalf of the board of EL has failed to respond to our requests in relation to why the board of EL considered the management fee to be payable taking into account the above comments and that pursuant to the EIF constitution, a management fee is only payable when interest distributions are being paid to investors. I remain of the view that no management fee is payable.

The Administrators wrote to me on 14 March 2012 asking for my confirmation that the sum of \$2,272,388 was due from the EIF to EL as a result of the management fee claimed. I have denied this claim and advised that after the proper reversal of the \$2.8M management fee, there is an amount owing by EL to the EIF.

## **10. Receivers Remuneration & Expenses**

I attach a remuneration summary covering the period from 21 November 2011 to 25 March 2012 (four months) in respect of fees incurred of \$377,843.50 plus outlays of \$3,263.96 plus GST. As previously advised, this will be subject to court approval in due course. None of the fees have been drawn to date.


Substantial costs have been incurred due to the actions and lack of co-operation of Mr Mclvor and the board of EL in the winding up. With Administrators appointed to EL, the court order of 29 February 2012, the premises move for the staff and consultants assisting me in the winding up and the continued realisation of the property of the Fund, the costs will continue to reduce.

## **11. Queries**

Monthly reports will continue to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au). The latter new website is currently a copy of the old website and will be upgraded in due course.

Should investors have any queries in relation to the winding up of the Fund, they should contact the investors relation manager, Trish Riley on (07) 5510 4870 or my office on (07) 3237 5999 or by email at [info@bdo.com.au](mailto:info@bdo.com.au). In the event investors raise queries not covered by the monthly reports, I will consider adding a frequently asked questions section to the new website.

Yours faithfully,



David Whyte  
Receiver

*duplicate*

**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944**

**Applicant: EQUITITRUST LIMITED ACN 061 383 944**

**AND**

**Respondents: THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN  
089 079 854 AND THE MEMBERS OF THE EQUITITRUST  
PRIORITY CLASS INCOME FUND ARSN 089 079 729**

**ORDER**

**Before: Justice Dalton**

**Date: 29 February 2012**

**Initiating document: Application filed 24 February 2012**

In this order, "Receiver" means Mr David Whyte, in his capacity as receiver of the property of the Equititrust Income Fund ARSN 089 079 854 (EIF) and as the person responsible for ensuring the EIF is wound up in accordance with its constitution pursuant to the Orders of Justice Applegarth of 21 November 2011 and 23 November 2011 in these proceedings (Orders),

**THE COURT DIRECTS THAT:**

1. Without derogating in any way from the Receiver's appointment or the Receiver's powers pursuant to the Orders, the Receiver is authorised to:
  - (a) take all steps necessary to ensure the realisation of property of EIF held by Equititrust Limited as Responsible Entity of the EIF (EL as RE of the EIF) by exercising any legal right of EL as RE of the EIF in relation to the property, including but not limited to:
    - (i) providing instructions to solicitors, valuers, estate agents or other consultants as are necessary to negotiate and/or finalise the sale of the property;
    - (ii) providing a response as appropriate to matters raised by receivers of property of EL as RE of the EIF to which receivers have been appointed;
    - (iii) dealing with any creditors with security over the property of the EIF including in order to obtain releases of security as is necessary to ensure the completion of the sale of property;



**29 FEB 2012**

**GADENS LAWYERS  
Level 25, 240 Queen Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201110996**

- (iv) appointing receivers, entering into possession as mortgagee or exercising any power of sale; and
- (v) executing contracts, transfers, releases, or any such other documents as are required to carry out any of the above;
- (b) bring, defend or maintain any proceedings on behalf of EIF in the name of EL as is necessary for the winding up of the EIF in accordance with clause 9 of its constitution, including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions;
- (c) take all steps necessary to effect the implementation of a NAB bank guarantee facility and the replacement of the existing CBA bank guarantee facilities including:
  - (i) providing instructions to solicitors as are necessary to negotiate and finalise the facilities and/or the security documentation required for a replacement bank guarantee facility from the NAB and the repayment of the CBA facilities and the release of any security held by the CBA;
  - (ii) dealing with NAB and CBA direct to provide for the replacement of the bank guarantees and finalise the documentation in relation to same; and
  - (iii) executing any and all facility and/or security documentation on behalf of EL as RE of the EIF or all such other legal documents as are necessary to ensure the security documentation is finalised and the CBA bank guarantee facilities replaced by the NAB bank guarantee facility.

THE ORDER OF THE COURT IS THAT:

2. That the parties appearing on this application, save for ASIC, the National Australia Bank and the receivers Messrs Colwell and Moloney, be paid their costs of and incidental to this Application, to be assessed on the standard basis, out of the EIF.

Signed:



DEPUTY REGISTRAR

Equitrust Income Fund (Receiver Appointed)  
22 November 2011 to 25 March 2012

Employee	Position	Rate	Total Units	Total Units	Admin Interaction Units	Assets Units	Assets Units	Gradients Units	Gradients Units	Employment Units	Employment Units	Investments Units	Investments Units	AT Trade Units	AT Trade Units	
Fielding, Andrew	Partner	545	10,920	61,090.00	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Neumann, Helen	Partner	545	10,920	327.00	0.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Whyte, David	Partner	545	10,920	7,412.00	13.60	61.10	33,299.50	40.60	22,127.00	0.20	109.00	8.50	4,632.50	369.30	201,268.50	
Bruske, David	Manager	375	11,920	9,000.00	24.00	69.70	26,137.50	1.60	600.00	0.00	0.00	1.00	375.00	18.90	7,087.50	
Raphael, Alastair	Manager	375	11,920	300.00	0.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Bauer, Kirsty	Senior Accountant II	260	8,000	2,080.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.00	2,080.00	0.00	0.00	
Robotham, Scott	Senior Accountant II	260	8,000	52.00	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Want, Andrew	Senior Accountant II	260	8,000	48,048.00	184.80	1.10	286.00	1.50	390.00	0.08	0.00	0.00	0.00	0.00	0.00	
Conston, Jayden	Accountant I	210	4,470	2,541.00	12.10	10.60	2,226.00	19.50	4,095.00	1.90	399.00	0.10	21.00	0.50	105.00	
Jones, Annabel	Accountant I	210	4,470	3,444.00	16.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Pembroke, Elle	Accountant I	210	4,470	672.00	3.20	0.00	0.00	0.10	21.00	0.00	0.00	0.00	0.00	0.00	0.00	
Richardson, Ashley	Administrative Assistant	70	9,720	679.00	9.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
<b>TOTAL</b>			<b>87,918.00</b>	<b>227,544.00</b>	<b>227,544.00</b>	<b>227,544.00</b>	<b>65,194.90</b>	<b>63,350.00</b>	<b>27,923.00</b>	<b>24.00</b>	<b>508.00</b>	<b>17.60</b>	<b>7,108.50</b>	<b>3,833.20</b>	<b>2,209,461.00</b>	
			<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>	<b>415,627.85</b>

DISBURSEMENT REPORT  
Equitrust Income Fund (Receiver Appointed)  
22 November 2011 to 25 March 2012

Item	Amount
NSW Power of Attorney Transfer fee	90.45
Travel - Mileage	2,457.50
Mobile Internet	53.63
Postage	20.10
Photocopying	45.00
Search Fee	597.28
Sub Total	3,263.96
GST	326.40
<b>TOTAL</b>	<b>3,590.36</b>

**TO INVESTORS**

16 May 2012

**EQUITRUST INCOME FUND ARSN 089 079 854 ("EIF")  
(RECEIVER APPOINTED) ("The Fund")**

I refer to my previous reports dated 1 February 2012, 21 February and 27 March 2012 and now provide my fourth update to investors on the progress of the winding up of the Fund by me as Court appointed receiver of the property of the Fund.

**1. Receipts and Payments**

I provide below a summary of the Receipts and Payments of the Fund for the period 26 March to 13 May 2012.

**Summary of Receipts and Payments for the Period  
26 March 2012 to 13 May 2012**

<b>Opening Cash at Bank</b>	<b>1,228,181.34</b>
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**Receipts**

Interest Income	2,915.75
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## Loan Recoveries:

Corymbia Corporation Pty Ltd	1,452.21	
Kristine Newton	2,665,906.97	
Rosea Pty Ltd	19,583.33	
Taylor, AG & SK	207,584.01	
Toowoomba (Foundry Shopping Centre) Pty Ltd	6,919.00	
Tweed Central Pty Ltd	153,716.77	
Western Land Corporation	160.00	3,055,322.29
<b>Total Receipts</b>		<b>3,058,238.04</b>

**Payments**

<b>Bank Charges</b>	<b>618.12</b>
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## Distressed Loan funding:

Boothers Pty Ltd	7,380.63
Checkling Pty Ltd	39,089.58



Corymbia Corporation Pty Ltd	31,526.10	
Corymbia Estates Pty Ltd	1,320.00	
East Coast Pty Ltd	13,186.42	
Gamp Developments Pty Ltd	26,078.00	
Gonfanon Pty Ltd	6,046.42	
Kele Property Group (Port Macquarie) Pty Ltd	4,856.02	
Morvale Land Pty Ltd	4,021.10	
Mountbell Pty Ltd	4,058.32	
Resort Corporation Australia (No 2) Pty Ltd (In Liq)	20,678.35	
Tweed Central Pty Ltd	101,876.63	
Valencia Grove Pty Ltd	6,935.50	
Western Land Corporation	14,891.25	
Windsor Turf Pty Ltd	29,324.43	
Wirrina Corporation Pty Ltd	122,122.78	433,391.53
Internet Hosting & Access		1,284.80
IT expenses		27,854.48
Legal Fees		114,655.68
Office Rental charge		11,963.95
Purchase of office equipment		745.00
Secured Creditor distribution		
Commonwealth Bank of Australia	54,409.25	
National Bank of Australia	1,200,000.00	1,254,409.25
Wages & Salaries		60,450.83
	<b>Total Payments</b>	<b>1,905,373.64</b>
<b>Closing Cash at Bank</b>		<b>2,381,045.74</b>

## 2. Realisation of Assets

As previously advised, the process of the winding up of the Fund for the benefit of investors is well underway.

As this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify individual properties and/or their expected realisable values. However, I summarise in the table below the sales completed since my appointment, contracts on foot and current offers accepted and waiting execution of contracts:

	\$
Sales completed	6,758,866
Six contracts on foot	4,253,186
Two offers accepted, awaiting executed contracts	4,850,000

With respect to the contracts on foot, I note the following:

- A deed of settlement has been executed with \$150,000 to be received on 17 June 2012 and \$1.1M to be received on 17 June 2013.
- A contract for \$1.575M has been executed with due diligence expiring on 17 May 2012 and settlement 60 days thereafter.
- A contract for \$545,500 was executed on 16 May 2012 with 30 day settlement terms.
- Three unconditional contracts totalling \$1,033,186 are due to settle between 30 November 2012 and 23 December 2012.

With respect to the offers accepted, I note the following:

- A contract for \$2.95M has been delayed pending confirmation that the Development Approval, that was lodged and withdrawn, will not be opposed by Council.
- A previous offer that was accepted at \$1.9M has not progressed and, therefore, I am arranging for this property to be remarketed after dealing with an outstanding issue in relation to vegetation on the site.

The remaining 15 properties, with the exception of two properties, are currently on the market or being prepared for the commencement of sale campaigns. With respect to the properties two not presently subject to a sale campaign, I have engaged two planning consultants to advise on whether or not a revised development application should be pursued prior to taking one of the properties to market and the other is subject to possession proceedings.

I will update investors on the progress of the sales in my monthly reports to investors. With the contracts on foot and sale campaigns reaching their closing date, I am hopeful that NAB will be repaid in full by the end of July 2012.

### 3. Legal Proceedings

There are currently nine legal actions on foot although five are largely finalised with cost orders to be recovered in four of those matters.

Judgement was handed down on one matter on 13 March 2012 in the amount of \$401,554 plus interest and costs against several parties. Settlement terms against two parties have been agreed with \$150,000 expected to be received by the end of May 2012.

The remaining actions are expected to realise several million dollars for the benefit of investors although this may take some time to realise.

Additionally, as noted above I have instructed solicitors to commence possession proceedings in respect of one property. In addition instructions have been given in relation to two actions against

the same valuer for negligence and damages in excess of \$10M. Any amount recoverable in this latter respect will be sought against a professional indemnity insurance policy.

#### 4. NAB Funding

Notwithstanding the existing defaults on the National Australia Bank ("NAB") facilities, NAB have approved the continued support of the facilities at normal rates and not at default rates. NAB has also agreed to replace the bank guarantee facility provided by the other secured creditor who insisted on repayment of their facility.

#### 5. Estimated Return to Investors

In my report of 1 February 2012, I provided an estimated return to investors of between 34 and 46 cents in the dollar. This did not take into account future operating costs, interest on bank loans until repaid in full, future Receivers fees and rates and land tax after 31 December 2011. It also excluded any legal recoveries against borrowers, valuers or other third parties.

Since then a number of offers have been received for properties, valuations have been updated on a number of properties and feedback from sale campaigns have indicated in several instances that the valuation amounts are unlikely to be achieved. As a result of this feedback, there have been significant write downs in relation to three large properties in particular.

I have therefore updated the estimated selling values for the properties and have adjusted the estimated return to investors to between 18 and 30 cents in the dollar as at 30 April 2012 as follows:

	Low \$000's	High \$000's
<b>Total estimated selling prices</b>	<b>56,394</b>	<b>80,837</b>
Less: Selling costs - marketing and agents fees (3.5%)	(1,974)	(2,829)
Secured creditors (net of cash at bank)	(7,673)	(7,673)
Land Tax and Rates	(7,900)	(7,900)
Other unsecured creditors	(1,585)	(1,585)
Receivers fees	(464)	(464)
<b>Estimated net amount available to investors as at 30 April 2012</b>	<b>36,798</b>	<b>60,386</b>
Total investors units	203,635	203,635
<b>Estimated return in the dollar</b>	<b>\$0.18</b>	<b>\$0.30</b>

The above table does not take into account future operating costs, interest on bank loans until repaid in full, future Receivers fees and rates and land tax after 30 April 2012. It also excludes any legal recoveries against borrowers, valuers or other third parties.

With the benefit of further sales of the properties currently on the market and where sale campaigns are to commence, I am hopeful I will be able to commence interim distributions to investors in the second half of this year. This will be after paying secured creditors, land tax and rates, Receivers fees and the unsecured creditors who rank ahead of investors' interests.

## 6. Receivers Remuneration & Expenses

I attach a remuneration summary covering the period from 21 November 2011 to 13 May 2012 (six months) in respect of fees incurred of \$463,873.50 plus outlays of \$9,389.45 plus GST. None of the fees have been drawn to date.

I intend making an application to Court to seek approval of my fees for the period to 13 May 2012. I will notify creditors and investors of the application date with relevant documents to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au).

## 7. Contact Details

As previously advised, the staff and consultants engaged by me to assist in the winding up of the fund are located at the following address which should be used for all communications.

Postal Address: Equititrust Income Fund  
Wyndham Building  
Level 9, 1 Corporate Court  
BUNDALL QLD 4217

Phone: 07 5510 4870  
Fax: 07 5510 4907

## 8. Queries

Monthly reports will continue to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au). The latter new website is currently a copy of the old website and will be upgraded in due course.

Should investors have any queries in relation to the winding up of the Fund, they should contact the investors relation manager, Trish Riley on (07) 5510 4870 or my office on (07) 3237 5999 or by email at [info@bdo.com.au](mailto:info@bdo.com.au). In the event investors raise queries not covered by the monthly reports, I will consider adding a frequently asked questions section to the new website.

Yours faithfully,



David Whyte  
Receiver

Equititrust Income Fund (Receiver Appointed)  
22 November 2011 to 13 May 2012

Employee	Position	Rate	Total Units	Totals	Administration		Assets		Creditors		Employees		Investigations		Tradeseq		
					Units	\$	Units	\$	Units	\$	Units	\$	Units	\$	Units	\$	
Fielding, Andrew	Partner	545	10,920	109,200	0.20	109.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Newman, Helen	Partner	545	0.60	302.00	0.60	327.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Whyte, David	Partner	545	605,500	329,997,500	13.80	7,521.00	107.40	58,533.00	42.10	22,944.50	0.20	109.00	8.70	4,741.50	433.30	236,148.50	
Brushie, David	Manager	375	1,542.00	50,825.00	25.70	9,637.50	82.60	30,975.00	1.80	675.00	0.00	0.00	1.00	375.00	23.10	8,662.50	
Raphael, Alastair	Manager	375	0.80	300.00	0.80	300.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Bauer, Kirsty	Senior Accountant II	260	8,000	2,080,000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.00	2,080.00	0.00	0.00	
Robotham, Scott	Senior Accountant II	260	0.20	52.00	0.20	52.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Want, Andrew	Senior Accountant II	260	23,920	62,192.00	224.20	58,292.00	1.10	286.00	5.40	1,404.00	0.00	0.00	0.00	0.00	8.50	2,210.00	
Coulston, Jayden	Accountant I	210	56,000	117,600.00	18.10	3,801.00	11.90	2,499.00	23.50	4,935.00	1.90	399.00	0.10	21.00	0.50	105.00	
Jones, Annabel	Accountant I	210	17,500	3,633.00	17.30	3,633.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Pembroke, Elle	Accountant I	210	5,900	1,248.00	5.50	1,155.00	0.00	0.00	0.30	63.00	0.00	0.00	0.00	0.00	0.00	0.00	
Glasper, Michael	Accountant II	160	6,500	1,040.00	6.50	1,040.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Richardson, Ashley	Administrative Assistant	70	12,000	840.00	12.00	840.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
<b>TOTAL</b>				<b>1,086,330</b>	<b>4,638,673.50</b>	<b>224,900</b>	<b>840,725.00</b>	<b>0.30</b>	<b>9,292.00</b>	<b>7.50</b>	<b>30,021.50</b>	<b>2,100</b>	<b>508,800</b>	<b>17,680</b>	<b>7,217,500</b>	<b>4,652,400</b>	<b>2,272,690.00</b>
<b>TOTALING GST</b>				<b>651</b>	<b>46,839,785</b>	<b>2,669</b>	<b>84,707,500</b>	<b>4,165</b>	<b>1,292,300</b>	<b>10,699</b>	<b>30,021,500</b>	<b>24,900</b>	<b>508,800</b>	<b>405,480</b>	<b>7,217,500</b>	<b>5,310,000</b>	<b>2,272,690.00</b>
<b>AVERAGE HOUR RATE</b>				<b>510,260,85</b>	<b>42,700</b>	<b>2,669</b>	<b>84,707,500</b>	<b>4,165</b>	<b>1,292,300</b>	<b>10,699</b>	<b>30,021,500</b>	<b>24,900</b>	<b>508,800</b>	<b>405,480</b>	<b>7,217,500</b>	<b>5,310,000</b>	<b>2,272,690.00</b>

DISBURSEMENT REPORT  
Equititrust Income Fund (Receiver Appointed)  
22 November 2011 to 13 May 2012

Item	Rate
NSW Power of Attorney Transfer Fee	90.45
Airfares	2,475.41
Travel - Mileage	2,557.50
Travel - Taxi	24.82
Travel - Car Rental	469.47
Parking	63.64
Courier	449.49
Mobile Internet	53.63
Postage	800.72
Photocopying	1,713.60
Search Fee	690.72
Sub Total	9,389.45
GST	938.95
<b>TOTAL</b>	<b>10,328.40</b>

**TO INVESTORS**

21 June 2012

**EQUITRUST INCOME FUND ARSN 089 079 854 ("EIF")  
(RECEIVER APPOINTED) ("The Fund")**

I refer to my previous reports dated 1 February 2012, 21 February, 27 March 2012 and 16 May 2012 and now provide my fifth update to investors on the progress of the winding up of the Fund by me as Court appointed receiver of the property of the Fund.

**1. Receipts and Payments**

I provide below a summary of the Receipts and Payments of the Fund for the period 14 May to 17 June 2012.

**Summary of Receipts and Payments for the Period  
14 May 2012 to 17 June 2012**

<b>Opening Cash at Bank</b>		<b>2,381,045.74</b>
<b>Receipts</b>		
Loan Recoveries:		
Elysian Marketing Pty Ltd et al ATF	367,821.57	
Mountbell Pty Ltd	478,157.31	
Rosea Pty Ltd	39,166.66	
Toowoomba (Foundry Shopping Centre) Pty Ltd	3,527.33	
Tweed Central Pty Ltd	40,016.02	
Valencia Grove Pty Ltd	16,204.63	944,893.52
<b>Total Receipts</b>		<b>944,893.52</b>

**Payments**

Bank Charges		30.40
Distressed Loan funding:		
Boothers Pty Ltd	4,147.95	
Checkling Pty Ltd	3,457.94	
Corymbia Corporation Pty Ltd	64,662.76	
Corymbia Estates Pty Ltd	1,379.13	
CTP Pty Ltd	3,631.88	
East Coast Pty Ltd	8,449.15	



Gamp Developments Pty Ltd	5,266.71	
Gonfanon Pty Ltd	968.55	
Kele Property Group (Port Macquarie) Pty Ltd	5,030.12	
Morvale Land Pty Ltd	21,496.04	
Mountbell Pty Ltd	612.01	
Newton, Kristine Lorraine	771.93	
Resort Corporation Australia (No 2) Pty Ltd (In Liq)	2,827.00	
Toowoomba (Foundry Shopping Centre) Pty Ltd	16,215.25	
Tweed Central Pty Ltd	6,407.07	
Valencia Grove Pty Ltd	84,843.36	
Western Land Corporation	27,399.73	
Wirrina Corporation Pty Ltd	110,862.25	368,428.83
External Receiver Outlays (David Clout)		297.00
Insurance		1,267.26
IT expenses		6,066.90
Legal Fees		39,144.60
Mileage Allowance		350.25
Motor Vehicle Expenses		9.68
Office Rental charge		8,670.95
Reversal of prior period payment (re-issued in current period)		(4,501.83)
Secured Creditor distribution - National Australia Bank		1,278,882.38
Superannuation Contribution Paid		3,212.50
Wages & Salaries		29,562.26
<b>Total Payments</b>		<b>1,731,421.18</b>
<b>Closing Cash at Bank</b>		<b>1,594,518.08</b>

## 2. Realisation of Assets

As this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify individual properties and/or their expected realisable values. However, I summarise in the table below the sales completed since my appointment, contracts on foot and current offers accepted and waiting execution of contracts:

	\$
Sales completed	7,813,866
Four contracts on foot	2,133,186
One offer accepted, awaiting executed contract	2,750,000



One offer under consideration

6,000,000

With respect to the contracts on foot, I note the following:

- A deed of settlement has been executed with \$150,000 received on 18 June 2012 and \$1.1M to be received on 17 June 2013.
- Three unconditional contracts totalling \$1,033,186 are due to settle between 30 November 2012 and 23 December 2012.

With respect to the offer accepted, I note the following:

- A contract for \$2.95M noted in my fourth report has not progressed, however a new contract for \$2.75M has been submitted for execution.

The contract for \$1.575M noted in my fourth report has not progressed due to unsatisfactory due diligence. The material change of use approval "(MCU)" has lapsed and therefore steps are being taken to ascertain if the MCU can be reinstated. A realisation strategy will be developed thereafter.

The remaining 15 properties, with the exception of one property, is currently on the market or being prepared for the commencement of sale campaigns. The property not presently subject to a sale campaign is currently subject to possession proceedings.

I will update investors on the progress of the sales in my monthly reports to investors. With the contracts on foot and sale campaigns reaching their closing date, I am hopeful that NAB will be repaid in full by the end of August 2012.

### **3. Legal Proceedings**

As previously advised, there are currently nine legal actions on foot although five are largely finalised with cost orders to be recovered in four of those matters.

The remaining actions are expected to realise several million dollars for the benefit of investors although this may take some time to realise.

Additionally, as noted above possession proceedings are continuing in respect of one property. In addition, two actions are progressing against the same valuer for negligence and damages in excess of \$10M. Any amount recoverable in this latter respect will be sought against a professional indemnity insurance policy.

### **4. Appeal of Court Order**

Equititrust Limited filed an appeal with respect to the terms of the Court Orders dated 21 and 23 November 2011, in respect to the powers granted to me as Receiver of EIF. The appeal had not progressed and has now been dismissed by the Supreme Court of Queensland as the Liquidators failed to appear and acknowledged they would not be progressing the appeal.





## 5. Estimated Return to Investors

I provide below an estimated return to investors of between 17 and 28 cents in the dollar as at 31 May 2012 as follows:

	Low \$000's	High \$000's
Total estimated selling prices	53,846	76,719
Less: Selling costs - marketing and agents fees (3.5%)	(1,885)	(2,685)
Secured creditors (net of cash at bank)	(8,458)	(8,458)
Land Tax and Rates	(7,900)	(7,900)
Other unsecured creditors	(373)	(373)
Receivers fees	(544)	(544)
<b>Estimated net amount available to investors as at 31 May 2012</b>	<b>34,686</b>	<b>56,759</b>
Total investors units	203,635	203,635
<b>Estimated return in the dollar</b>	<b>\$0.17</b>	<b>\$0.28</b>

The above table does not take into account future operating costs, interest on bank loans until repaid in full, future Receivers fees and rates and land tax after 31 May 2012. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Subject to the sale of the properties currently on the market and where sale campaigns are to commence, I remain hopeful that I will be able to commence interim distributions to investors in the second half of this year. This will be after paying secured creditors, land tax and rates, Receivers fees and the unsecured creditors who rank ahead of investors' interests.

## 6. Receivers Remuneration & Expenses

I attach a remuneration summary covering the period from 21 November 2011 to 17 June 2012 (seven months) in respect of fees incurred of \$544,539 plus outlays of \$11,992.46 plus GST. None of the fees have been drawn to date.

As advised in my fourth report, I am currently preparing an application to Court to seek approval of my fees. I will notify creditors and investors of the application date with relevant documents to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au).



## 7. Contact Details

As previously advised, the staff and consultants engaged by me to assist in the winding up of the fund are located at the following address which should be used for all communications.

Postal Address: Equititrust Income Fund  
Wyndham Building  
Level 9, 1 Corporate Court  
BUNDALL QLD 4217

Phone: 07 5510 4870

Fax: 07 5510 4907

## 8. Queries

Monthly reports will continue to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au). The latter new website is currently a copy of the old website and will be upgraded in due course.

Should investors have any queries in relation to the winding up of the Fund, they should contact the investors relation manager, Trish Riley on (07) 5510 4870 or my office on (07) 3237 5999 or by email at [info@bdo.com.au](mailto:info@bdo.com.au). In the event investors raise queries not covered by the monthly reports, I will consider adding a frequently asked questions section to the new website.

Yours faithfully,

David Whyte  
Receiver

Equitytrust Income Fund (Receiver Appointed)  
21 November 2011 to 17 June 2012

Employee	Position	Rate	Hours	Units	Amount	Units	Amount	Units	Amount	Units	Amount	Units	Amount	Units	Amount	Units	Amount	Units	Amount
Fielding, Andrew	Partner	545	0.20	0.20	109.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Newman, Helen	Partner	545	0.60	0.60	327.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Whyte, David	Partner	545	15.20	15.20	8,284.00	139.60	76,082.00	42.10	22,944.50	0.60	327.00	8.70	4,741.50	452.50	246,612.50	0.00	0.00	0.00	0.00
Brushie, David	Manager	375	28.00	28.00	10,500.00	86.00	32,250.00	1.80	675.00	0.00	0.00	1.50	562.50	28.70	10,762.50	0.00	0.00	0.00	0.00
Rapheal, Alastair	Manager	375	0.80	0.80	300.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Somerville, John	Manager	375	18.10	18.10	6,787.50	49.80	18,675.00	4.70	1,762.50	0.00	0.00	0.50	187.50	7.20	2,700.00	0.00	0.00	0.00	0.00
Bauer, Kirsty	Senior Accountant II	260	0.20	0.20	52.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Roboham, Scott	Senior Accountant II	260	281.80	281.80	73,268.00	2.10	546.00	5.40	1,404.00	0.00	0.00	8.00	2,080.00	0.00	0.00	0.00	0.00	0.00	0.00
Want, Andrew	Accountant I	210	20.60	20.60	4,326.00	13.30	2,793.00	26.00	5,460.00	1.90	399.00	0.00	0.00	0.50	105.00	0.00	0.00	0.00	0.00
Coulston, Jayden	Accountant I	210	17.30	17.30	3,633.00	0.00	0.00	0.40	84.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jones, Annabel	Accountant I	210	7.40	7.40	1,554.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Pembroke, Elle	Accountant II	160	6.50	6.50	1,040.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Glasper, Michael	Administrative Assistant	70	12.40	12.40	868.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Richardson, Ashley	Administrative Assistant	70																	
<b>TOTAL</b>					<b>524,531.00</b>		<b>524,531.00</b>		<b>524,531.00</b>		<b>524,531.00</b>		<b>524,531.00</b>		<b>524,531.00</b>		<b>524,531.00</b>		<b>524,531.00</b>
					<b>599,928.00</b>		<b>599,928.00</b>		<b>599,928.00</b>		<b>599,928.00</b>		<b>599,928.00</b>		<b>599,928.00</b>		<b>599,928.00</b>		<b>599,928.00</b>

DISBURSEMENT REPORT  
Equitytrust Income Fund (Receiver Appointed)  
21 November 2011 to 17 June 2012

Item	90.45
NSW Power of Attorney Transfer fee	2,475.41
Airfares	2,557.50
Travel - Mileage	104.94
Travel - Taxi	469.47
Travel - Car Rental	134.55
Parking	449.49
Courier	53.63
Mobile Internet	235.00
EIF - Photocopier install	81.82
Postage	3,811.80
Photocopying	778.40
Search Fee	11,992.46
Sub Total	1,199.25
GST	13,191.71
<b>TOTAL</b>	<b>13,191.71</b>



**TO INVESTORS**

26 July 2012

**EQUITRUST INCOME FUND ARSN 089 079 854 ("EIF")  
(RECEIVER APPOINTED) ("The Fund")**

I refer to my previous reports dated 1 February 2012, 21 February 2012, 27 March 2012, 16 May 2012 and 21 June 2012 and now provide my sixth update to investors on the progress of the winding up of the Fund by me as Court appointed receiver of the property of the Fund.

**1. Receipts and Payments**

I provide below a summary of the Receipts and Payments of the Fund for the period 18 June to 22 July 2012.

**Summary of Receipts and Payments for the Period  
18 June 2012 to 22 July 2012****Opening Cash at Bank** 1,594,518.08**Receipts**

## Loan Recoveries:

Corymbia Estates Pty Ltd	4,316.62	
Mountbell Pty Ltd	39,548.75	
Rosea Pty Ltd	168,333.33	
Toowoomba (Foundry Shopping Centre) Pty Ltd	146,200.54	358,399.24
<b>Total Receipts</b>		<b>358,399.24</b>

**Payments**

Bank Charges 20.80

## Distressed Loan funding:

Corymbia Estates Pty Ltd	17,600.00
CTP Pty Ltd	11,477.40
East Coast Pty Ltd	2,750.00
Morvale Land Pty Ltd	660.00
Resort Corporation Australia (No 2) Pty Ltd (In Liq)	37,223.71
Toowoomba (Foundry Shopping Centre) Pty Ltd	16,500.00
Tweed Central Pty Ltd	23,904.62



Valencia Grove Pty Ltd	33,976.03	
Western Land Corporation	4,400.00	
Wirrina Corporation Pty Ltd	144,334.73	292,826.49
Insurance		25,298.24
IT expenses		10,347.27
Legal Fees		841.50
Mileage Allowance		325.50
Office Rental charge		7,770.98
Reversal of Prior Period GST remittance (subject to Private Ruling)		(250,689.00)
Statutory Payments - GST & PAYG		43,909.00
Wages & Salaries		34,672.56
<b>Total Payments</b>		<b>165,323.34</b>
<b>Closing Cash at Bank</b>		<b>1,787,593.98</b>

## 2. Realisation of Assets

The realisation of the Fund's assets continues to progress.

As this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify individual properties and/or their expected realisable values. However, I summarise all sales, contracts on foot, current offers accepted and contracts awaiting execution below:

	\$
Sales completed	8,848,866
Eight contracts on foot	5,780,000
Eleven offers accepted, awaiting executed contracts	4,050,000
One offer under consideration	12,000,000 - 15,000,000

With respect to the information above, I note the following:

- A property settled on 23 July 2012 with gross realisations of \$885,000;
- Four contracts are unconditional with settlements scheduled in August 2012 and gross realisations of approximately \$1.4 million;
- A contract is unconditional in the amount of \$2.25 million with settlement scheduled in September 2012;
- Three contracts are unconditional with settlements scheduled in December 2012 and gross realisations of approximately \$1.03 million;
- A deed of settlement has been executed with \$150,000 received on 18 June 2012 and \$1.1 million to be received on 17 June 2013;



- Contracts for ten lots are currently being exchanged with gross realisations of approximately \$1.8 million anticipated. The agent for the site is continuing to market the remaining lots;
- An offer of \$2.25 million for a property has been received with a contract forwarded to the purchaser for execution;
- An offer in the range of \$12M to \$15M is currently being considered;
- A highly conditional offer of \$6 million has been received for a property, however is not capable of acceptance at this time. The property will be subject to a sale campaign commencing in the next four to six weeks.

The remaining 11 properties, with the exception of one property, is currently on the market or being prepared for the commencement of sale campaigns. The property not presently subject to a sale campaign is currently subject to possession proceedings.

I will update investors on the progress of the sales in my monthly reports to investors. With the contracts on foot and sale campaigns reaching their closing date, I am hopeful that NAB will be repaid in full by the end of September 2012.

### 3. Legal Proceedings

As previously advised, there are currently nine legal actions on foot although five are largely finalised with cost orders to be recovered in four of those matters.

The remaining actions are expected to realise several million dollars for the benefit of investors although this may take some time to realise.

Additionally, as noted above possession proceedings are continuing in respect of one property. In addition, two actions are progressing against the same valuer for negligence and damages in excess of \$10M. Any amount recoverable in this latter respect will be sought against a professional indemnity insurance policy.

### 4. Estimated Return to Investors

I provide below an estimated return to investors of between 18 and 26 cents in the dollar as at 26 July 2012 as follows:

	Low \$000's	High \$000's
Total estimated selling prices	53,435	68,320
Less: Selling costs - marketing and agents fees (3.5%)	(1,870)	(2,391)
Secured creditors (net of cash at bank)	(6,923)	(6,923)
Land Tax and Rates	(7,781)	(7,781)



Other unsecured creditors	(1,094)	(1,094)
Receivers fees	(596)	(596)
<b>Estimated net amount available to investors as at 30 June 2012</b>	<b>35,171</b>	<b>49,535</b>
Total investors units	193,916	193,916
<b>Estimated return in the dollar</b>	<b>\$0.18</b>	<b>\$0.26</b>

The above table does not take into account future operating costs, interest on bank loans until repaid in full, future Receivers fees and rates and land tax after 30 June 2012. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Subject to the sale of the properties currently on the market and where sale campaigns are to commence, I remain hopeful that I will be able to commence interim distributions to investors in the second half of this year. This will be after paying secured creditors, land tax and rates, Receivers fees and the unsecured creditors who rank ahead of investors' interests.

## 5. Updated Unit Price

I have received numerous requests to provide an updated unit price. In this regard, I provide below an updated unit price as at 30 June 2012 of 23 cents, which is based on the mid point of the high and low estimated selling prices of the secured assets as at 30 June 2012.

	\$000's
Investor units opening balance 1 July 2011	203,635
Reallocation of income payments to reduction in principal in 2011/2012	(9,719)
<b>Total investor units as at 30 June 2012</b>	<b>193,916</b>
Total Value of Fund Assets as at 30 June 2012 (net of land tax and rates)	53,844
Less value of NAB facility	(6,000)
	<hr/> 47,844
Less Creditors and Other Payables	(3,891)
<b>Total Net Value of Fund Assets</b>	<b>43,953</b>
<b>Total Number of Units as at 30 June 2012</b>	<b>193,916</b>
<b>Unit Price</b>	<b>0.23</b>



Please note that the unit price has been calculated based on unaudited management accounts as at 30 June 2012.

I attach a copy of a letter to Centrelink confirming the unit price as at 30 June 2012, which may be used by investors to assist with the revision of their pensions.

I have previously 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. Despite following them up in this respect, I have not yet received a response from the Minister.

## **6. Piper Alderman Class Action**

I have been asked by Piper Alderman to include the below update to investors on their behalf in relation to the current status of the proposed class action.

As previously advised, pursuant to the terms of the EIF constitution, as Receiver of the fund's assets and person responsible for winding up the fund, I am not able to prosecute the claims proposed by Piper Alderman which are claims that can only be made by investors themselves.

This update has been prepared by Piper Alderman and I make no comment in respect of same. It is for investors to make their own decision regarding any such class action. I recommend investors seek their own independent legal advice before determining if they should participate in the class action contemplated.

*"Piper Alderman has been engaged in ongoing preparations relating to the class action proceedings against Equititrust Limited (and its directors) as the responsible entity of the Equititrust Income Fund ("the Fund") and the Fund's auditors. The preparation of the claims is in the final stages, with senior counsel instructed by Piper Alderman reviewing the proposed claims. Accordingly, Piper Alderman expects that the claims will be commenced shortly.*

*It is understood that unknown persons have made unsolicited communications to unit holders alleging that Piper Alderman is not proceeding with the class action. These allegations are untrue and should be ignored.*

*Any unit holder wishing to participate in the proceedings should contact Shaan Palmer of Piper Alderman on (02) 9253 9920 without delay to ensure that you are included in the proceedings."*

## **7. Request for Proofs of Debt from Liquidator of Equititrust Limited**

I understand that there has been some confusion with respect to Hall Chadwick's request for Proofs of Debt forms in their latest correspondence. Please note that an investor's claim against Equititrust Limited will be for any shortfall on their investment caused by Equititrust Limited acting as responsible entity of the Fund.





If an investor wishes to lodge a Proof of Debt form, they should lodge it directly with Hall Chadwick. Contact details for Hall Chadwick are provided below.

Hall Chadwick  
29/31 Market Street  
Sydney NSW 2000  
Telephone: (02) 9263 2600

## 8. Reduction in Overheads

As previously advised, staff and consultants were retained following my appointment to assist with the winding up of the Fund initially under a services agreement with Equititrust Limited (Receivers and Managers Appointed) (In Liquidation), GCP(HQ) Pty Ltd and ECG Administration Pty Ltd (In Liquidation) ("ECGA") in order to reduce overheads from an average of \$514,000 to \$147,000 per month.

Since January 2012, the monthly overhead costs have gradually been reduced and are now approximately \$53,000 per month. A further two staff members will cease employment by mid August 2012, reducing overheads by a further amount of approximately \$21,000 per month.

## 9. Contact Details

One of the staff members due to finish on 27 July 2012 is the investor relations manager, Trish Riley. For all future queries in relation to your investment you should contact Andrew Want of my office on (07) 3237 5711.

The remaining staff and consultants engaged by me to assist in the winding up of the fund are still located at the following address.

Postal Address: Equititrust Income Fund	Phone: 07 5510 4870
Wyndham Building	Fax: 07 5510 4907
Level 9, 1 Corporate Court	
BUNDALL QLD 4217	

## 10. Receivers Remuneration & Expenses

I attach a remuneration summary covering the period from 21 November 2011 to 22 July 2012 in respect of fees incurred of \$634,418.00 plus outlays of \$14,804.09 plus GST. None of the fees have been drawn to date.

As advised in my fifth report, I am currently preparing an application to Court to seek approval of my fees. I will notify creditors and investors of the application date with relevant documents to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au).



## 11. Queries

Monthly reports will continue to be uploaded to the websites [www.equitrust.com.au](http://www.equitrust.com.au) and [www.equitrustincomefund.com.au](http://www.equitrustincomefund.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,

A handwritten signature in black ink, appearing to read 'David Whyte', written over a horizontal line.

David Whyte  
Receiver

Equitrust Income Fund (Receiver Appointed)  
21 November 2011 to 22 July 2012

Employee	Position	Rate	Total Units	Total GST	Total	Administration		Assets		Creditors		Employees		Investigations		Trade-on	
						Units	Value	Units	Value	Units	Value	Units	Value	Units	Value	Units	Value
Wynne, David	Partner	560	0.20	223,676.00	3.90	2,184.00	23.90	13,384.00	1.00	560.00	0.20	112.00	0.00	0.00	13.10	7,336.00	
Fielding, Andrew	Partner	545	0.60	109.00	0.60	327.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Newman, Helen	Partner	545	0.60	327.00	0.60	8,393.00	156.10	85,074.50	42.10	22,944.50	0.60	327.00	0.00	4,741.50	458.40		
Wynne, David	Partner	545	0.60	327.00	4.20	1,785.00	24.10	10,242.50	2.30	977.50	0.00	0.00	0.00	0.00	14.70		
Somerville, John	Senior Manager	425	0.60	19,525.50	28.00	10,500.00	86.20	32,325.00	1.80	675.00	0.00	0.00	0.00	562.50	6,247.50		
Bruske, David	Manager	375	0.80	300.00	0.80	300.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	28.70		
Raphael, Alastair	Manager	375	0.80	300.00	24.40	9,150.00	69.50	26,062.50	7.50	2,812.50	0.00	0.00	0.00	187.50	19.30		
Somerville, John	Senior Accountant II	270	1.10	297.00	1.10	513.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Coutson, Jayden	Senior Accountant II	270	1.10	513.00	1.90	513.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Boyes, Rebecca	Senior Accountant II	270	1.10	513.00	29.50	7,965.00	2.90	783.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Went, Andrew	Senior Accountant II	260	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Bauer, Kirsty	Senior Accountant II	260	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Robotham, Scott	Senior Accountant II	260	0.20	52.00	0.20	52.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Went, Andrew	Accountant I	210	3.33	88,812.00	319.30	83,018.00	1.10	286.00	5.40	1,404.00	0.00	0.00	0.00	0.00	8.10		
Coutson, Jayden	Accountant I	210	64.70	15,987.00	21.80	4,578.00	13.30	2,793.00	76.10	5,481.00	1.90	399.00	1.10	231.00	105.00		
Jones, Annabel	Accountant I	210	17.30	3,633.00	17.30	3,633.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Pembroke, Elle	Accountant I	210	7.80	1,563.00	7.40	1,554.00	0.00	0.00	0.40	84.00	0.00	0.00	0.00	0.00	0.00		
Glasper, Michael	Accountant II	160	6.50	1,040.00	6.50	1,040.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Richardson, Ashley	Administrative Assistant	70	12.40	868.00	12.40	868.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
<b>TOTAL</b>			<b>4,523.90</b>	<b>634,741,800</b>	<b>494.90</b>	<b>1,362,660.00</b>	<b>377.10</b>	<b>170,950.50</b>	<b>86.60</b>	<b>34,938.50</b>	<b>2.70</b>	<b>838.00</b>	<b>19.80</b>	<b>7,802.50</b>	<b>542.80</b>	<b>283,622.50</b>	
			<b>TOTALING GST</b>	<b>634,741,800</b>													
			<b>AVERAGE HOUR/YEAR</b>	<b>697,959.80</b>													

DISBURSEMENT REPORT  
Equitrust Income Fund (Receiver Appointed)  
21 November 2011 to 22 July 2012

Item	Rate
NSW Power of Attorney Transfer fee	90.45
Airfares	2,475.41
Travel - Mileage	4,849.50
Travel - Taxi	104.94
Travel - Car Rental	469.47
Parking	134.55
Courier	449.49
Mobile Internet	53.63
EIF - Photocopier install	255.00
Postage	830.86
Photocopying	3,811.80
Search Fee	1,278.99
Sub Total	14,804.09
GST	1,480.41
<b>TOTAL</b>	<b>16,284.50</b>

**TO WHOM IT MAY CONCERN**

26 July 2012

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

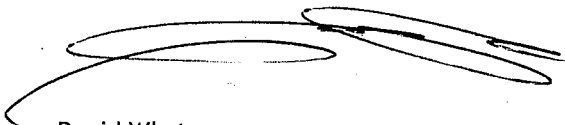
I refer to my court appointment on 21 November 2011 as interim Receiver and subsequent appointment on 23 November 2011 as Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution.

I provide an update on the estimated unit price of the fund as at 30 June 2012, calculated as follows:

	<b>\$000's</b>
Investor units opening balance 1 July 2011	203,635
Reallocation of income payments to reduction in principal in 2011/2012	(9,719)
<b>Total investor units as at 30 June 2012</b>	<b>193,916</b>
Total Value of Fund Assets as at 30 June 2012	53,844
Less value of NAB facility	(6,000)
	<hr/>
	47,844
Less Creditors and Other Payables	(3,891)
	<hr/>
<b>Total Net Value of Fund Assets</b>	<b>43,953</b>
<b>Total Number of Units as at 30 June 2012</b>	<b>193,916</b>
<b>Unit Price</b>	<b>0.23</b>

Should you have any queries in respect of the above, please contact Andrew Want of my office on (07) 3237 5711.

Yours faithfully,



David Whyte  
Receiver

**TO INVESTORS**

30 August 2012

**EQUITRUST INCOME FUND ARSN 089 079 854 ("EIF")  
(RECEIVER APPOINTED) ("The Fund")**

I refer to my previous reports dated 1 February 2012, 21 February 2012, 27 March 2012, 16 May 2012, 21 June 2012 and 26 July 2012, and now provide my seventh update to investors on the progress of the winding up of the Fund by me as Court appointed receiver of the property of the Fund.

**1. Receipts and Payments**

I provide below a summary of the Receipts and Payments of the Fund for the period 23 July 2012 to 28 August 2012.

<b>Summary of Receipts and Payments for the Period</b>	
<b>23 July 2012 to 28 August 2012</b>	
<b>Opening Cash at Bank</b>	<b>1,787,593.98</b>
<b>Receipts</b>	
Interest Income	843.83
Loan Recoveries:	
Resort Corporation Australia (No.2) Pty Ltd	816,868.46
Rosea Pty Ltd	74,963.89
Toowoomba (Foundry Shopping Centre) Pty Ltd	78,491.22
Tweed Central Pty Ltd	1,586,947.64
<b>Total Receipts</b>	<b>2,557,271.21</b>
<b>Payments</b>	
Bank Charges	17.20
Distribution to Secured Creditor - NAB	2,500,000.00
Distressed Loan funding:	
Boothers Pty Ltd	8,295.32
Checkling Pty Ltd	27,305.87
Corymbia Estates Pty Ltd	35,263.12
Gonfanon Pty Ltd	18,964.65
Morvale Land Pty Ltd	5,280.00



Newton, Kristine Lorraine	1,732.50	
Resort Corporation Australia (No 2) Pty Ltd	31,317.34	
Tweed Central Pty Ltd	305,328.17	
Valencia Grove Pty Ltd	2,427.15	
Western Land Corporation	7,544.30	
Windsor Turf Pty Ltd	8,341.21	
Wirrina Corporation	121,057.50	
Wirrina Resort & Conference Centre Pty Ltd (In Liquidation)	20,878.25	593,735.38
IT expenses		9,855.56
Legal Fees		115,934.41
Mileage Allowance		94.53
Office Rental charge		8,018.14
Superannuation		11,123.74
Wages & Salaries		64,980.32
<b>Total Payments</b>		<b>3,303,759.28</b>
<b>Closing Cash at Bank</b>		<b>1,041,949.74</b>

## 2. Realisation of Assets

The realisation of the Fund's assets continues to progress.

As advised in previous reports, this is a public document and therefore to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify individual properties and/or their expected realisable values. However, I summarise all sales, contracts on foot, current offers accepted and contracts awaiting execution below:

	\$
Sales completed	10,238,726
Twelve contracts on foot	9,755,266
Four offers accepted, awaiting executed contracts	566,960
Three offers under consideration	18,650,000 - 21,650,000

With respect to the information above, I note the following:

- Five contracts are unconditional with settlements scheduled in September 2012 and gross realisations of approximately \$3.4 million;
- Three contracts are unconditional with settlements scheduled in December 2012 and gross realisations of approximately \$1.03 million;
- A contract for \$2.25 million for a property has been exchanged with due diligence expiring on 5 September 2012 and settlement scheduled for 5 October 2012;



- A deed of settlement has been executed with \$150,000 received on 18 June 2012 and \$1.1 million to be received on 17 June 2013;
- Contracts for four lots are currently being exchanged with gross realisations of approximately \$567,000 anticipated. The agent for the site is continuing to market the remaining lots;
- An offer in the range of \$12M to \$15M is still under consideration; and
- Offers of \$5 million and \$1.65 million are currently under consideration.

The remaining 10 properties, with the exception of one property, is currently on the market or being prepared for the commencement of sale campaigns. The property not presently subject to a sale campaign is currently subject to possession proceedings.

I will update investors on the progress of the sales in my monthly reports to investors.

### 3. Legal Proceedings

As noted in my previous reports, there are currently nine legal actions on foot although five are largely finalised with cost orders to be recovered in four of those matters.

The remaining actions are at various stages from reviewing counter claims to negotiating settlements in respect of amounts awarded in favour of EIF. The actions are expected to realise several million dollars for the benefit of investors although this may take some time to realise.

Additionally, possession proceedings are continuing in respect of one property and two actions are progressing against the same valuer for negligence and damages in excess of \$10M. Any amount recoverable in this latter respect will be sought against a professional indemnity insurance policy.

### 4. Estimated Return to Investors

I provide below an estimated return to investors of between 17 and 25 cents in the dollar as at 27 August 2012 as follows:

	Low \$000's	High \$000's
Total estimated selling prices	50,367	67,177
Less: Selling costs - marketing and agents fees (3.5%)	(1,763)	(2,351)
Secured creditors (net of cash at bank)	(6,658)	(6,658)
Land Tax and Rates	(8,066)	(8,066)
Other unsecured creditors	(1,094)	(1,094)
Receivers fees	(745)	(745)



Estimated net amount available to investors as at 27 August 2012	32,041	48,263
Total investors units	193,916	193,916
Estimated return in the dollar	\$0.17	\$0.25

The above table does not take into account future operating costs, interest on bank loans until repaid in full, future Receivers fees and rates and land tax after 31 July 2012. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Subject to the sale of the properties currently on the market and where sale campaigns are to commence, I remain hopeful that I will be able to commence interim distributions to investors in the second half of this year or early next year. This will be after paying secured creditors, land tax and rates, Receivers fees and the unsecured creditors who rank ahead of investors' interests.

## 5. Correspondence from Centrelink

In response to my correspondence requesting consideration to exempt units from deeming provisions, and my updated unit valuation of 23 cents, I have received a letter from the office of the Minister for Families, Community Services and Indigenous Affairs, Minister for Disability reform, the Honourable Jenny Macklin MP. Please find *attached* the Minister's response for your information.

In relation to the exemption of units from deeming provisions, the position of the Minister's office is unchanged and therefore the units held in the fund will not be exempt for deeming purposes. The Minister's office explains that:

*"...the freezing of distributions and the risks associated with this product is allowed for in the PDS and the constitution of the fund. Consequently, investors would therefore have been made aware of the potential for this situation when they made the choice to invest."*

*"...[the] investments in the Fund will continue to be assessed as financial assets subject to the deemed income provisions and the assets tests."*

In relation to the updated unit price, the Minister's office has requested that investors advise Centrelink of the change in value of their investment.

## 6. Income statements for Taxation purposes

To assist completion of your tax obligations for the financial year ending 30 June 2012, please find *attached* a letter detailing that no distributions, interest, capital or otherwise, were made during the last financial year.





## 7. Piper Alderman Class Action

I have requested an update from Piper Alderman with respect to the status of the proposed class action, however as at the time of finalising this report, a response has not been received.

## 8. Receivers Remuneration & Expenses

I attach a remuneration summary covering the period from 21 November 2011 to 26 August 2012 (9 months) in respect of fees incurred of \$745,415.00 plus outlays of \$18,553.71 plus GST. None of the fees have been drawn to date.

As advised in my previous reports, I am currently preparing an application to Court to seek approval of my fees. I will notify creditors and investors of the application date with relevant documents to be uploaded to the websites [www.equitrust.com.au](http://www.equitrust.com.au) and [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au).

## 9. 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.

Equitrust Income Fund (Receiver appointed)  
C/- BDO  
GPO Box 457  
Brisbane QLD 4001

## 10. Queries

Monthly reports will continue to be uploaded to the websites [www.equitrust.com.au](http://www.equitrust.com.au) and [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au).

The remaining staff and consultants engaged by me to assist in the winding up of the fund are located at the following address:

Postal Address: Equitrust Income Fund	Phone: 07 5510 4870
Wyndham Building	Fax: 07 5510 4907
Level 9, 1 Corporate Court	
BUNDALL QLD 4217	

Andrew Want of this office is, however, key point of contact for all investor queries. Andrew can be contacted by the following;

Phone: 07 3237 5999  
Email: [andrew.want@equitrustincomefund.com.au](mailto:andrew.want@equitrustincomefund.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,

A handwritten signature in black ink, appearing to read 'D. Whyte', written over a horizontal line.

David Whyte  
Receiver



**Office of the Hon Jenny Macklin MP  
Minister for Families, Community Services and Indigenous Affairs  
Minister for Disability Reform**

*Parliament House  
CANBERRA ACT 2600*

*Telephone: (02) 6277 7560  
Facsimile: (02) 6273 4122*

**RECEIVED**  
06 AUG 2012

MC12-006579

BY:.....

02 AUG 2012

Mr David Whyte  
BDO Business Recovery and Insolvency (QLD) Pty Ltd  
GPO Box 457  
BRISBANE QLD 4001

Dear Mr Whyte

Thank you for your letter of 31 May 2012 to the Minister for Families, Community Services and Indigenous Affairs, Minister for Disability Reform, the Hon Jenny Macklin MP, about exempting investments in the Equititrust Income Fund from the social security income test deeming rules. The Minister has asked me to reply to you on her behalf. I apologise for the delay in responding.

As you may know, exemptions from the deeming rules have been 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).

In relation to the Equititrust Income Fund (the Fund), I understand the freezing of distributions and the risks associated with this product is allowed for in the PDS and the constitution of the fund. Consequently, investors would therefore have been made aware of the potential for this situation when they made the choice to invest. In this regard, the Fund continues to operate like any other managed fund which is subject to market forces, which may involve the cessation of income distributions, a reduction in the value of the investment or a winding up of the fund.


While the Minister appreciates the difficulties investors are experiencing, investments in the Fund will continue to be assessed as financial assets subject to the deemed income provisions and the assets tests.

I note your estimate of the likely return to investors. I would recommend that investors contact Centrelink to advise of the change in the value of their investment.

In addition, if investors want further information regarding their individual circumstances, I would also recommend that they arrange an interview with a Centrelink Financial Information Service officer. These officers are specially trained to provide information on the operation of the income and assets tests. This is a free service and an appointment can be made by phoning Centrelink on 13 2300 for the cost of a local call. Please note that calls made from mobile phones may incur additional costs.

Thank you again for writing.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Max Jeganathan', written in a cursive style.

Max Jeganathan  
Adviser



Tel: +61 7 3237 5999  
Fax: +61 7 3221 9227  
www.bdo.com.au

Level 18, 300 Queen St  
Brisbane QLD 4000  
GPO Box 457 Brisbane QLD 4001  
AUSTRALIA

**TO INVESTORS**

30 August 2012

Dear Investor,

**EQUITRUST INCOME FUND ("EIF")  
(RECEIVER APPOINTED) ("THE FUND")  
RESPONSIBLE ENTITY: EQUITRUST LTD A.C.N. 061 383 944**

I refer to my 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.

The books and records maintained by the Fund and its' Responsible Entity indicate that *no distributions; interest, capital or otherwise, were made to investors of the fund for the financial year ending 30 June 2012.*

I advise that records produced prior to my appointment have not been audited and as such I accept no responsibility for the completeness or accuracy of same.

Should you have any queries, or require further information, please contact Andrew Want of this office on (07) 3237 5999.

Yours faithfully

*11*

David Whyte  
Receiver

Equitrust Income Fund (Receiver Appointed)  
21 November 2011 to 26 August 2012

Employee	Position	Rate	Hours	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount
Whyte, David	Partner	560	14.20	7,952.00	79.30	44,408.00	1.40	784.00	0.20	112.00	0.00	0.00	29.40	16,464.00					
Fielding, Andrew	Partner	545	0.20	109.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Newman, Helen	Partner	545	0.60	327.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Whyte, David	Partner	545	15.40	8,393.00	156.10	85,074.50	42.10	22,944.50	0.60	327.00	8.70	4,741.50	458.40	249,828.00					
Somersville, John	Senior Manager	425	19.90	8,457.50	52.90	22,482.50	10.80	4,590.00	0.00	0.00	0.00	0.00	42.40	18,020.00					
Brushe, David	Manager	375	28.00	10,500.00	86.20	32,325.00	1.80	675.00	0.00	0.00	1.50	562.50	28.70	10,762.50					
Raphael, Alastair	Manager	375	0.80	300.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Somersville, John	Manager	375	24.40	9,150.00	69.50	26,062.50	7.50	2,812.50	0.00	0.00	0.50	187.50	19.30	7,237.50					
Brown, Gareth	Supervisor	350	0.00	0.00	2.7	945.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Bulla, Andrew	Supervisor	350	0.00	0.00	11.2	3,920.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Boyes, Rebecca	Senior Accountant II	270	1.10	297.00	0.80	216.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Coulston, Jayden	Senior Accountant II	270	10.40	2,808.00	2.70	729.00	0.10	27.00	0.30	81.00	0.00	0.00	0.00	0.00					
Want, Andrew	Senior Accountant II	270	111.30	30,051.00	2.90	783.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Bauer, Kirsty	Senior Accountant II	260	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Robotham, Scott	Senior Accountant II	260	0.20	52.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Want, Andrew	Accountant I	210	319.30	83,018.00	1.10	286.00	5.40	1,404.00	0.00	0.00	0.00	0.00	8.10	2,106.00					
Coulston, Jayden	Accountant I	210	21.80	4,578.00	13.30	2,793.00	26.10	5,481.00	1.90	399.00	1.10	231.00	0.50	105.00					
Jones, Annabel	Accountant I	210	17.30	3,633.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Pembroke, Elle	Accountant I	210	7.40	1,554.00	0.00	0.00	0.40	84.00	0.00	0.00	0.00	0.00	0.00	0.00					
Glasper, Michael	Accountant II	160	6.50	1,040.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Glasper, Michael	Accountant II	155	0.30	46.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					
Richardson, Ashley	Administrative Assistant	70	12.40	868.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00					

DISBURSEMENT REPORT  
Equitrust Income Fund (Receiver Appointed)  
21 November 2011 to 26 August 2012

Item	Amount
NSW Power of Attorney Transfer fee	90.45
Airfares	2,867.53
Travel - Mileage	4,849.50
Travel - Taxi	104.94
Travel - Car Rental	733.25
Parking	134.55
Courier	642.72
Mobile Internet	255.00
EIF - Photocopier Install	53.63
Postage	2,375.61
Photocopying	4,891.80
Search Fee	1,554.73
Sub Total	18,553.71
GST	1,855.37
TOTAL	20,409.08

**TO INVESTORS**

4 October 2012

**EQUITRUST INCOME FUND ARSN 089 079 854 ("EIF")  
(RECEIVER APPOINTED) ("The Fund")**

I refer to my previous reports and now provide my eighth update to investors on the progress of the winding up of the Fund by me as Court appointed receiver of the property of the Fund.

**1. Receipts and Payments**

I provide below a summary of the Receipts and Payments of the Fund for the period since my last report of 27 August 2012.

<b>Summary of Receipts and Payments for the Period</b>		
<b>27 August 2012 to 2 October 2012</b>		
<b>Opening Cash at Bank</b>		<b>1,041,949.74</b>
<b>Receipts</b>		
Interest Income		8,008.84
Legal Recoveries		45,000.00
Loan Recoveries:		
Morvale Land Pty Ltd	2,000,000.00	
Resort Corporation Australia (No.2) Pty Ltd	6,777.44	
Rosea Pty Ltd	18,333.33	
Toowoomba (Foundry Shopping Centre) Pty Ltd	154,564.25	
Tweed Central Pty Ltd	1,245,011.32	3,424,686.34
	<b>Total Receipts</b>	<b>3,477,695.18</b>
<b>Payments</b>		
Bank Charges		48.80
Distressed Loan funding:		
Corymbia Estates Pty Ltd	3,036.00	
East Coast Pty Ltd	27,225.00	
Toowoomba (Foundry Shopping Centre) Pty Ltd	309,349.30	
Tweed Central Pty Ltd	4,485.37	
Valencia Grove Pty Ltd	1,500.00	
Wirrina Corporation	83,500.00	429,095.67

Distribution to Secured Creditor - NAB	2,500,000.00
IT expenses	4,246.00
Legal Fees	59,586.80
Office Rental charge	12,856.45
Staff Wages and Reimbursements	10,908.62
<b>Total Payments</b>	<b>3,016,742.34</b>
<b>Closing Cash at Bank</b>	<b>1,502,902.58</b>

## 2. Realisation of Assets

The realisation of the Fund's assets continues to progress.

As advised in previous reports, this is a public document and therefore to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify individual properties and/or their expected realisable values. However, I summarise all sales, contracts on foot, current offers accepted and contracts awaiting execution below:

	\$
Sales completed	14,180,806
Ten contracts on foot	8,029,746
Five offers accepted, awaiting executed contracts	1,999,280
Four offers under consideration	20,100,000 - 23,100,000

With respect to the information above, I note the following:

- One contract is unconditional with settlement scheduled in November 2012 and gross realisations of \$2.1 million;
- Four contracts are unconditional with settlements scheduled in December 2012 and gross realisations of approximately \$2.68 million;
- One contract is unconditional with settlement scheduled in March 2013 and gross realisations of \$1.6 million;
- A deed of settlement has been executed with \$150,000 received on 18 June 2012 and \$1.1 million to be received on 17 June 2013;
- Three contracts are unconditional with settlements scheduled in July 2013 and gross realisations of \$546,560;
- A contract for \$2.25 million has been terminated as the purchaser was unable to satisfy the due diligence clause within the required timeframe. The purchaser has submitted a revised offer, which is currently under consideration;
- Contracts for four lots are currently being exchanged with gross realisations of approximately \$949,280 anticipated. The agent for the site is continuing to market the remaining two lots;



- Contract terms for an offer of \$1.05 million are currently being finalised;
- An offer in the range of \$12M to \$15M is still under consideration;
- An offer of \$5 million is unlikely to proceed as the proposed purchaser appears unlikely to be able to satisfy the terms of the offer;
- An offer of \$1.65 million is unlikely to proceed as the proposed purchaser has been unable to evidence its ability to complete the transaction.

The remaining 7 properties, with the exception of one property, are currently on the market or being prepared for the commencement of sale campaigns. The property not presently subject to a sale campaign is currently subject to possession proceedings.

I will continue to update investors on the progress of the sales in my monthly reports to investors.

### **3. Legal Proceedings**

There are currently numerous legal actions on foot including:

- Possession proceedings are underway with respect to a secured property;
- Two claims have been filed against the same valuer for negligence and damages in excess of \$10 million. Any amount recoverable will be sought against a professional indemnity insurance policy;
- A deed of settlement has been executed with respect to a claim against a guarantor. Filing for default judgment against the remaining guarantors is currently under consideration;
- Monetary judgement has been obtained against a guarantor, however a cross claim has been filed by the borrower with a hearing date scheduled for later in the year;
- Several proceedings have been commenced against a bankrupt/related parties to realise his interest in a property. This is likely to result in a substantial recovery for the fund;
- Collection of a judgement debt is ongoing with the final payment of \$250,000 due in December 2012;
- The value of a caveated property is under consideration to determine if a commercial recovery is achievable;
- An assessment of a costs order obtained against a borrower is underway; and
- Other claims are being considered against borrowers/guarantors to determine if commercial recoveries are achievable.

The actions are expected to realise several million dollars for the benefit of investors although this may take some time to realise.

#### 4. Estimated Return to Investors

I provide below an estimated return to investors of between 16 and 23 cents in the dollar as at 30 September 2012 as follows:

	Low \$000's	High \$000's
Total estimated selling prices	44,443	59,253
Less: Selling costs - marketing and agents fees (3.5%)	(1,556)	(2,074)
Secured creditors (net of cash at bank)	503	503
Other loan	(3,000)	(3,000)
Land Tax and Rates	(7,895)	(7,895)
Other unsecured creditors	(591)	(591)
Receivers fees	(860)	(860)
Estimated net amount available to investors as at 24 September 2012	31,044	45,336
Total investors units	193,916	193,916
Estimated return in the dollar	\$0.16	\$0.23

The above table does not take into account future operating costs, interest on bank loans until repaid in full, future Receivers fees and rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Subject to the sale of the properties currently on the market and where sale campaigns are to commence, I am hopeful that I will be able to commence interim distributions to investors early next year. This will be after paying secured creditors, land tax and rates, Receivers fees and the unsecured creditors who rank ahead of investors' interests.

#### 5. Overhead Expenses

I confirm that the overhead expenses of engaging staff and contractors with knowledge of the files, together with the maintenance of serviced offices at Bundall, have been reduced to approximately \$21,000 per month. These expenses have been reduced from \$500,000 per month at the time of my appointment, to \$147,000 per month in January 2012, and will continue to reduce as the properties charged to the EIF are realised.

## 6. Court Application for Remuneration

As advised in my prior updates to investors, from time to time I am required to make an application to the Court for the approval of my remuneration. Two applications were filed on 21 September 2012 in this respect.

The first application is an interlocutory application which seeks orders in respect of the service of the substantive application on the investors of the EIF. In order to save estimated costs of approximately \$80,000 in relation to mailing all investors and creditors a copy of the application that amounts to in excess of 500 pages, I have sought orders from the court that *inter alia*:

- a) notice of my application for approval of remuneration be effected on the members of the Fund by:
  - i) placing an advertisement of the application in The Australian, The Courier Mail and the Gold Coast Bulletin newspapers;
  - ii) posting a notice of the application in a prominent location on the Equititrust Limited website of "www.equititrust.com.au";
  - iii) posting a notice of the application in a prominent location on the Equititrust Income Fund website of "www.equitrustincomefund.com.au"; and
  - iv) sending a notice by ordinary post to all members at their last known address.
- b) service of the application and any supporting affidavits on each of the members of the Equititrust Income Fund pursuant to rule 112 of the Uniform Civil Procedure Rules 1999 (Qld) be dispensed with.
- c) pursuant to rule 116 of the Uniform Civil Procedure Rules 1999 (Qld) substituted service of the application and supporting affidavit of David Whyte be deemed effected on each of the members of the Equititrust Income Fund five (5) days after those documents are made available in PDF on the websites of "www.equititrust.com.au" and "www.equitrustincomefund.com.au".
- d) pursuant to rule 116 of the Uniform Civil Procedure Rules 1999 (Qld) substituted service of any further documents to be relied upon by the court appointed receiver be deemed effected on each of the members of the Equititrust Income Fund five (5) days after those documents are made available in PDF on the websites of "www.equititrust.com.au" and "www.equitrustincomefund.com.au".

The substantive application seeks orders for approval of remuneration totalling \$764,546.00 (plus GST) and outlays of \$18,533.71 (plus GST) for the period 22 November 2012 to 31 August 2012.

Regardless of the outcome of the application to waive the requirement to distribute the full application to all interested parties, the application for remuneration will be uploaded to the following websites for investors to review:

- [www.equititrust.com.au](http://www.equititrust.com.au); and
- [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au)

The interlocutory application has been set down to be heard on Thursday, 11 October 2012, and the substantive application has been set down to be heard on Thursday, 25 October 2012.

## 7. Piper Alderman Class Action

I have been advised that Piper Alderman is continuing to progress the claims available to Unit Holders in relation to the Fund's demise. Unit holders wishing to be part of the anticipated action should contact Shaan Palmer of Piper Alderman on (02) 9253 9920.

## 8. Receiver's Remuneration & Expenses

I attach a remuneration summary covering the period from 21 November 2011 to 30 September 2012 in respect of fees incurred of \$852,960 plus outlays of \$24,873.94 plus GST. None of the fees have been drawn to date.

As noted above, I have prepared an application to the Court to seek approval of my fees for the period to 31 August 2012.

## 9. 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

## 10. Queries

Monthly reports will continue to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au).

The remaining staff and consultants engaged by me to assist in the winding up of the fund are located at the following address:

Postal Address: Equititrust Income Fund  
Wyndham Building  
Level 9, 1 Corporate Court  
BUNDALL QLD 4217

Phone: 07 5510 4870  
Fax: 07 5510 4907

Andrew Want of this office is, however, key point of contact for all investor queries. Andrew can be contacted by the following;

Phone: 07 3237 5999  
Email: [andrew.want@equitrustincomefund.com.au](mailto:andrew.want@equitrustincomefund.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)  
21 November 2011 to 30 September 2012**

Whyte, David	Partner	560	1,844.00	102.80	57,568.00	3.80	2,128.00	0.20	112.00	0.00	0.00	0.00	0.00	0.00	46.50	26,040.00
Fiedling, Andrew	Partner	545	3,080.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Newman, Helen	Partner	545	3,080.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Whyte, David	Partner	545	3,080.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Somersville, John	Senior Manager	425	14,450.00	104.70	44,497.50	17.20	7,310.00	0.60	327.00	8.70	4,741.50	0.00	63.30	249,828.00		
Bruslie, David	Manager	390	975.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	26,902.50			
Bruslie, David	Manager	375	1,050.00	86.20	32,325.00	1.80	675.00	0.00	0.00	1.50	562.50	0.00	28.70	10,762.50		
Raphael, Alastair	Manager	375	300.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Somersville, John	Manager	375	9,150.00	69.50	26,062.50	7.50	2,812.50	0.00	0.00	0.50	187.50	0.00	19.30	7,237.50		
Brown, Gareth	Supervisor	350	1,120.00	2.70	945.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Bulda, Andrew	Supervisor	350	1,120.00	2.70	945.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Potts, Andrew	Supervisor	350	1,120.00	2.70	945.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Dharmaratne, Michael	Senior Accountant I	310	0.00	0.40	124.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Boyes, Rebecca	Senior Accountant II	270	297.00	0.80	216.00	0.10	27.00	0.30	81.00	0.00	0.00	0.00	0.00	0.00		
Coulston, Jayden	Senior Accountant II	270	5,022.00	2.90	783.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Want, Andrew	Senior Accountant II	270	57,618.00	2.90	783.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.40	648.00		
Bauer, Kirsty	Senior Accountant II	260	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.00	2,080.00	0.00	0.00	0.00		
Robotham, Scott	Senior Accountant II	260	52.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Want, Andrew	Senior Accountant II	260	319.30	2.10	546.00	5.40	1,404.00	0.00	0.00	0.00	0.00	0.00	10.70	2,782.00		
Pembroke, Elle	Accountant I	220	198.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Coulston, Jayden	Accountant I	210	4,578.00	13.30	2,793.00	26.10	5,481.00	1.90	399.00	1.10	231.00	0.50	105.00			
Jones, Annabel	Accountant I	210	17.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			
Pembroke, Elle	Accountant I	210	1,596.00	0.00	0.00	0.40	84.00	0.00	0.00	0.00	0.00	0.00	0.00			
Jones, Annabel	Accountant I	190	1,615.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			
Glasper, Michael	Accountant II	160	1,040.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			
Richardson, Ashley	Administrative Assistant	155	46.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			
		70	868.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			

**DISBURSEMENT REPORT**

Equititrust Income Fund (Receiver Appointed)  
21 November 2011 to 30 September 2012

Item	90.45
NSW Power of Attorney Transfer fee	3,196.81
Airfares	5,224.90
Travel - Mileage	104.94
Travel - Taxi	1,502.80
Travel - Car Rental	190.91
Parking	898.21
Courier	53.63
Mobile Internet	255.00
Elf - Photocopier Install	3,443.52
Postage	7.00
Facsimile	7.00
Photocopying	7,891.80
Search Fee	2,013.97
Sub Total	24,873.94
GST	2,487.39
<b>TOTAL</b>	<b>27,361.33</b>

**TO INVESTORS**

9 November 2012

**EQUITRUST INCOME FUND ARSN 089 079 854 ("EIF")  
(RECEIVER APPOINTED) ("The Fund")**

I refer to my previous reports and now provide my ninth update to investors on the progress of the winding up of the Fund by me as Court appointed receiver of the property of the Fund.

**1. Receipts and Payments**

I provide below a summary of the Receipts and Payments of the Fund for the period since my last report of 3 October 2012.

<b>Summary of Receipts and Payments for the Period 3 October 2012 to 4 November 2012</b>		
<b>Opening Cash at Bank</b>		<b>1,502,902.58</b>
<b>Receipts</b>		
Interest Income		1,957.78
Loan Recoveries:		
Rosea Pty Ltd	18,333.33	
Toowoomba (Foundry Shopping Centre) Pty Ltd	76,118.27	
Tweed Central Pty Ltd	395,173.70	489,625.30
	<b>Total Receipts</b>	<b>491,583.08</b>
<b>Payments</b>		
Bank Charges		19.00
Distressed Loan funding:		
Boothers Pty Ltd	3,423.65	
Checkling Pty Ltd	2,920.04	
Corymbia Corporation Pty Ltd	880.00	
Corymbia Estates Pty Ltd	8,796.81	
CTP Pty Ltd	3,630.00	
East Coast Pty Ltd	29,915.81	
Gonfanon Pty Ltd	2,047.65	
Kele Property Group	17,397.92	
Toowoomba (Foundry Shopping Centre) Pty Ltd	716,353.51	



Tweed Central Pty Ltd	23,446.52	
Western Land Corporation	22,900.74	
Windsor Turf Pty Ltd	3,300.00	
Wirrina Cove	62,479.50	897,492.15
Equititrust Premium Fund (Receivers and Managers Appointed)		5,000.00
Settlement from Guarantor		7,395.70
IT expenses		2,643.90
Legal Fees		6,188.27
Office Rental charge		11,234.87
Staff Wages and Reimbursements		7,933.97
Superannuation remittance		
<b>Total Payments</b>		<b>937,907.86</b>
<b>Closing Cash at Bank</b>		<b>1,056,577.80</b>

I note that the 'Distressed Loan Funding' relates to marketing costs, agents' fees, consultants' fees and rates and land tax. The incurring of these costs are considered essential in terms of successfully realising the assets subject to the Fund's securities.

## 2. Realisation of Assets

The realisation of the Fund's assets continues to progress.

As advised in previous reports, this is a public document and therefore to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify individual properties and/or their expected realisable values. However, I summarise sales completed, contracts on foot, current offers accepted and contracts awaiting execution below:

	\$
Sales completed	14,180,806
Thirteen contracts on foot	10,833,946
Two offers accepted, awaiting executed contract/deed of assignment	2,170,000

With respect to the information above, I note the following:

- Five contracts are unconditional with settlement scheduled in November 2012 and gross realisations of \$3.76 million;
- Five contracts are unconditional with settlements scheduled in December 2012 and gross realisations of approximately \$4.04 million;
- One contract is unconditional with settlement scheduled in March 2013 and gross realisations of \$1.6 million;





- A deed of settlement has been executed with \$150,000 received on 18 June 2012 and \$1.1 million to be received on 17 June 2013;
- One contract is unconditional with settlement scheduled in August 2013 and gross realisations of \$320,000;
- A contract is currently being exchanged with gross realisations of approximately \$400,000 anticipated. The agent for the site is continuing to market the remaining lot;
- Documentation is currently being prepared for the transfer of a security interest over a property in exchange for \$1.77 million;

The remaining 8 properties, with the exception of two properties, are currently on the market with one being prepared for the commencement of a sale campaign and the other subject to possession proceedings.

I will continue to update investors on the progress of the sales in my monthly reports to investors.

### 3. Legal Proceedings

There are currently numerous legal actions on foot including:

- Possession proceedings are underway with respect to a secured property as noted in section 2 of this report;
- Two claims have been filed against the same valuer for negligence and damages in excess of \$10 million. Expert witnesses have been engaged to progress the claims. Any amount recoverable will be sought against a professional indemnity insurance policy;
- A deed of settlement has been executed with respect to a claim against a guarantor. Filing for default judgment against the remaining guarantors is under consideration;
- Monetary judgement has been obtained against a guarantor, however a cross claim has been filed by the borrower with a hearing date scheduled for later in the year;
- Several proceedings are ongoing against a bankrupt/related parties to realise his interest in a property. This is likely to result in a substantial recovery for the fund;
- Collection of a judgement debt has been finalised with a final payment of \$250,000 received;
- An assessment of a costs order obtained against a borrower is ongoing; and
- Other claims are still being considered against borrowers/guarantors to determine if commercial recoveries are achievable.

The actions are expected to realise several million dollars for the benefit of investors although this may take some time to realise.



#### 4. Estimated Return to Investors

I provide below an estimated return to investors of between 15 and 22 cents in the dollar as at 4 November 2012 as follows:

	Low \$000's	High \$000's
Total estimated selling prices	44,471	58,581
Less: Selling costs - marketing and agents fees (3.5%)	(1,556)	(2,050)
Secured creditors (net of cash at bank) and including bank guarantees	(1,195)	(1,195)
Other loan	(3,000)	(3,000)
Land Tax and Rates	(8,377)	(8,377)
Other unsecured creditors	(268)	(268)
Receivers fees	(939)	(939)
Estimated net amount available to investors as at 4 November 2012	29,136	42,752
Total investors units	193,916	193,916
Estimated return in the dollar	\$0.15	\$0.22

The above table does not take into account future operating costs, interest on bank loans until repaid in full, future Receivers fees and rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Subject to the sale of the properties currently on the market and where sale campaigns are to commence and particularly depending on the sale of the two largest properties, I am hopeful that I will be able to commence interim distributions to investors in the first six months of next year. This will be after paying secured creditors, land tax and rates, Receivers fees and the unsecured creditors who rank ahead of investors' interests.

#### 5. Court Application for Remuneration

As advised in my prior updates to investors, an application to the Court for the approval of my remuneration was filed on 21 September 2012.

The application was heard on 25 October 2012 with the Court approving my remuneration for the period from 21 November 2011 to 31 August 2012 in the amount of \$837,103.85 (inclusive of GST), a reduction of \$3,896.75 (inclusive of GST) of the total amount claimed. This reduction followed a submission by counsel on behalf of Equititrust Ltd (In Liquidation)(Receivers & Managers Appointed)("Equititrust") in relation to their view that the time I spent consulting with



my lawyers and reviewing my affidavit to support ASIC's intended winding up application against Equititrust, fell outside the terms of my appointment.

This occurred in February 2012 at a time when the winding up of the Fund was being hampered by the lack of cooperation of the directors who were trying to pursue an alternative strategy. The lack of cooperation was causing an increase in my costs and therefore in my view it was beneficial to investors for Equititrust to be wound up with a view to improving ongoing cooperation of the Responsible Entity in the winding up of the Fund.

A copy of the Court Order approving my remuneration is attached for your information.

I will continue to advise investors of all future applications with respect to seeking approval of my remuneration.

## **6. Piper Alderman Class Action**

I have been advised that Piper Alderman is continuing to progress the claims available to Unit Holders in relation to the Fund's demise. Unit holders wishing to be part of the anticipated action should contact Shaan Palmer of Piper Alderman on (02) 9253 9920.

## **7. Receiver's Remuneration & Expenses**

I attach a remuneration summary covering the period from 1 September 2012 to 4 November 2012 in respect of fees incurred of \$179,153.00 plus outlays of \$14,092.64 plus GST. None of the fees have been drawn to date.

As noted above, on 25 October 2012, the Court approved my remuneration for the period 22 November 2011 to 31 August 2012 in the amount of \$837,103.85 (inclusive of GST). These fees are expected to be paid later this month and after the secured creditors loan is paid in full. A bank guarantee facility of \$1.1M will remain in place with a view to arranging the release of the guarantees in due course or alternatively paying them out.

## **8. 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

## **9. Queries**

Monthly reports will continue to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equititrustincomefund.com.au](http://www.equititrustincomefund.com.au).

The remaining staff and consultants engaged by me to assist in the winding up of the fund are located at the following address:



Postal Address: Equititrust Income Fund  
Wyndham Building  
Level 9, 1 Corporate Court  
BUNDALL QLD 4217

Phone: 07 5510 4870  
Fax: 07 5510 4907

Andrew Want of this office is, however, the key point of contact for all investor queries.  
Andrew can be contacted by the following;

Phone: 07 3237 5999  
Email: [andrew.want@equititrustincomefund.com.au](mailto:andrew.want@equititrustincomefund.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,

A handwritten signature in black ink, appearing to read 'David Whyte', written over a horizontal line.

David Whyte  
Receiver

Equitrust Income Fund (Receiver Appointed)  
1 September 2012 to 4 November 2012

Employees	Position	Rate	Total Units	Total \$	Administration		Assets		Directors		Employees		Fiduciary		
					Units	\$	Units	\$	Units	\$	Units	\$	Units	\$	
Wlyte, David	Partner	560	125.96	201,504.00	31.10	17,416.00	62.30	34,888.00	6.20	3,472.00	0.00	0.00	26.30	14,778.00	
Somerville, John	Senior Manager	425	148.80	63,240.00	17.50	7,437.50	89.80	36,165.00	8.10	3,442.50	0.00	0.00	33.40	14,195.00	
Brush, David	Manager	390	2.50	975.00	2.50	975.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Bulda, Andrew	Supervisor	350	0.50	175.00	0.50	175.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Demeyere, Chris	Senior Accountant I	310	1.50	465.00	0.00	0.00	1.30	403.00	0.00	0.00	0.00	0.00	0.00	0.00	
Coulston, Jayden	Senior Accountant II	270	21.40	5,778.00	19.10	5,157.00	1.30	351.00	0.00	0.00	1.00	270.00	0.00	0.00	
Want, Andrew	Senior Accountant II	270	123.56	33,355.00	121.10	32,697.00	0.00	0.00	0.00	0.00	0.00	0.00	2.40	648.00	
Tom Hopkin	Tax consultant	240	0.50	120.00	0.30	72.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Pembroke, Elle	Accountant I	220	0.90	198.00	0.90	198.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Jones, Annabel	Accountant II	190	7.70	1,463.00	7.70	1,463.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
<b>TOTAL</b>				<b>432.80</b>	<b>176,153.00</b>	<b>200.20</b>	<b>65,590.50</b>	<b>154.70</b>	<b>73,807.00</b>	<b>14.30</b>	<b>6,914.50</b>	<b>1.00</b>	<b>270.00</b>	<b>62.80</b>	<b>29,571.00</b>
				<b>TOTALING GST</b>	<b>47,615.90</b>										
				<b>AVERAGE HOURLY RATE</b>	<b>407.01</b>										

DISBURSEMENT REPORT  
Equitrust Income Fund (Receiver Appointed)  
1 September 2012 to 4 November 2012

Item	2012.05
Advertising	209.54
Accommodation	329.28
Airfares	255.49
Courier	7.00
Fax	391.85
Mileage	174.55
Parking	6,801.00
Photocopy	3,822.72
Postage	721.80
Printing	726.99
Search Fee	374.52
Travel - Car Rental	50.85
Travel - Taxi	14,092.64
Sub Total	1,409.26
GST	15,501.90
<b>TOTAL</b>	<b>15,501.90</b>

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED (RECEIVERS AND MANAGERS  
APPOINTED (IN LIQUIDATION) ACN 061 383 944

Applicant: **EQUITITRUST LIMITED (RECEIVERS AND MANAGERS  
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

AND

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089  
079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY  
CLASS INCOME FUND ARSN 089 079 729**

ORDER

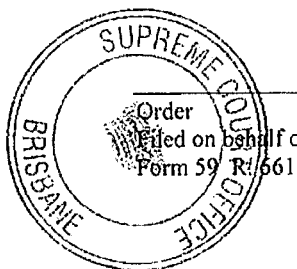
Before: The Honourable Justice Mullins  
Date: 25 October 2012  
Initiating Document: Application filed 21 September 2012

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 22 November 2011 to 31 August 2012, be fixed in the amount of \$837,103.85 (inclusive of GST); and
2. The costs of and incidental to the application filed on 21 September 2012 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed: 

DEPUTY REGISTRAR



GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SZC:JSK:201204781

BNEDOCS Order of Justice Mullins dated 25 October 2012

**TO INVESTORS**

4 January 2013

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

I refer to my previous reports and now provide my tenth update to investors since my appointment as Court appointed Receiver and person responsible for winding up the EIF on 21 November 2011.

With it being in excess of one year since my appointment, this report summarises the actions taken to date and remaining issues to be dealt with to finalise the winding up. My last report to investors was on 9 November 2012. A December 2012 report was delayed due to significant work being undertaken to dispose of a major asset in South Australia (commented upon further below) and the Christmas break.

**1. Property Realisations**

There have been 32 properties sold since my appointment with total gross realisations of approximately \$19.6 million and contracts accepted for six properties totalling approximately \$7.3 million to date as detailed in the tables below:

**1.1 Loan Book Realisations**

Loan Number	Loan (Borrower)	Security location	Contract Sale Price (Excl. GST where applicable)
<b>Securities sold/refinanced</b>			
105648	Mountbell	Ipswich, QLD	545,500
105653	Tweed Central	Murwillumbah, NSW (22 lots)	6,227,285
105667	Resort Corp Admin	Kingscliff, NSW	885,000
105680	Morevale Land	Glenella, QLD	2,250,000
105717	Checkling	Richmond, NSW	2,100,000
105746	Western Land Corporation	Redbank Plains QLD	925,000
105652	Kristine Newton	Lennox Heads	2,750,000
105482	Gamp Developments Pty Ltd	Bowen, QLD	500,000
105622	National Resorts	Bowen, QLD	1,772,295
105004	Taylor AG & SK (refinance)	Birkdale QLD	207,584
105264	East Coast Pty Ltd	Yamba, NSW	1,500,000
			<b>\$19,662,664</b>

There was a significant amount of rates and land tax outstanding on the above properties, which was required to be discharged at settlement.

## 1.2 Properties Under Contract/Subject to Deed of Settlement

As this is a public document, to ensure I do not prejudice completion of the contracts, I will not at this time identify the individual contract values.

Loan Number	Loan (Borrower)	Security location	Settlement Date
105735	Valencia Grove	Griffith, NSW	To be confirmed
105549	Corymbia Estates	Carbrook QLD	30 January 2013
105657	Rosea Pty Ltd	Wongawallen, QLD	17 June 2013
105696	Morvale Land	Port Augusta, SA	31 March 2013
105721	Kele Property Group	Port Macquarie, NSW	7 January 2013
105653	Tweed Central	Murwillumbah, NSW	29 August 2013

## 1.3 Properties Remaining to be Sold

A summary of the eight remaining properties to be realised along with the key outstanding issues to be resolved with respect to each property is provided below. Again, as this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify their expected realisable values.

### (i) Wirrina Cove

Wirrina Corporation Pty Ltd and the EIF are the mortgagees in possession of the Wirrina Cove assets which comprise a resort, golf course, conference centre, caravan park, marina, residential land and rural land.

The resort and surrounding assets have been under the control of the mortgagees since at least 2010.

There was an unsuccessful marketing campaign conducted in September 2011 with the assets having been on the market since that time with no reasonable offers received.

In order to achieve a better outcome for investors it was decided to "break up" the assets and offer the individual components for sale and after resolving the following issues:

- Removal of caveats registered on titles in order to effect a sale of land:- an application to the Supreme Court of South Australia has been made and an Order obtained directing the removal of the caveats. There are still caveats registered on the titles of the marina berth under leases, which are in the process of being removed.
- Recovery of outstanding water and sewerage levies from the condominium body corporate and establishing an agreement going forward:- the condominiums (privately owned) had not paid water and sewerage levies since at least 2008. An agreement has been entered into with the condominium body corporate with respect to the outstanding levies and ongoing billings.
- Recovery of outstanding levies/re-entry of delinquent under leases with respect to marina berths.
- Applying for a new Section 23 Authorisation pursuant to the *Aboriginal Heritage Act 1988*:- the residential land at Wirrina Cove includes 32 allotments on the ocean



front, 21 of which are located on an Aboriginal Site. A Section 23 Authorisation had previously been granted in relation to the relevant allotments to allow a developer to build on the land, however the authorisation did not extend to third parties who acquired the land. As it was not possible to sell the land with the existing authorisation, this authorisation has been revoked and a new authorisation has been applied for, which is anticipated to be granted early in 2013.

- Transfer of water and sewerage operations to a third party supplier:- the mortgagee of the land, Wirrina Corporation Pty Ltd (a wholly owned subsidiary of EIF), currently provides water and sewerage services to land owners at Wirrina Cove. Under the *Water Industry Act 2012 (SA)*, the water industry regulator, Essential Services Commission of SA, requires suppliers of water and sewerage services to be licensed from 1 January 2013. An exemption from a licence has been approved until 30 June 2013 and pending the transfer of the water and sewerage operations to a third party supplier.

Ray White have been engaged to sell the assets at Wirrina Cove and an expressions of interest campaign closed in this respect on 19 December 2012.

Details of the sale are located at <http://wirrinacove.raywhite.com>.

The following assets are available for sale either individually or in one line:

- Resort, golf course and conference centre;
- Caravan park;
- Marina head lease;
- Approximately 100 marina berth sub leases;
- 75 residential lots; and
- 6 undeveloped lots ranging from 2 to 237 hectares in area.

The sale campaign was extensive and resulted in approximately 500 enquiries with 134 expressions of interest received.

At the time of writing this report, the acceptable expressions of interest received are being converted to contracts of sale.

#### (ii) Toowoomba Foundry

The property comprises a 50,290 square metre site situated within the City of Toowoomba QLD, which includes a closed down foundry, offices and warehouses.

An 'Offers to Purchase' campaign conducted by Ray White on behalf of the liquidators of the owner of the site closed on 6 December 2012. The marketing agent is currently finalising negotiations with those parties that submitted offers with a view to executing contracts of sale in the next couple of weeks.

#### (iii) Collingwood Park

The property is an englobo residential development site approximately 77 hectares in size situated in the suburb of Collingwood Park, QLD.

A highly conditional offer for the property was received in May 2012, however following legal advice, the offer was not accepted and a new marketing campaign was undertaken in September and October 2012. Offers have been received for the property, however at

this stage are not at a level that is acceptable to the Receiver. Discussions are ongoing in this respect.

(iv) Maclean

The property is a residential development site approximately 14 hectares in size situated in the town of Maclean, NSW.

The property was passed in at auction on 5 December 2012. The market feedback leading up to, and following the auction expressed some concerns about development costs due to the property being flood prone and having to bring fill onto the site. Discussions are ongoing with interested parties who have been advised that in accordance with the current approvals, no fill is required to be brought onto the site.

The existing development approval is currently being extended and a feasibility study conducted to determine a residual land value.

(v) Cornwallis and Richmond

The properties include a turf farm and development site in Cornwallis, NSW and Richmond, NSW respectively. Both properties are in the control of a Receiver and Manager.

A tender campaign has been undertaken by the Receiver with no offers accepted to date. The third related property was sold by the Receiver and Manager.

(vi) Murwillumbah

There is one remaining lot (23 lots have been sold/under contract to date) of vacant industrial land at Murwillumbah, NSW. An offer has been accepted for this final lot and a contract of sale is being finalised with an expected settlement date of 21 January 2013.

(vii) Gold Coast

The property consists of a residential house and land and is currently subject to possession proceedings, which is to be heard at the end of January 2013.

## **1.4 Legal Proceedings**

There are currently several legal actions 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:

- Possession proceedings are underway with respect to a secured property with the matter to be heard at the end of January 2013;
- Two claims have been filed against the same valuer for negligence and damages in excess of \$10 million. Expert witnesses are currently preparing reports to progress the claims. Any amount recoverable will be sought against a professional indemnity insurance policy;
- A deed of settlement has been executed with respect to a claim against a guarantor. Filing for default judgment against the remaining guarantors is underway;
- Monetary judgement has been obtained against a guarantor, however a cross claim has been filed by the borrower. The matter is likely to go to trial in early 2013;



- Several proceedings are ongoing against a bankrupt/related parties to realise his interest in a property. This is likely to result in a substantial recovery for the Fund; and
- Other claims are still being considered against borrowers/guarantors/valuers to determine if commercial recoveries are achievable.

The actions are expected to realise several million dollars for the benefit of Investors, although this may take some time to realise.

### **1.5 Overhead Expenses/Services Agreement**

Upon my appointment, it was determined that costs being incurred by Equititrust Limited (Receivers and Managers Appointed) (In Liquidation) ("EL") as Responsible Entity ("RE") for the EIF was approximately \$500,000 per month, which in my view was extremely high in relation to the management of 29 loans and for the winding up of the EIF.

My ability to control overheads was limited because staff and consultants were not engaged directly by EL as RE of the EIF but were engaged by a separate company, ECG Administration Pty Ltd (ECGA) on behalf of the RE. Administrators were appointed to ECGA on 15 February 2012.

In order to reduce and to obtain greater control of overhead costs associated with the employment of staff and consultants and the provision of plant and equipment, I negotiated a services agreement. The services agreement provided that an entity would provide certain services to EL to enable it to carry on the business of the RE for the purposes of the winding down of the Fund, such as day-to-day management, accounting and taxation reporting, information technology services, corporate administration services as well as the provision of staff and consultants and the use of the business premises from which EL operated. As a result of the implementation of the services agreement, EL's operating costs were reduced to approximately \$147,000 per month. Under the terms of the services agreement, the intention had been for the staff and consultants to be transferred to the new service provider, however this had not been completed at the time of the administrators' appointment to ECGA. As a result, the staff and consultants were terminated by the administrators on 16 March 2012 and I employed 7 former staff/consultants direct as receiver of the EIF.

Following ongoing reductions of staff/consultants and the premises move, and prior to termination of the services agreement, the monthly overhead costs had been reduced to between \$65K and \$70K per month. This monthly overhead cost has reduced as the number of staff/consultants decreased as the loan book was realised.

From 21 December 2012, there will be one remaining staff member assisting plus an IT consultant with the winding up of the Fund, which will reduce overheads further to approximately \$21,000 per month. It is anticipated that the remaining staff member will finish up by the end of March 2013 resulting in the closure of the Bundall office and a reduction of overhead costs to approximately \$7,200 a month, which will relate to maintenance of the IT infrastructure.

## **2. Creditor Claims**

### **2.1 Secured Creditors**

As at the date of my appointment, the debt due to secured creditors totalled approximately \$9.5 million. The secured creditors' claims have now been discharged, with the exception of approximately \$1.1 million in respect of bank guarantees issued by the National Australia Bank.

The bank guarantees support bonds held by various Councils with respect to certain development sites. I am currently investigating the action required for the bonds to be released by the respective Councils.

### **2.2 Other Creditors**

Other creditors that must be paid in priority to Investors 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.

There is a matter to be resolved with respect to an amount advanced by the McIvor Superannuation Fund to the EIF for approximately \$2.46m. The amount was advanced in or around February 2011 pursuant to a loan agreement, which provides for an interest charge of 15% per annum. The current balance of the loan is approximately \$3.3 million. Should it be substantiated that the McIvor Superannuation Fund has a valid claim, this amount will rank in priority to Investors.

### **2.3 Claims by the Liquidators of EL**

The liquidators of EL, Hall Chadwick, have lodged an application for directions with the Court in relation to the extent to which they are entitled to be indemnified out of EIF's assets for remuneration and expenses incurred by them as Administrators totalling approximately \$805,000. Their application is scheduled to be heard in February 2013, however as they failed to meet the deadline to serve the application on me then the hearing is likely to be adjourned.

I have previously queried the basis of their claims and their right to claim against the EIF's assets and bearing in mind:

- I was already appointed to wind up the EIF at the time of their appointment and was the Receiver of the EIF's assets;
- The statements made by Richard Albarran at the first meeting of creditors where he advised Investors of the EIF that his costs and expenses would not come out of the Fund;
- The Court Order of 29 February 2012 (which the Administrators consented to) and which clarified the roles of the various insolvency practitioners in order to save the duplication of costs; and



- Richard Albarran's confirmation at the second meeting of creditors that if Hall Chadwick were appointed Liquidators of EL they would not seek reimbursement of any costs from the EIF as Liquidators.

### 3. Piper Alderman Class Action

I have been advised that Piper Alderman is continuing to progress the claims available to Unit Holders in relation to the Fund's demise. Unit holders wishing to be part of the anticipated action should contact Shaan Palmer of Piper Alderman on (02) 9253 9920.

### 4. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period since my appointment on 21 November 2011 to 31 December 2012.

Summary of Receipts and Payments for the Period 21 November 2011 to 31 December 2012		
<b>Receipts</b>		
Interest Income		60,133.06
<i>Loan Recoveries:</i>		
Checking Pty Ltd	1,709,820.00	
Corymbia Corporation Pty Ltd	11,887.64	
Corymbia Estates Pty Ltd	84,316.62	
East Coast Pty Ltd	1,731,129.80	
Elysian Marketing Pty Ltd	412,821.57	
Gamp Developments Pty Ltd	481,996.99	
Hollyander	344,457.88	
Kristine Newton	2,665,906.97	
Morvale Land Pty Ltd	2,000,000.00	
Mountbell Pty Ltd	641,481.75	
Resort Corporation Australia (No 2) Pty Ltd	823,645.90	
Rosea Pty Ltd	415,416.62	
National Resorts Corporation	1,772,295.45	
Taylor, AG & SK	215,438.34	
Toowoomba (Foundry Shopping Centre) Pty Ltd	735,297.49	
Tweed Central Pty Ltd	6,269,332.23	
Valencia Grove Pty Ltd	16,204.63	
Western Land Corporation	1,019,968.62	21,351,418.50
Petty Cash on hand		69.10
<i>Other Income:</i>		
Pre-appointment ATO lodgements	69,453.00	
Fees earned from Release of Mortgage	550.00	70,003.00



Refunds received	360.50
Transfer from Pre-appointment accounts	1,263,719.13
<b>Total Receipts</b>	<b>22,745,703.29</b>

#### Payments

Bank Charges		53,246.72
Consultant fees		897.00
<i>Distressed Loan funding:</i>		
Boothers Pty Ltd	41,358.40	
Checkling Pty Ltd	230,638.19	
Corymbia Corporation Pty Ltd	462,878.83	
Corymbia Estates Pty Ltd	66,708.25	
CTP Pty Ltd	21,571.00	
East Coast Pty Ltd	391,432.40	
Gamp Developments Pty Ltd	108,558.74	
Glenrowan Land Pty Ltd	4,215.00	
Gonfanon Pty Ltd	10,678.62	
Kele Property Group (Port	47,865.58	
Morvale Land Pty Ltd	55,735.66	
Mountbell Pty Ltd	180,436.78	
Newton, Kristine Lorraine	4,546.18	
Resort Corporation Australia (No 2) Pty Ltd	117,136.25	
Toowoomba (Foundry Shopping Centre) Pty Ltd	1,108,786.85	
Tweed Central Pty Ltd	862,026.10	
Valencia Grove Pty Ltd	150,309.13	
Western Land Corporation	265,312.72	
Windsor Turf Pty Ltd	166,503.72	
Wirrina Cove	2,117,631.32	6,414,329.72
Office Establishment expenses		14,909.51
Document Production		6,763.86
GST Paid		322,921.00
Insurance		28,212.73
IT expenses		97,073.83
Legal Fees		931,923.44
Office Rental charge		74,986.01
PAYG Paid		76,803.00
<i>Receivers Fees (Court approved)</i>		
Remuneration	837,103.85	
Outlays	20,409.09	857,512.94
<i>Reimbursement of Expenses - Equititrust Limited</i>		
Pre-appointment (prior to 21 November 2011)	653,867.63	



Post-appointment (subsequent to 21 November 2011)	305,682.62	959,550.25
Secured Creditor Fees and Charges (Bill Facility)		600,527.80
<i>Secured Creditor distribution</i>		
Commonwealth Bank of Australia	54,409.25	
National Australia Bank	8,400,000.00	8,454,409.25
Statutory Fees		1,199.00
Superannuation Paid		22,270.21
Telephone, Fax & Internet		2,494.80
Wages & associated reimbursements		279,559.08
<b>Total Payments</b>		<b>19,199,590.15</b>
<b>Closing Cash at Bank</b>		<b>3,546,113.14</b>

I note that the 'Distressed Loan Funding' relates to marketing costs, agents' fees, consultants' fees, legal fees and rates and land tax. The incurring of these costs are considered essential in terms of successfully realising the assets subject to the Fund's securities.

Toowoomba (Foundry Shopping Centre) Pty Ltd includes rates of approximately \$955,000, insurance of approximately \$65,000 and marketing costs of approximately \$40,000.

Wirrina Cove includes ongoing trading expenses of approximately \$984,000, marketing expenses of approximately \$367,000, insurance of approximately \$229,000, legal expenses of approximately \$180,000 and Pay as You Go withholding tax of approximately \$285,000.

## 5. Estimated Return to Investors

I provide below an estimated return to investors of between 11 and 19 cents in the dollar as at 31 December 2012 as follows:

	Low	High
	\$000's	\$000's
<b>Total estimated selling prices</b>	<b>32,145</b>	<b>49,205</b>
Less: Selling costs - marketing and agents fees (3.5%)	(1,125)	(1,722)
Bank Guarantees (net of cash at bank)	2,446	2,446
Other loan	(3,300)	(3,300)
Land Tax and Rates	(8,211)	(8,211)
Other unsecured creditors	(587)	(587)
Receivers fees	(372)	(372)



Estimated net amount available to Investors as at 31 December 2012	20,996	37,459
Total investor units	193,916	193,916
Estimated return in the dollar	\$0.11	\$0.19

The estimated return in the dollar has reduced from between 15 and 22 cents in the dollar as provided in my 9<sup>th</sup> report to Investors dated 9 November 2012 to between 11 and 19 cents in the dollar primarily due to a revision of the estimated values of certain property securities (based on offers received being less than the professional valuations held) and the accrual of outstanding rates and land tax.

The above table does not take into account future operating costs, interest on the other loan, future Receivers fees and rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Subject to the sale of the properties currently on the market and where sale campaigns are to commence and particularly depending on the sale of the two largest properties, I am hopeful that I will be able to commence interim distributions to Investors before 30 June 2013. This will be after paying secured creditors, land tax and rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

## 6. Receiver's Remuneration and Expenses

As advised in my prior updates to Investors, an application to the Court for the approval of my remuneration was filed on 21 September 2012.

The application was heard on 25 October 2012 with the Court approving my remuneration for the period from 21 November 2011 to 31 August 2012 in the amount of \$837,103.85 (inclusive of GST). My fees for this period have now been paid.

I anticipate that my next application for approval of my remuneration will be in January 2013. I will continue to advise Investors of all future applications with respect to seeking approval of my remuneration.

I attach a summary of my current remuneration and outlays outstanding for the period 1 September 2012 to 31 December 2012. My remuneration incurred during this period totals \$372,478 plus outlays of \$22,773 plus GST.

## 7. Finalisation

The finalisation of the winding up of the Fund will include the following:

- (i) Realise the remaining assets of the Fund noted in section 1.2 and 1.3 of this report, which I anticipate will be completed this year;
- (ii) Finalise the remaining legal proceedings and other claims where commercial recoveries are considered achievable. The time frames to finalise these matters will primarily be determined by the Courts;



- (iii) Pay outstanding creditor claims that have a priority over Investors;
- (iv) Distribute surplus proceeds to Investors in proportion to the number of units of which they are the registered holder. As noted in section 6 of this report, I anticipate that an interim distribution will be made to Investors by 30 June 2013. A final distribution to Investors will be made once all assets have been realised; and
- (v) Once the winding up is complete, a registered company auditor will be engaged to audit the final accounts of the Fund. A copy of the report prepared by the auditor will be sent to Investors within 30 days after the report is received from the auditor.

## **8. 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

## **9. Queries**

Monthly reports will continue to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au).

The remaining staff engaged by me to assist in the winding up of the Fund are located at the following address:

Postal Address: Equititrust Income Fund	Phone: 07 5510 4870
Wyndham Building	Fax: 07 5510 4907
Level 9, 1 Corporate Court	
BUNDALL QLD 4217	

Andrew Want of this office is, however, the key point of contact for all investor queries. Andrew can be contacted by the following;

Phone: 07 3237 5999  
Email: [andrew.want@equitrustincomefund.com.au](mailto:andrew.want@equitrustincomefund.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 September 2012 to 31 December 2012

NAME	UNIT	UNIT COST	UNIT VALUE	UNIT COST	UNIT VALUE	UNIT COST	UNIT VALUE	UNIT COST	UNIT VALUE	UNIT COST	UNIT VALUE	UNIT COST	UNIT VALUE			
Whyte, David	Partner	560	279.70	156,632.00	42.40	23,744.00	190.20	106,512.00	8.10	4,536.00	0.00	0.00	39.00	21,840.00		
Somersville, John	Senior Manager	425	316.80	134,640.00	35.00	14,875.00	212.60	90,355.00	18.10	7,692.50	0.00	0.00	51.10	21,717.50		
Bruske, David	Manager	390	2.50	975.00	2.50	975.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Bulda, Andrew	Supervisor	350	0.50	175.00	0.50	175.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Demeyere, Chris	Senior Accountant I	310	1.30	403.00	0.00	0.00	1.30	403.00	0.00	0.00	0.00	0.00	0.00	0.00		
Coulston, Jayden	Senior Accountant II	270	24.70	6,669.00	22.40	6,048.00	1.30	351.00	0.00	0.00	1.00	270.00	0.00	0.00		
Want, Andrew	Senior Accountant II	270	262.10	70,767.00	250.60	67,662.00	1.30	351.00	4.10	1,107.00	0.00	0.00	6.10	1,647.00		
Hogbin, Tom	Tax Consultant	240	0.30	72.00	0.30	72.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Mitchalk, Dean	Accountant I	220	1.40	308.00	0.00	0.00	0.00	0.00	1.40	308.00	0.00	0.00	0.00	0.00		
Pembroke, Elle	Accountant I	220	1.70	374.00	1.70	374.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Jones, Annabel	Accountant II	190	7.70	1,463.00	7.70	1,463.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
<b>TOTAL</b>													<b>1,463.00</b>	<b>1,463.00</b>	<b>4,536.00</b>	<b>4,536.00</b>

DISBURSEMENT REPORT

Equititrust Income Fund (Receiver Appointed)  
 1 September 2012 to 31 December 2012

Item	3,476.28
Airfares	337.66
Courier	7.00
Fax	1,242.85
Mileage	361.82
Parking	9,188.70
Photocopy	4,881.87
Postage	870.43
Search Fee	1,069.31
Statutory Advertising	209.54
Travel - Accomodation	1,077.60
Travel - Car Rental	50.85
Travel - Taxi	22,773.91
Sub Total	2,277.39
GST	25,051.30
TOTAL	

**TO INVESTORS**

28 February 2013

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

I refer to my previous reports and now provide my eleventh 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**

There have been 34 properties sold since my appointment with total gross realisations of approximately \$20.9 million as detailed in the table below:

**1.1 Loan Book Realisations**

Loan Number	Loan (Borrower)	Security location	Contract Sale Price (Excl. GST where applicable)
<b>Securities sold/refinanced</b>			
105648	Mountbell	Ipswich, QLD	545,500
105653	Tweed Central	Murwillumbah, NSW (23 lots)	6,612,285
105667	Resort Corp Admin	Kingscliff, NSW	885,000
105680	Morevale Land	Glenella, QLD	2,250,000
105717	Checkling	Richmond, NSW	2,100,000
105746	Western Land Corporation	Redbank Plains QLD	925,000
105652	Kristine Newton	Lennox Heads	2,750,000
105482	Gamp Developments Pty Ltd	Bowen, QLD	500,000
105622	National Resorts	Bowen, QLD	1,772,295
105004	Taylor AG & SK (refinance)	Birkdale QLD	207,584
105264	East Coast Pty Ltd	Yamba, NSW	1,500,000
105721	Kele Property Group	Port Macquarie, NSW	880,000
			<b>\$20,927,164</b>

There has been a significant amount of rates and land tax outstanding on the above properties, which was required to be discharged at settlement.

## **1.2 Properties Under Contract/Subject to Deed of Settlement**

As this is a public document and to ensure I do not prejudice completion of the contracts, I will not at this time identify the individual contract values.

<b>Loan Number</b>	<b>Loan (Borrower)</b>	<b>Security location</b>	<b>Settlement Date</b>
105735	Valencia Grove	Griffith, NSW	20 March 2013
105549	Corymbia Estates	Carbrook QLD	31 March 2013
105657	Rosea Pty Ltd	Wongawallen, QLD	17 June 2013
105696	Morvale Land	Port Augusta, SA	31 March 2013
105653	Tweed Central	Murwillumbah, NSW	29 August 2013
105739	Sunset Cove Developments	Wirrina Cove, SA	Various

The status of the contracts/accepted offers with respect to the Wirrina Cove property is discussed further in section 1.3 of this report.

## **1.3 Properties Remaining to be Sold**

A summary of the status of the six remaining properties to be realised is provided below. Again, as this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify their expected realisable values.

### **(i) Wirrina Cove**

As advised in my tenth report to Investors, Ray White were engaged to sell the assets at Wirrina Cove. At the time of writing this report, a total of 105 offers have been accepted and/or contracts exchanged totalling approximately \$6.88 million with respect to residential land, rural land and marina berth under leases. A summary is provided below.

	<b>Offers accepted/contracts exchanged (number)</b>	<b>Lots/marina berths remaining (number)</b>
Marina berths	49	58
Residential land	53	22
Rural land	2	0
Caravan Park	1	0
<b>Total</b>	<b>105</b>	<b>80</b>

Discussions are ongoing with parties interested in acquiring the Resort, Golf Course, and Conference Centre.

There are still a number of issues that are currently being resolved in order to maximise the realisable value of the assets including:

- Removal of caveats registered on titles in order to effect a sale of the land and/or the registering of marina berth under leases.

- Recovery of outstanding levies/re-entry of delinquent under leases with respect to marina berths.
- Obtaining a new Section 23 Authorisation pursuant to the *Aboriginal Heritage Act 1988* for 32 allotments on the ocean front (Esplanade lots), 21 of which are located on an Aboriginal Site.
- Transfer of water and sewerage operations to Yankalilla District Council are currently in advanced stages of negotiations. Council agreed at its meeting on 21 February 2013 to take over the water and sewerage infrastructure. This transfer needs to occur to effectuate settlement of the residential land contracts.

(ii) Toowoomba Foundry

The marketing agent is currently finalising negotiations with an interested party with a contract offer expected within the next few days.

(iii) Collingwood Park

A contract of sale has been submitted to a party for consideration with negotiations ongoing with other parties who have expressed an interest in the property.

(iv) Maclean

Negotiations are ongoing with interested parties with a contract offer expected within the next few days.

(v) Cornwallis and Richmond

The Receiver will shortly commence a further sale campaign for both properties.

(vi) Gold Coast

The property consists of a residential house and land and is subject to possession proceedings, which are currently on foot. The proceedings were defended and are now subject to me lodging a claim and statement of claim by 18 March 2013 with mediation to take place by 7 June 2013.

## **1.4 Legal Proceedings**

As advised in my tenth 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, possession proceedings are underway with respect to a secured property. Mediation is to take place by 7 June 2013 after the claim is lodged and responded to;
- Two claims have been filed against the same valuer for negligence and damages in excess of \$10 million. Expert witnesses are currently finalising reports to progress the claims. Any amount recoverable will be sought against a professional indemnity insurance policy;

- A deed of settlement has been executed with respect to a claim against a guarantor. Default judgment against the remaining guarantors has been obtained and letters of demand have been served;
- Monetary judgement has been obtained against a guarantor, however a cross claim has been filed by the borrower. The matter is likely to go to trial in early/mid 2013 once evidence has been considered;
- Several proceedings are ongoing against a bankrupt/related parties to realise an interest in the surplus proceeds from the sale of a property. This is likely to result in a substantial recovery for the Fund; and
- Other claims are still being considered against borrowers/guarantors/valuers to determine if commercial recoveries are achievable.

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 tenth report to Investors, secured creditors' claims have been discharged, with the exception of approximately \$1.1 million in respect of bank guarantees issued by the National Australia Bank.

The bank guarantees support bonds held by various Councils with respect to certain development sites. Discussions are taking place with the councils to determine when the guarantees may be released.

### **2.2 Other Creditors**

As advised in my tenth report to Investors, there are a number of creditors that must be paid in priority 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.

I am still investigating the amount advanced by the Mclvor Superannuation Fund to the EIF, the current balance of which is approximately \$3.3 million. Should it be substantiated that the Mclvor Superannuation Fund has a valid claim, this amount will rank in priority to Investors.

### **2.3 Claims by the Liquidators of EL**

As advised in my tenth report to Investors, the liquidators of EL, Hall Chadwick, lodged an application for directions with the Court in relation to the extent to which they are entitled to



be indemnified out of EIF's assets for remuneration and expenses incurred by them as Administrators totalling approximately \$805,000.

Hall Chadwick has not filed the application for directions as previously foreshadowed and the Court has now adjourned the hearing to a date to be fixed. It is therefore unclear if this will proceed.

### 3. Piper Alderman Class Action

Piper Alderman has provided the following update:

***“Class Action***

*Piper Alderman has completed their preliminary investigations and have finalised the principal claims to be brought against various parties for the benefit of unit holders in relation to the losses sustained to the Equititrust Income Fund (the Fund). Prior to the commencement of the claims (and with a view to obtaining further information and documentation relevant to the prosecution of the claims), Piper Alderman intend to undertake public examinations, which involves obtaining documentation through the court process from parties associated with Equititrust Limited (ET) and the Fund and examining relevant persons in court such as the former directors and auditors of Equititrust and the Fund. To this end, Piper Alderman is presently liaising with Hall Chadwick (ET's liquidators) with a view to collectively undertaking examinations. Piper Alderman has also taken action to obtain the requisite authority from ASIC to undertake examinations independently of Hall Chadwick in the event that the dealings with Hall Chadwick do not eventuate in a collaborative approach. Further, if the examinations do not eventuate in the short term, the claims may be instituted as presently formulated.*

***Contact***

*Should you have any questions about the claims, please contact William Nolan (Tel) 02 9253 9921; (e-mail) [wnolan@piperalderman.com.au](mailto:wnolan@piperalderman.com.au)”*

### 4. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period 1 January 2013 to 31 January 2013.

Summary of Receipts and Payments for the Period 1 January 2013 to 31 January 2013	
Opening Cash at Bank	3,546,113.14
<b>Receipts</b>	
Interest Income	5,764.76
<i>Loan Recoveries:</i>	
Kele Property Group (Port Macquarie) Pty Ltd	1,098,741.72
Morvale Land Pty Ltd	1,636.60
Rosea Pty Ltd	18,333.33



Toowoomba (Foundry Shopping Centre) Pty Ltd	3,527.33	
Tweed Central Pty Ltd	491,360.94	
Valencia Grove Pty Ltd	354,000.00	1,967,599.92
Receipt of Monies held in Trust - Legal		8,172.55
<b>Total Receipts</b>		<b>1,981,537.23</b>

#### Payments

Bank Charges		24.40
<i>Distressed Loan funding:</i>		
Boothers Pty Ltd	5,424.58	
Checkling Pty Ltd	66.00	
Corymbia Corporation Pty Ltd	22,076.92	
Corymbia Estates Pty Ltd	9,873.94	
East Coast Pty Ltd	2,640.00	
Kele Property Group (Port Macquarie) Pty Ltd	306,174.11	
Morvale Land Pty Ltd	1,400.52	
National Resorts Corporation	8,311.05	
Toowoomba (Foundry Shopping Centre) Pty Ltd	10,284.08	
Tweed Central Pty Ltd	139,018.45	
Valencia Grove Pty Ltd	13,681.36	
Western Land Corporation	28,684.61	
Wirrina Cove	132,214.22	679,849.84
GST Paid		211,233.00
Insurance		552.44
IT expenses		10,670.64
Legal Fees		89,905.04
Office Rental charge		5,460.95
PAYG Paid		8,120.00
Wages & associated reimbursements		8,160.62
<b>Total Payments</b>		<b>1,013,976.93</b>
<b>Closing Cash at Bank</b>		<b>4,513,673.44</b>

I note that the 'Distressed Loan Funding' relates to marketing costs, agents' fees, consultants' fees, legal fees and rates and land tax. The incurring of these costs are considered essential in terms of successfully realising the assets subject to the Fund's securities.





## 5. Estimated Return to Investors

I provide below an estimated return to Investors of between 11 and 17 cents in the dollar as at 31 January 2013 as follows:

	Low	High
	\$000's	\$000's
Cash at Bank	4,513	4,513
Estimated selling prices	32,130	44,765
<i>Less:</i>		
Bank guarantees	(1,100)	(1,100)
Selling costs (3.5% of sale price)	(1,124)	(1,567)
Other loan	(3,300)	(3,300)
Land tax & rates	(8,272)	(8,272)
Other unsecured creditors	(1,300)	(1,200)
Receiver's fees	(532)	(532)
<b>Estimated net amount available to investors as at 31 Jan 2013</b>	<b>21,015</b>	<b>33,307</b>
Total investor units	193,916	193,916
<b>Estimated return in the dollar</b>	<b>0.11</b>	<b>0.17</b>

The above table does not take into account future operating costs, interest on the other loan, future Receivers fees and rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Subject to the sale of the properties currently on the market and where sale campaigns are to commence and particularly depending on the sale of the two largest properties, I anticipate commencing interim distributions to Investors shortly after 30 June 2013. The offer received for one of the two largest properties and where a contract has been issued is anticipated to settle on 28 June 2013. The other large property in South Australia has a number of different settlement dates, however the residential properties will likely settle by 30 June 2013.

The distribution to investors will take place after paying secured creditors, land tax and rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

## 6. Updated Unit Price

I have received numerous requests to provide an updated unit price. In this regard, I provide below an updated unit price as at 31 December 2012 of 16 cents, which is based on the mid-point of the high and low estimated selling prices of the secured assets as at 31 December 2012.

	\$000's
Total Value of Fund Assets as at 31 December 2012 (net of land tax and rates)	38,099
Less value of NAB facility	(1,100)
	<hr/>
	36,999
Less Creditors and Other Payables	(6,375)
	<hr/>
<b>Total Net Value of Fund Assets</b>	<b>30,624</b>
<b>Total Number of Units as at 31 December 2012</b>	<b>193,916</b>
<b>Unit Price</b>	<b>0.16</b>

Please note that the unit price has been calculated based on unaudited management accounts as at 31 December 2012.

I attach a copy of a letter to Centrelink confirming the unit price as at 31 December 2012, which may be used by Investors to assist with the revision of their pensions.

I have previously 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 in this instance.

## 7. Receiver's Remuneration and Expenses

I attach a summary of my current remuneration and outlays outstanding for the period 1 September 2012 to 31 January 2013. My remuneration incurred during this period totals \$504,571.00 plus outlays of \$27,868.52 plus GST.

I anticipate that my next application for approval of my remuneration will be in March 2013. I will continue to advise Investors of all future applications with respect to seeking approval of my remuneration.

## 8. 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

## 9. Queries

Monthly reports will continue to be uploaded to the websites [www.equititrust.com.au](http://www.equititrust.com.au) and [www.equitrustincomefund.com.au](http://www.equitrustincomefund.com.au).

The remaining staff engaged by me to assist in the winding up of the Fund are located at the following address:

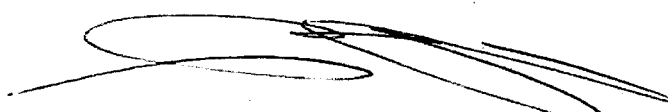
Postal Address: Equititrust Income Fund	Phone: 07 5510 4870
Wyndham Building	Fax: 07 5510 4907
Level 9, 1 Corporate Court	
BUNDALL QLD 4217	

Andrew Want of this office is, however, the key point of contact for all investor queries. Andrew can be contacted by the following;

Phone: 07 3237 5999  
Email: [andrew.want@equitrustincomefund.com.au](mailto:andrew.want@equitrustincomefund.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

**Equitrust Income Fund (Receiver Appointed)  
1 September 2012 to 31 January 2013**

EMPLOYEE	POSITION	RATE	12/01/12	12/02/12	12/03/12	12/04/12	12/05/12	12/06/12	12/07/12	12/08/12	12/09/12	12/10/12	12/11/12	12/12/12	12/13/12	12/14/12	12/15/12	12/16/12	12/17/12	12/18/12	12/19/12	12/20/12	12/21/12	12/22/12	12/23/12	12/24/12	12/25/12	12/26/12	12/27/12	12/28/12	12/29/12	12/30/12	12/31/12	TOTAL	AVERAGE TO DATE		
Whyte, David	Partner	560	66.10	37,016.00	276.30	154,728.00	11.40	6,384.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	40.00	22,400.00			
Somerville, John	Senior Manager	425	48.70	20,697.50	293.20	124,610.00	23.60	10,030.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	60.40	25,670.00			
Griffin, Maree	Associate	415	0.20	83.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Brushe, David	Manager	390	2.50	975.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Bulda, Andrew	Supervisor	350	0.50	175.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Demeyere, Chris	Senior Accountant I	310	0.00	0.00	1.30	403.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Coulston, Jayden	Senior Accountant II	270	25.20	6,804.00	1.30	351.00	0.00	0.00	1.00	270.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Want, Andrew	Senior Accountant II	270	325.50	87,885.00	2.80	756.00	4.10	1,107.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.10	1,647.00
Hogbin, Tom	Senior Accountant II	240	0.30	72.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Michalk, Dean	Senior Accountant II	220	0.00	0.00	0.00	0.00	1.40	308.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Pembroke, Elle	Accountant I	220	1.70	374.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Jones, Annabel	Accountant I	190	7.70	1,463.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Alexander, Samuel	Consultant II	150	0.90	135.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Muller, Leisa	Practice Assistant	125	0.80	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Richardson, Ashley	Administrative Assistant	75	1.70	127.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		

**DISBURSEMENT REPORT  
Equitrust Income Fund (Receiver Appointed)  
1 September 2012 to 31 January 2013**

Item	Amount
Airfares	4,394.46
Car Hire	200.86
Courier	464.07
Fax	7.00
General	2,567.87
Mileage	1,226.40
Parking	318.18
Photocopy	12,653.40
Postage	4,904.53
Search Fee	885.93
Taxi fares	245.82
Sub Total	<b>27,868.52</b>
GST	2,786.85
<b>TOTAL</b>	<b>30,655.37</b>

**TO WHOM IT MAY CONCERN**

28 February 2013

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

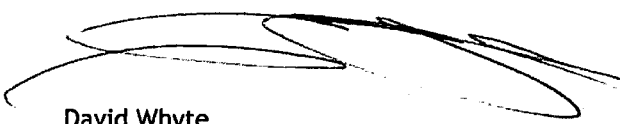
I refer to my court appointment on 21 November 2011 as interim Receiver and subsequent appointment on 23 November 2011 as Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution.

I provide an update on the estimated unit price of the fund as at 31 December 2012, calculated as follows:

	\$'000's
Total Value of Fund Assets as at 31 December 2012 (net of land tax and rates)	38,099
Less value of NAB facility	(1,100)
	36,999
Less Creditors and Other Payables	(6,375)
<b>Total Net Value of Fund Assets</b>	<b>30,624</b>
<b>Total Number of Units as at 31 December 2012</b>	<b>193,916</b>
<b>Unit Price</b>	<b>0.16</b>

Should you have any queries in respect of the above, please contact Andrew Want of my office on (07) 3237 5711.

Yours faithfully,



David Whyte  
Receiver

**TO INVESTORS**

18 April 2013

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

I refer to my previous reports and now provide my twelfth update to Investors since my appointment as Court appointed Receiver and person responsible for winding up the EIF on 21 November 2011. This report has been delayed by three weeks as I wanted to be in a position to confirm that one of the substantial assets in the Fund, being the Collingwood Park property, is now subject to contract with this being executed on 10 April 2013.

In addition, I am pleased to advise that the contract of sale to transfer the water and sewerage infrastructure and services at Wirrina Cove to Yankalilla Council was executed yesterday with settlement due on 31 May 2013. Completion of this sale will then trigger settlement of the 75 residential lots at Wirrina Cove as this was a condition of the sales. These items are further discussed at Section 1 below.

**1. Property Realisations**

Provided below is a summary of the status of the remaining properties awaiting settlement or still to be sold.

**1.1 Properties Under Contract/Subject to Deed of Settlement**

As this is a public document and to ensure I do not prejudice completion of the contracts, I will not at this time identify the individual contract values.

Loan Number	Loan (Borrower)	Security location	Settlement Date
105735	Valencia Grove	Griffith, NSW	22 April 2013
105549	Corymbia Estates	Carbrook QLD	14 May 2013
105657	Rosea Pty Ltd	Wongawallen, QLD	17 June 2013
105696	Morvale Land	Port Augusta, SA	30 April 2013
105653	Tweed Central	Murwillumbah, NSW	29 August 2013
105665	Corymbia Corporation	Collingwood Park, QLD	30 August 2013
105385	East Coast	Maclean, NSW	13 June 2013
105739	Sunset Cove Developments	Wirrina Cove, SA	Various

Please note that the settlement dates for the properties at Griffith, Carbrook and Port Augusta have been extended since my eleventh report to investors. The extensions were granted at the request of the purchaser with an extension fee and/or default interest applicable.

1

All properties noted above are subject to unconditional contracts with the exception of the following:

(i) Wurrina Cove

Ray White is continuing with the sale of the assets at Wurrina Cove. At the time of writing this report, a total of 134 offers have been accepted and/or contracts exchanged totalling approximately \$7.87 million with respect to residential land, rural land and marina berth under leases. A summary is provided below.

	Offers accepted/contracts exchanged (number)	Lots/marina berths remaining (number)
Marina berths	63	42
Residential land	68	7
Rural land	2	0
Caravan Park	1	0
<b>Total</b>	<b>134</b>	<b>49</b>

Discussions are ongoing with interested parties in acquiring the Resort, Golf Course, and Conference Centre and I anticipate that a contract will be finalised in the coming weeks. Following feedback from the sale campaign, an asking price of \$3 million has been set for this part of the Wurrina Cove assets.

The key issues that are/were required to be resolved to effect settlement of the above mentioned contracts include:

- Removal of caveats registered on titles and obtaining consent from a subsequent mortgagee. After protracted negotiations, I anticipate that the withdrawal of caveats will be completed in the next two weeks along with consent being granted by the mortgagee.
- Obtaining a new Section 23 Authorisation pursuant to the *Aboriginal Heritage Act 1988* for 32 allotments on the ocean front (Esplanade lots), 21 of which are located on an Aboriginal Site. This approval was received from the Minister's office on 15 April 2013.
- Transfer of the water and sewerage operations to Yankalilla District Council. Under the terms of the contract of sale, which was executed on 17 April 2013, the water and sewerage operations will be transferred to Council by 31 May 2013.

(ii) Collingwood Park

A contract was executed on 10 April 2013, which is conditional upon the purchaser obtaining approval from the Ipswich City Council and the Australian Government Department of Sustainability, Water, Population and Communities to clear the vegetation on the site. It is anticipated that the approvals will be obtained by 31 July 2013 with settlement scheduled 30 days thereafter. The contract does allow the purchaser to extend the contract for up to 28 days up to a maximum of three times upon

payment of a non-refundable fee of \$78,706.85 (for each extension) if the approvals have not been obtained.

## **1.2 Properties Remaining to be Sold**

A summary of the status of the three remaining properties to be realised is provided below. Again, as this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the properties, I will not at this time identify their expected realisable values.

### **(i) Toowoomba Foundry**

Negotiations are ongoing with an interested party and I am hopeful that a contract will be finalised shortly. The site has various contamination and heritage issues, which has resulted in protracted contract negotiations.

### **(ii) Cornwallis and Richmond**

The Receiver has commenced a sale campaign with tenders closing on 23 April 2013.

### **(iii) Gold Coast**

The property consists of a residential house and land and is subject to possession proceedings, which are currently on foot. I have filed a claim and statement of claim and are currently awaiting for the defendant to file a defence. It is anticipated that mediation will take place by 7 June 2013.

## **1.3 Legal Proceedings**

As advised in my eleventh 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, possession proceedings are underway with respect to a secured property. Mediation is to take place by 7 June 2013 after the claim is lodged and responded to;
- Two claims have been filed against the same valuer for negligence and damages in excess of \$10 million. Expert witnesses are currently finalising reports to progress the claims. Any amount recoverable will be sought against a professional indemnity insurance policy;
- A deed of settlement has been executed with respect to a claim against a guarantor. Default judgment against the remaining guarantors has been obtained and letters of demand have been served. I anticipate that a sequestration order will be obtained bankrupting the guarantors;
- Monetary judgement has been obtained against a guarantor, however a cross claim has been filed by the borrower. The matter is likely to go to trial in mid-2013 once evidence has been considered;
- Several proceedings are ongoing against a bankrupt/related parties to realise an interest in the surplus proceeds from the sale of a property. This is likely to result in a substantial recovery for the Fund; and



- Other claims are still being considered against borrowers/guarantors/valuers to determine if commercial recoveries are achievable.

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 eleventh report to Investors, secured creditors' claims have been discharged, with the exception of approximately \$1.1 million in respect of bank guarantees issued by the National Australia Bank.

The bank guarantees support bonds held by various Councils with respect to certain development sites. Discussions are ongoing with the councils to determine when the guarantees may be released.

### **2.2 Other Creditors**

As advised in my eleventh report to Investors, there are a number of creditors that must be paid in priority 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.

I am still investigating the amount advanced by the Mclvor Superannuation Fund ('MSF') to the EIF, the current balance of which is approximately \$3.3 million. In this regard, I was of the understanding that the trustee of the MSF was MM Holdings Pty Ltd (Receivers and Managers Appointed) (In Liquidation) ('MMH') and, therefore, if it could be determined that the debt was due and payable then funds would be repaid to the Liquidators of MMH. However, I have since been advised that the trustee of the MSF was purported to have been changed to MSM Family Holdings Pty Ltd ('MSM') on 20 September 2011. This is surprising because of representations made by Mr Mark Mclvor/MMH seeking repayment of the loan after my appointment on 21 November 2011. It should be noted that the directors of MSM are Mr Mark Mclvor and Mrs Stacey Mclvor. The sole shareholder of MSM is Mr Mark Mclvor. My investigations are ongoing with respect to this matter and I am currently obtaining legal advice as to how to proceed with the demand for repayment of the loan.

### **2.3 Claims by the Liquidators of EL**

As advised in my eleventh report to Investors, the liquidators of EL, Hall Chadwick, lodged an application for directions with the Court in relation to the extent to which they are entitled to be indemnified out of EIF's assets for remuneration and expenses incurred by them as Administrators totalling approximately \$805,000.

Hall Chadwick has still not filed the application for directions. It is therefore unclear if this will proceed.



### 3. Piper Alderman Class Action

I understand that Piper Alderman is continuing to progress the claims available to Unit Holders in relation to the Fund's demise. Unit holders wishing to be part of the anticipated action should contact William Nolan on (02) 9253 9921 or email [wnolan@piperalderman.com.au](mailto:wnolan@piperalderman.com.au).

### 4. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period from 1 February to 31 March 2013.

Summary of Receipts and Payments for the Period 1 February 2013 to 31 March 2013		
Opening Cash at Bank		4,513,673.44
<b>Receipts</b>		
Interest Income		17,343.20
Investment Income - Wonderkids Pty Ltd		10,000.00
<i>Loan Recoveries:</i>		
Corymbia Estates Pty Ltd	40,000.00	
Rosea Pty Ltd	36,666.66	
Spottiswood, Graham (A Bankrupt)	100.00	
Valencia Grove Pty Ltd	185,750.00	262,516.66
	<b>Total Receipts</b>	<b>289,859.86</b>
<b>Payments</b>		
Bank Charges		38.90
<i>Distressed Loan funding:</i>		
Boothers Pty Ltd	18,035.60	
Checkling Pty Ltd	34,811.10	
Corymbia Corporation Pty Ltd	52,717.50	
Corymbia Estates Pty Ltd	198.00	
East Coast Pty Ltd	7,973.86	
Gonfanon Pty Ltd	44,770.56	
National Resorts Corporation	22,751.79	
Newton, Kristine Lorraine	1,650.00	
Spottiswood, Graham (A Bankrupt)	912.23	
Toowoomba (Foundry Shopping Centre) Pty Ltd	14,010.20	
Tweed Central Pty Ltd	1,109.45	
Valencia Grove Pty Ltd	11,694.70	
Western Land Corporation	18,131.75	
Windsor Turf Pty Ltd	37,213.63	
Wirrina Cove - Advances	107,833.05	
- Legal Fees	292,440.47	



- Sundry	1,554.30	
- Valuation Fees	11,900.00	679,708.19
Insurance		720.93
IT expenses		11,394.36
Legal Fees		24,670.15
Office Rental charge		10,856.02
Wages & associated reimbursements		16,509.04
<b>Total Payments</b>		<b>743,897.59</b>
<b>Closing Cash at Bank</b>		<b>4,059,635.71</b>

I note that the 'Distressed Loan Funding' relates to marketing costs, agents' fees, consultants' fees, legal fees and rates and land tax. The incurring of these costs are considered essential in terms of successfully realising the assets subject to the Fund's securities.

## 5. Estimated Return to Investors

I provide below an estimated return to Investors of between 12 and 16 cents in the dollar as at 15 April 2013 as follows:

	Low	High
	\$000's	\$000's
Cash at Bank	4,059	4,059
Estimated selling prices	34,290	42,390
<i>Less:</i>		
Bank guarantees	(1,100)	(1,100)
Selling costs (3.5% of sale price)	(1,200)	(1,484)
Other loan	(3,300)	(3,300)
Land tax & rates	(8,500)	(8,500)
Other unsecured creditors	(800)	(600)
Receiver's fees	(678)	(678)
<b>Estimated net amount available to investors as at 15 April 2013</b>	<b>22,771</b>	<b>30,787</b>
Total investor units	193,916	193,916
<b>Estimated return in the dollar</b>	<b>0.12</b>	<b>0.16</b>

The above table does not take into account future operating costs, interest on the other loan, future Receivers fees and rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

With the majority of the remaining properties now subject to contract/under offer, I have used the contract/offer prices as the low and high estimated selling ranges. This has had the result of 'firming up' the low estimate which has increased from 11 cents to 12 cents in the dollar and reduced the high estimate from 18 cents to 16 cents in the dollar as provided in my last report dated 28 February 2013.

The timing of an interim distribution to investors will be dependent on settlement of the highest value properties at Wirrina Cove, Collingwood Park, the Toowoomba foundry and Cornwallis and Richmond.

The majority of the Wirrina Cove properties/assets are expected to settle by June/July 2013.

If Collingwood Park settles on the contracted date of 31 August 2013 (with no extensions required) and Toowoomba, Cornwallis and Richmond properties are sold, I will be in a position to commence distributions in September 2013.

The distribution to investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

## **6. Receiver's Remuneration and Expenses**

I attach a summary of my current remuneration and outlays outstanding for the period from 1 September 2012 to 31 March 2013. My remuneration incurred during this period totals \$678,432 plus outlays of \$38,177.13 plus GST.

I anticipate that my next application for approval of my remuneration will be heard in May 2013. 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.equititrustincomefund.com.au](http://www.equititrustincomefund.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 457Brisbane QLD 4001

## **8. Future Reports**

As 34 of 46 properties have been sold and the majority of the remaining properties are subject to contract/under offer, then in order to reduce costs, I intend issuing reports to investors every two to three months rather than monthly.

## **9. Queries**

The Bundall office will be closed on 30 April 2013 and therefore any queries should be directed to Andrew Want of this office who can be contacted as follows;

Phone: 07 3237 5999

Email: [andrew.want@equititrustincomefund.com.au](mailto:andrew.want@equititrustincomefund.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

Equitrust Income Fund (Receiver Appointed)  
1 September 2012 to 31 March 2013

Employee	Position	Rate	Total Units	Total	Admin. Units	Admin. \$	Assess. Units	Assess. \$	Advisors Units	Advisors \$	Employees Units	Employees \$	Trade-on Units	Trade-on \$
Whyte, David	Partner	560	535.70	299,992.00	74.30	41,608.00	398.90	223,384.00	19.10	10,696.00	0.00	0.00	43.40	24,304.00
Semerville, John	Senior Manager	425	557.70	237,022.50	54.20	23,035.00	406.10	172,592.50	32.70	13,897.50	0.00	0.00	64.70	27,497.50
Griffin, Maree	Associate	415	0.20	83.00	0.20	83.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Brushe, David	Manager	390	2.50	975.00	2.50	975.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Bulda, Andrew	Supervisor	350	0.50	175.00	0.50	175.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Demeyere, Chris	Senior Accountant I	310	1.30	403.00	0.00	0.00	1.30	403.00	0.00	0.00	0.00	0.00	0.00	0.00
Want, Andrew	Senior Accountant I	310	100.50	31,155.00	100.30	31,093.00	0.20	62.00	0.00	0.00	0.00	0.00	0.00	0.00
Coulston, Jayden	Senior Accountant II	270	30.30	8,181.00	28.00	7,560.00	2.30	351.00	0.00	0.00	1.00	270.00	0.00	0.00
Want, Andrew	Senior Accountant II	270	361.30	97,551.00	348.30	94,041.00	2.80	756.00	4.10	1,107.00	0.00	0.00	6.10	1,647.00
Hogbin, Tom	Accountant I	240	0.30	72.00	0.30	72.00	0.00	0.00	1.40	308.00	0.00	0.00	0.00	0.00
Michalik, Dean	Accountant I	220	2.40	528.00	1.00	220.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Pembroke, Elle	Accountant I	220	1.70	374.00	1.70	374.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Andison, Nicholas	Accountant II	190	0.50	95.00	0.50	95.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Andison, Nicholas	Accountant II	190	7.70	1,463.00	7.70	1,463.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jones, Annabel	Consultant II	150	0.90	135.00	0.90	135.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Alexander, Samuel	Practice Assistant	125	0.80	100.00	0.80	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Muller, Leisa	Administrative Assistant	75	1.70	127.50	1.70	127.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Richardson, Ashley	Administrative Assistant	75	1.70	127.50	1.70	127.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		TOTAL	5,698.00	678,827.00	572.90	20,145.00	2,107.00	97,648.50	27.90	24,008.50	1.00	270.00	674.20	53,448.50
		AVERAGE HOUR RATE	65.1	7,672.676	422.44	372.9	490.44	529.90	270.00	468.03				

DISBURSEMENT REPORT  
Equitrust Income Fund (Receiver Appointed)

1 September 2012 to 31 March 2013

Item	6,145.62
Airfares	1,076.23
Car Hire	634.93
Courier	7.00
Fax	2,567.87
General	1,226.40
Mileage	552.63
Parking	16,426.80
Photocopy	4,921.96
Postage	885.93
Search Fee	261.11
Taxi Fares	34,706.48
Sub Total	3,470.65
GST	38,177.13
TOTAL	