

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**

AFFIDAVIT

I, **DAVID WHYTE** of Level 18, 300 Queen 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 now make 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 22 November 2011 to 31 August 2012.
5. In support of this application, I have set out herein my affidavit the background to my appointment as well as details of the tasks which I have undertaken in the course of the receivership and as person responsible for ensuring that the EIF is wound up in accordance with its constitution for the period 22 November 2011 to 31 August 2012 and an explanation as to why these said tasks were necessary.

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

6. Throughout this affidavit, where I refer to "my role", I am referring to my role as receiver of the property of the EIF and as the person appointed under section 601NF(1) of the Act as person responsible for ensuring the EIF is wound up in accordance with its constitution.

Background - Summary of the responsible entity and the Funds

Equititrust Limited

7. 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. Receivers and Managers were appointed to the EPF on 21 February 2012 by the Bank of Scotland International.
8. EL holds an Australian Financial Services Licence (**AFSL**) to operate the EIF, EPCIF and EPF. On or about 9 December 2011, I became aware that the Australian Securities and Investments Commission (**ASIC**) suspended EL's AFSL on 7 December 2011, however that suspension does not prevent EL from providing financial services that are reasonably necessary for, or incidental to, the winding up of EIF and EPCIF, and are reasonably necessary for, or incidental to, the orderly winding down of the EPF.
9. The directors of EL are David Hickie (**Hickie**), Mark McIvor (**McIvor**) and Ross Honeyman (**Honeyman**).

EIF

10. EIF is a first mortgage fund. There are approximately 1,600 investors in the EIF. As at the date of my appointment, the written down balance of the remaining 29 loans was \$127 million. Presently, there are 17 loans which remain outstanding with a written down balance of \$60 million. The majority of these loans have been provided in relation to the acquisition and/or development of residential land in Queensland, New South Wales and South Australia although two loans also have trading businesses associated with them.
11. Upon my appointment I became aware that only one loan for approximately \$300,000 was performing with the remainder having been in default for some time.
12. Now produced and shown to me and marked "DW-2" is a true copy of the Consolidated Constitution for the EIF dated 3 June 2011 that I obtained following my appointment.
13. Upon my appointment, I became aware from the books and records of the EIF that the EIF has been a 'frozen fund' since October 2008, in that no redemptions of units by investors have been permitted since then, and that the EIF ceased distribution payments to investors in February 2011.

EPCIF

14. EPCIF has five investors which total \$4.6 million. Its only asset is as a unit holder in the EPF with a current value of nil.
15. Now produced and shown to me and marked "DW-3" is a true copy of the replacement constitution for the EPCIF dated 30 November 2010 and Deed Poll dated 13 December 2010 (which varies the constitution) that I obtained following my appointment.
16. Given the EPCIF has five members and relatively minimal assets, the majority of my role has been as receiver of the property of the EIF and overseeing the winding up of the EIF. The application I have made and this supporting affidavit seeks approval for remuneration in respect

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of work performed for the EIF only.

Appointment of Voluntary Administrators and Receivers to EL

17. On Wednesday, 15 February 2012, Blair Pleash, Richard Albarran and Glen Oldham of the firm Hall Chadwick (the **administrators**) were appointed administrators of EL.
18. On Thursday, 16 February 2012, William Colwell and Greg Moloney of the firm Ferrier Hodgson (the **receivers**) were appointed receivers of EL by the NAB (this appointment was in respect of EL only and not in respect of the EIF).
19. In light of the appointment of administrators and receivers to EL, and at the instigation of the solicitors for the administrators, I attended at a meeting on Tuesday, 21 February 2012 with Blair Pleash and Glen Oldham of Hall Chadwick and William Colwell and Robert Malt of Ferrier Hodgson and the parties' respective solicitors.
20. At this meeting, the parties discussed the recent appointments to EL and considered the most appropriate course of action in moving forward in the winding up of the Funds.
21. By this time I had done considerable work in familiarising myself with the assets and workings of the EIF and commencing the process of the winding up of the fund.
22. It was agreed by each of the parties that, in light of the recent appointments of numerous insolvency practitioners and given the need for certainty and minimisation of costs, it was appropriate for me (as the court appointed receiver of the assets of the EIF) to make an application for directions so that I could continue with the winding up of the Funds in accordance with the Orders of His Honour Justice Applegarth of 21 November 2011 and 23 November 2011 and in accordance with the EIF's constitution.
23. As a result of this meeting, and as agreed, I made an application to the court for directions. For the purposes of this application, I was required to undertake the following tasks:
 - (a) engage solicitors to prepare the application and supporting material;
 - (b) liaise with and instruct my solicitors and counsel engaged in respect of the application and the terms of the orders being sought;
 - (c) liaise with my solicitors in order to prepare and finalise affidavits of myself in support of the application;
 - (d) liaise with my solicitors to collate exhibits to my affidavits; and
 - (e) attend at the offices of my solicitor in order to review and finalise my affidavits and swear same prior to the hearing of the application.
24. The primary reason for my seeking the directions was to provide certainty to external parties with whom I had to deal and as to the roles of the respective administrators and receivers and to minimise the costs of the winding up of the Funds in light of the recent appointment of the administrators and the receivers to EL. The directions were also necessary to clarify my authority to carry out certain matters in accordance with my appointment pursuant to previous orders of the Court and allow me to continue with the process of winding up of the Funds consistent with the process already in place. The major matters which were required to be done at that time and which I sought directions on were as follows:
 - (a) selling real property which was subject to mortgages in favour of EL as RE for the EIF pursuant to which EL as RE for the EIF will sell as mortgagee exercising power of sale or

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- which will be the subject of sales by receivers appointed by EL;
- (b) the provision of instructions regarding current legal proceedings; and
 - (c) effecting the implementation of a National Australia Bank (NAB) bank guarantee facility and the replacement of the existing Commonwealth Bank of Australia (CBA) bank guarantee facilities.
25. At the hearing of the application (which was held 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 (this is discussed further below at paragraphs 255 to 262 below).
26. Now produced and shown to me and marked "DW-4" is a true copy of the Order of Justice Dalton dated 29 February 2012.
27. In my role as receiver of the assets of the EIF, I was required to liaise with the administrators of EL in respect of various matters associated with the receivership, including:
- (a) consideration and acceptance of offers to purchase properties (prior to the Order of Justice Dalton on 29 February 2012);
 - (b) EL's claim for management fee;
 - (c) EL's claim for reimbursement of expenses;
 - (d) provision of reports in relation to the status of the receivership; and
 - (e) obtaining copies of relevant books and records.
28. In addition to the above matters, as the EIF is a creditor of EL, I also attended at each of the creditor's meetings of EL in order to vote on behalf of the EIF. In my role, I was also required to review and consider the communications issued by the administrators in respect of the administration of EL, including, in particular, the Report to Creditors issued by the administrators pursuant to section 439A of the Act (**439A Report**).
29. Following the publication of the 439A Report on EL's website of "www.equitrust.com.au", I wrote to the administrators in order to raise with them a number of issues arising from the report including:
- (a) the claim for the management fee for the 2011 Financial Year;
 - (b) the administrators' claim for expenses remuneration; and

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- (c) the potential replacement of the responsible entity.
30. Subsequently, at the second meeting of creditors which was held on Friday, 20 April 2012, the creditors of EL resolved that EL should be wound up and further resolved to appoint Blair Pleash, Richard Albarran and Glen Oldham (the **liquidators**) liquidators of EL.
31. Now produced and shown to me and marked "DW-5" is a true copy of a company search of EL which shows the appointment of the various insolvency practitioners to EL.

Conduct of the winding up of the EIF

32. Upon my appointment as receiver of the property of the EIF and as appointee under section 601NF(1) of the Act I reviewed the books and records for the EIF, met with the staff and senior management of EL, gathered information about the assets and liabilities of the EIF and took steps to ensure that EL put in place a strategy for the orderly winding up of those funds. As part of that process I (and my staff) have been involved in undertaking tasks which broadly come within the following six categories:
- (a) Administration;
 - (b) Trade-on;
 - (c) Assets;
 - (d) Creditors;
 - (e) Employees; and
 - (f) Investigations.
33. Particulars of the work performed by me, and my staff during the period 22 November 2011 to 31 August 2012 are summarised in the Schedule which is now produced and shown to me and marked "DW-6". The Schedule shows a description of each task undertaken under each of the above categories, the name and position of the person who performed the task, the date the task was undertaken, the length of time it took and the amount charged.
34. Also now produced and shown to me and marked "DW-7" is a true and correct copy of BDO's scale of insolvency hourly charge out rates. The Partners of BDO Business Recovery & Insolvency (Qld) are members of the Insolvency Practitioners Association and follow the IPA Statement of Best Practice – Remuneration.
35. During the course of the receivership, in order ensure efficiency of cost, time and resources, I utilised, where possible, the EIF staff and consultants given their background knowledge of the books and records of the EIF. I also delegated tasks to employees and/or agents of BDO in order to ensure compliance with statutory obligations and for accounting and reporting purposes, in particular, compliance with ASIC requirements where EL as RE for the EIF is mortgagee in possession/controller and for insurance purposes. On or about 1 June 2012, the primary portfolio manager resigned. Since that time, a senior manager of BDO has taken over management of the loan portfolio and, in particular, consideration of the EIF's interest in the Wirrina Cove asset (discussed further at paragraphs 162 to 181 below).
36. In order to further assist the Court, I set out within my affidavit an explanation as to why the tasks detailed in the Schedule were undertaken and why these tasks were necessary for the proper administration of the receivership of the EIF. Where I have considered it appropriate I have also detailed a background to the complexities and difficulties which have arisen since my appointment as receiver of the property of the EIF and as appointee under section 601NF(1) of the

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Act.

37. For example, some of the main factors which have added to the complexity of the receivership include:
- (a) the resistance I experienced from the board of EL, in particular, McIvor as to my authority under the Court orders and the steps to be taken in winding up the EIF;
 - (b) the fact there are 1,600 investors in the EIF and communications with investors;
 - (c) the number of legal disputes in relation to the properties the subject of security held by EL as RE for the EIF;
 - (d) the arrangements having to be reached to access funds of the EIF held with the NAB in order to wind up the EIF;
 - (e) the complex inter-relationship between EL's affairs in its own right and EL's affairs as responsible entity for the EIF and EPCIF as well as the personal interests of directors of EL;
 - (f) matters arising from the provision of a services agreement, a claim for a management fee, claim for repayment of a loan to McIvor's super fund and the promotion by the directors of EL of an alternative strategy to the winding up; and
 - (g) the number of and the complexity of the properties held as security for the various loans made by EL as RE for the EIF.

Administration

38. In my role, my staff and I have undertaken various tasks which can be described as falling within the category "administration".
39. In essence, the remuneration claimed in this application under this category, includes work undertaken by my staff and myself which was necessary for the proper and efficient administration of the receivership and to ensure proper accounts and records were maintained.
40. The main tasks undertaken by myself and my staff are discussed further below.

Creating, maintaining and updating records relevant to the receivership

41. Upon my appointment as receiver of the property of the EIF and the EPCIF (as is the usual practice), separate bank accounts were created. This was done in order to maintain control of receipts and payments following the appointment of the receiver.
42. My staff obtained a forensic image of all data held on the server of EL. This was done to maintain the integrity of the information from the date of the appointment.
43. Upon my appointment, I became aware that there was a loan spreadsheet available in respect of the EIF. However, this loan spreadsheet did not provide all the relevant details for each of the loans made by the EIF and, in particular, did not include a summary of the security held for each loan, the strategies for realising the particular loan and the relevant details for insurance purposes. This form of spreadsheet was not appropriate for me to use as receiver of the EIF.
44. In light of this, a master spreadsheet was created containing a summary of the loans, the security held and other relevant details for insurance purposes. During the course of the receivership my staff have maintained and updated the master spreadsheet to monitor realisation of security, compliance with ASIC requirements where EL is mortgagee in possession and for insurance

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purposes.

45. As noted above, there were 29 separate loans made by the EIF which remained outstanding at the date of my appointment and which were to be recovered. Accordingly, in addition to the above and from the data collated, my staff created separate MYOB accounting records for each relevant loan. During the course of the receivership my staff have maintained and inputted data to the MYOB records in order to apply receipts and payments correctly to the respective loan accounts and for ASIC reporting purposes.
46. My staff have also been responsible for:
- (a) reviewing and reconciling invoices;
 - (b) updating cashbook entries; and
 - (c) reconciling the loan/bank accounts.

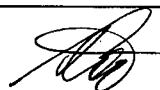
ASIC

47. During the course of the receivership and as appointee pursuant to section 601NF(1), I have been required to consider and ensure adherence to ASIC requirements where EL as RE of the EIF is mortgagee in possession of security properties. This has included undertaking the following tasks:
- (a) reviewing all mortgagee in possession loans to determine if receipts and payments and other statutory lodgements with ASIC have been properly undertaken; and
 - (b) lodging with ASIC of all statutory forms on an on-going basis.
48. I have also been required to consider legal professional privilege issues which have arisen as a result of search warrants which were issued by ASIC against EL prior to my appointment. In order to deal with this issue my staff and I have undertaken the following tasks:
- (a) meeting and correspondence with EIF's pre-appointment solicitors, Nyst Lawyers;
 - (b) meetings and correspondence with EIF's post appointment solicitors, Gadens Lawyers; and
 - (c) meetings and correspondence with ASIC in relation to maintaining legal professional privilege over EIF's books and records.
49. During the course of the receivership and at ASIC's request I have continued to keep ASIC informed as to the progress of the receivership given that I was appointed pursuant to their application.
50. On Monday, 30 January 2012, ASIC issued me with a notice pursuant to section 19 of the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)*. This notice required me to give to ASIC all reasonable assistance in connection with their investigation and to appear before ASIC for examination on oath to answer questions relevant to the matter being investigated.
51. As required under this notice, on Tuesday, 31 January 2012, I attended at ASIC's offices with my solicitor for the interview.
52. During the examination a number of directions pursuant to section 19 of the ASIC Act were given to me to produce documents and/or information relevant to ASIC's investigation.

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53. In order to comply with these directions, my staff and I were required to collate the relevant material as required by the directions. I was also required to consider and review the transcript of the interview and sign same.

Travel

54. Since my appointment and during the course of the receivership, I have travelled to and from EL's offices on the Gold Coast in order to discuss matters relevant to the winding up of the EIF with the staff, directors and consultants to EIF and to meet with borrowers and investors, and to oversee matters as appointee under section 601NF(1) of the Act.
55. I travelled on a regular basis to the former offices of EL and now travel on a regular basis to the offices of the EIF. I considered that it was and is proper and necessary for me to attend at the offices personally in order to oversee the winding up of the EIF, due to the location of staff and the records.
56. For example, over the course of the receivership, when I travelled to the offices I met with the board of EL, the now former CEO Mr Troy Bingham (**Bingham**) and relevant staff in order to discuss the day to day operations of the EIF including:
- (a) management of the loan book (including a review of current realisation strategies) (discussed further under Assets below);
 - (b) expenses of the fund including staff, consultants, premises and equipment;
 - (c) cashflow forecasts;
 - (d) reimbursement of expenses incurred by EL as RE; and
 - (e) negotiating and finalising a services agreement for the provision of staff, consultants, premises and equipment in order to assist with the winding down of the EIF (discussed further at paragraphs 81 to 99 below).
57. Upon the appointment of administrators to EL, my attendance at the offices of EL included several meetings with the administrators and their staff.
58. In addition to attending at the office of the EIF, I have also travelled to South Australia in order to visit the resort at Wirrina Cove (being one of the largest assets held by the EIF).
59. Given the large size of the Wirrina Cove asset, the complexities involved with it which I address below under the discussion of Assets and the importance of maximising the realisation of the asset for the benefit of investors, in my role as receiver and appointee under section 601NF(1) of the Act, I consider it proper and necessary for me to attend at the resort personally so that I can:
- (a) personally meet with the staff including the resort manager and the financial controller and discuss the ongoing operation of the resort;
 - (b) attend to any issues with respect to the ongoing operations and/or the trading of the resort including issues surrounding the water infrastructure, aboriginal cultural issues, marina, land tax and council rates;
 - (c) discuss and consider the expenses associated with the resort;
 - (d) personally meet with the appointed selling agents, Knight Frank, to discuss the progress of the sale of the asset;

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- (e) personally meet with the Office of State Revenue in relation to the outstanding land tax;
 - (f) personally meet with the Department of Aboriginal Affairs in relation to a legislative notice granted to build on the esplanade blocks;
 - (g) personally meet with representatives of Ray White Marina, Ray White Hotels, Ray White SA, Ray White Commercial and Century 21 in relation to a new sales campaign for all of the assets; and
 - (h) personally meet with the solicitor undertaking legal action in relation to outstanding water and sewerage charges and marina outgoings.
60. I have also travelled to Toowoomba in order to visit the Foundry site and following the major tenant being placed into administration. This included meeting with the council in respect of outstanding rates and also several interested parties in acquiring the property.
61. These assets are discussed in further detail under Assets below.

Payments

62. A further significant matter which my staff and I have attended to in the course of the administration of the receivership is the request for payments.
63. In my role, I and/or my staff are required to consider, approve and process payments in respect of a multiplicity of matters involved with the receivership including:
- (a) claims for reimbursement of expenses submitted by EL in its capacity as RE for the EIF pursuant to the terms of the constitution of the EIF;
 - (b) claims for payment of the management fee by EL as RE for the EIF;
 - (c) employee wages and consultancy fees;
 - (d) legal fees;
 - (e) advertising costs and real estate agents commission;
 - (f) council rates, land tax and other statutory obligations; and
 - (g) sundry costs.
64. These tasks are in my view necessary for the proper and orderly conduct of the receivership.

Job management

65. From the date of my appointment and during the course of the receivership, I and my staff have conducted internal meetings in order to discuss:
- (a) the progression of the job;
 - (b) efficient job administration and management;
 - (c) the strategy for moving forward;
 - (d) insurance review;
 - (e) loan strategies; and

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(f) other general day to day management.

66. Again, I consider that such tasks are necessary for the proper administration of the receivership.

Insurance

67. Upon my appointment, I arranged to put in place open cover insurance through Blue Insolvency. This is necessary to cover property and other general insurance risks.

68. During the course of my appointment and as person responsible, my staff and I have provided on an ongoing basis information to Blue Insolvency (the provider of insurance) required for the continuation of appropriate insurance cover.

Investor communications

69. During the course of the receivership my staff and I have attended to answering investor enquiries both by telephone and in person and issuing investor communications to keep investors updated as to the receivership including, asset realisation and the expected return to investors.

70. As part of this, we have also been liaising with Centrelink regarding asset impairment for pensioners and requirements for same in order to assist investors to access funds from Centrelink.

71. For the purposes of the investor communications, including my reports and letters to the investors, my staff and myself have been required to collate all relevant material for these reports including "work in progress" and remuneration reports and attend to the issue of these reports to each investor. I consider that these tasks are necessary to keep investors properly informed.

Relocation of offices

72. As discussed below, the administrators of EL (as they were then) disclaimed a services agreement and terminated all staff from 16 March 2012.

73. In order to save costs I made the decision to vacate the existing premises and move to new premises.

74. As part of this process my staff and I identified and secured appropriate alternative premises for the staff of the EIF and arranged for the provision of all necessary office equipment and computer systems.

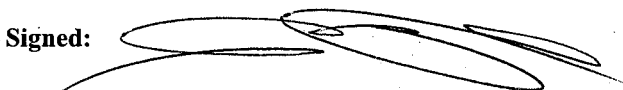
75. In addition, my staff assisted the staff of the EIF in moving to the new premises by attending at the offices of EL and boxing and itemising records, preparing for the move and transporting equipment and records to the new offices. This was necessary given the sheer volume of material to be moved and in order to achieve efficient moving and to ensure the integrity of the records that were transported.

General

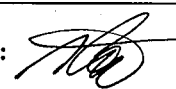
76. In addition to the above specific matters, my staff and I also conducted the following tasks:

- (a) reviewing and attending to correspondence as required;
- (b) maintenance of an appropriate filing system and filing correspondence;
- (c) preparing and lodging BAS returns;
- (d) conducting searches including property and company searches;

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- (e) reviewing and considering GST obligations; and
- (f) scanning and electronically filing of source documents relating to each loan from the EIF.

77. I consider that each of these tasks were necessary for the proper administration of the receivership.

Trade on

78. The remuneration claimed in this application, includes work undertaken by my staff and myself in respect of the administration of the receivership and in my role as overseeing the winding up of the Fund which work I would describe as "trade-on".

79. Generally, this "trade-on" work relates to my initial familiarisation with the assets of the EIF and also work which is incidental to the receivership and the specific matters discussed within this affidavit and includes:

- (a) reading and consideration of the constitution of the EIF and documents relating to loans made by the EIF and the underlying security for those loans;
- (b) regular discussions, meetings and correspondence with the former CEO of EL, Bingham, the directors of EL and relevant staff of EL, in relation to the day to day operations of the business and including:
 - (i) management of the loan book (including a review of current strategies);
 - (ii) expenses of the fund including staff/consultants, premises and equipment;
 - (iii) cashflow forecasts;
 - (iv) reimbursement of expenses incurred by the responsible entity; and
 - (v) negotiating and finalising the services agreement for the provision of staff/consultants, premises and equipment in order to assist with the winding down of the EIF (discussed further below);
- (c) discussions and correspondence with McIvor regarding his claim for repayment of a loan to his super fund (discussed further at paragraphs 129 to 132 below);
- (d) meetings with the loan file managers and senior management (including the directors) regarding the current strategies to realise each underlying property and proposed way forward;
- (e) review and agree to settlements for contracts of sale which were on foot prior to my appointment, including liaison with solicitors and other parties to ensure settlement of these contracts;
- (f) review current and forecast sales, including valuations in respect of properties to be realised;
- (g) consider offers for several properties;
- (h) review current provisions for each loan;
- (i) meeting with KPMG (the EIF auditors) regarding the June 2011 accounts;
- (j) liaising with solicitors for EL, a receiver appointed by EL to an asset and the loan

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managers employed by EL in relation to legal actions relating to loans made by the EIF and the underlying security for those loans;

- (k) considered and approved payments to maintain assets; and
- (l) dealing with various matters arising in terms of my appointment and the EIF.

80. In particular, I have also dealt with matters arising from the provision of a services agreement, the difficulties associated with the board of directors of EL, communications with EIF investors, claim for a management fee, claim for repayment of a loan to McIvor's super fund, promotion by the directors of EL of an alternative strategy to the winding up and ASIC's intended application to wind up EL. These matters are discussed further below.

Services Agreement

81. Following the first order made by His Honour on 21 November 2011, I attended at the business premises of EL on 22 November 2011. At this time I met with Bingham and discussed staffing, consultants, premises and equipment arrangements. It was apparent to me and it was agreed with Bingham at the time that the current costs being incurred by EL as RE of around \$500,000 per month (which was being paid out of the EIF) needed to be reduced because I considered the expenses to be too high in relation to the management of 29 loans and unnecessary for the winding up of the EIF. As an initial approach to the need to cut costs, Bingham advised that some six staff/consultants would not be required moving forward to wind up the Funds.
82. On 24 November 2011 I again attended at the business premises of EL and met with McIvor, one of the directors of EL, and Bingham when I again expressed my concerns about the level of overheads being incurred and the need to reduce those overheads in order to wind up the EIF. It was agreed with Bingham and McIvor at this time that they would provide to me a written plan by Wednesday, 30 November 2011 detailing which staff/consultants were required and the reasons for same together with a budget showing the reduction of costs over the short term.
83. My ability to control those overheads was limited because staff and consultants were not engaged directly by EL as RE of EIF but were engaged by a separate company, ECG Administration Pty Ltd ACN 144 977 275 (**ECGA**) on behalf of the RE. McIvor is the sole director of ECGA. EL owns 100% of the shares in ECGA. At the time of my appointment, I became aware that there was only an unsigned draft agreement between EL and ECGA regarding the provision of services and staff and consultants.
84. Administrators were appointed to ECGA on 15 February 2012 and it is now in liquidation.
85. Now produced and shown to me and marked "DW-8" is a true copy of an historical company search of ECGA.
86. ECGA invoiced EL for the cost of providing the staff, and then EL sought reimbursement from the EIF for those costs in accordance with the terms of the constitution of the EIF.
87. On 28 November 2011, I received an email from Clare McComb, Associate Director, Strategic Business Services of the NAB, attaching a letter from the NAB advising me that it had frozen the accounts held by the EIF with the NAB. The NAB also put EL and myself on notice that no person was authorised to dispose of or deal with the accounts of the Funds without the prior consent of the NAB. Now produced and shown to me and marked "DW-9" is a true and correct copy of the email and letter received from the NAB. It was a requirement of NAB's agreement to release funds to provide for the ongoing winding up, for a services agreement to be entered into to provide certainty moving forward.
88. The monies held in these accounts form part of the property of the EIF to which I have been

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appointed receiver. Ordinarily these funds would be used to reimburse EL for costs it incurs as RE pursuant to the right of indemnify in favour of EL as RE in accordance with the constitution of the EIF.

89. With my approval, Bingham set up a separate company called GCP (HQ) Pty Ltd (**GCP**) in mid-December 2011 to take over the provision of services to EL from ECGA.
90. In order to reduce and to obtain greater control over overhead costs associated with the employment of staff and consultants and the provision of plant and equipment, I negotiated a services agreement between EL, GCP, ECGA and myself as receiver of the property of the Funds.
91. During the period 6 December 2011 to 16 December 2011, I together with solicitors instructed by me were engaged in correspondence and discussions with Bingham, McIvor and Chris Stride (**Stride**) (EL's senior legal counsel) in order to obtain further information to complete the services agreement and negotiating and agreeing the terms of same. In the course of negotiations I had to deal with resistance from McIvor, in particular, as director of EL.
92. After considerable discussions and negotiations, the terms of the services agreement was agreed and it was executed by EL on 20 December 2011. Now produced and shown to me and marked "**DW-10**" is a true and correct copy of the executed services agreement.
93. The services agreement provided that GCP would provide certain services to EL to enable it to carry on the business of the RE (**Services**) for the purposes of the winding down of the EIF, 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 operates. GCP would also provide information and assistance to me in overseeing the winding up and for the purposes of the receivership as required by me from time to time.
94. GCP was responsible, under the services agreement, for meeting all costs associated with the provision of the Services. Once those costs were paid, EL could then seek reimbursement of the costs attributable to the EIF from me as receiver of the EIF.
95. As a result of the implementation of the services agreement, EL's operating costs were reduced to approximately \$147,000 per month from a previous high of \$500,000 per month prior to my appointment.
96. Under the terms of the services agreement, the intention had been for the staff and consultants to be transferred to the new service provider, GCP however this had not been completed at the time of the administrators' appointment to ECGA.
97. 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.
98. 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.
99. Present overheads costs have been now further reduced to \$21,000 per month.

Difficulties with the board of EL

100. Since the date of my appointment, I encountered significant resistance from the board of directors of EL and, in particular, McIvor to my appointment and the performance of my role as receiver of the Funds and the person responsible for ensuring that the Funds are wound up in accordance with their constitutions. These issues involved a considerable amount of time including having to

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seek legal advice on a number of occasions. However, it was very necessary for me to deal with these matters in order for me to carry out my role for the benefit of investors. I discuss specific examples of this below.

101. As a result of this resistance, prior to the appointment of the administrators and the receivers to EL, I was required to spend significant amounts of time on numerous occasions dealing with McIvor questioning the court order under which I was appointed, its effects and what I could or could not do as a result of the order.
102. I exchanged correspondence with EL, both personally and through my solicitors, in relation to this issue however I was faced with resistance, particularly from McIvor, in respect of my ability to perform the role that the court appointed me to.
103. On a daily basis, prior to the appointment of the administrators and the receivers to EL, I was faced with a general lack of assistance from the EL board and McIvor in particular in winding up the EIF and the board was not progressing issues required in relation to the realisation of assets which I discuss further below. On the contrary, the board demonstrated its desire to promote an alternative strategy of the winding up of the EIF, which I also discuss further below.
104. The time I was required to spend in dealing with the EL board on matters was necessary to be able to progress the winding up but detracted from my ability to dedicate my time to take steps to ensure the realisation of assets of the EIF for the benefit of the investors of the EIF.
105. In addition to the above examples of the on-going difficulties I was faced on a daily basis with progressing the winding up of the EIF, the board of EL failed consistently to respond to many of my requests for information and assistance and challenged my right to do so.
106. As an example, attached as exhibit "DW-11" to this affidavit is a copy of an email sent by me to McIvor dated 14 February 2012 summarising the matters to which I had not received but required a response. I have not exhibited the attachments to this email as they are commercially sensitive and subject to legal professional privilege.
107. I have provided the above example to the Court as an explanation of the kind of behaviour which I faced when dealing with the board and McIvor prior to the appointment of administrators and receivers to EL which significantly increased the time spent by me in carrying out my role pursuant to the Court orders and added to the complexity of the winding up.
108. I consider that the actions of the board of EL have significantly increased the costs of the winding up.

Communications with EIF investors

109. On or around 24 November 2011 when I initially met with McIvor, I informed him that he was not to have any communications with EIF investors without my prior approval given my role. I recall he acknowledged my comment and we discussed making a joint communication to investors.
110. Notwithstanding this, on 12 and 22 December 2011 McIvor issued three updates to investors via EL's website without my prior knowledge or authorisation.
111. In my opinion, it was appropriate for me to advise investors about what is currently occurring in relation to the operation and winding up of EIF.
112. On 1 February 2012, I published my first report to investors on the EL website updating them as to my appointment and the ongoing winding up of the EIF. Now produced and shown to me and marked "DW-12" is a true copy of my first report to the investors dated 1 February 2012 (First

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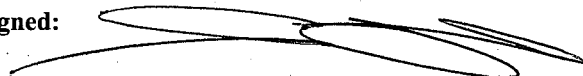
Report).

113. On 21 February 2012, I published a further report to investors on the EL website updating them as to the ongoing winding up of the EIF and the recent appointments to Wirrina Resort and Conference Centre Pty Ltd (**WRCC**), EL and ECGA (these appointments are discussed further above) (**Second Report**). Now produced and shown to me and marked "DW-13" is a true copy of my Second Report to the investors.
114. On 27 March 2012, I published my third report to the investors on the EL website updating them as to the ongoing winding up of the EIF and, in particular, the potential proposed change in the responsible entity (discussed further below), the class action by Piper Alderman, the services agreement and reduction of overheads and the claim by EL for payment of a management fee (**Third Report**). Now produced and shown to me and marked "DW-14" is a true copy of my Third Report to the investors.
115. On 16 May 2012, I published my fourth report to the investors on the EL website updating them as to the ongoing winding up of the EIF (**Fourth Report**). Now produced and shown to me and marked "DW-15" is a true copy of my Fourth Report to the investors.
116. On 21 June 2012, I published my fifth report to investors on the EL website updating them as to the ongoing winding up of the EIF (**Fifth Report**). Now produced and shown to me and marked "DW-16" is a true copy of my Fifth Report to the investors.
117. On 26 July 2012, I published my sixth report to investors on the EL website updating them as to the ongoing winding up of the EIF (**Sixth Report**). Now produced and shown to me and marked "DW-17" is a true copy of the Sixth Report to the investors.
118. On 30 August 2012, I published my seventh report to investors on the EL website updating them as to the ongoing winding up of the EIF (**Seventh Report**). Now produced and shown to me and marked "DW-18" is a true copy of the Seventh Report to the investors.
119. In the reports, I also provide investors with a summary of:
- (a) receipts and payments of the EIF;
 - (b) the realisation of the assets;
 - (c) the status of the legal proceedings;
 - (d) an updated estimate return to investors; and
 - (e) my remuneration.
120. I consider that it is necessary for the proper administration of the receivership to keep the investors properly informed as to the continuation of the wind up of the EIF and to try and reduce the number of direct inquiries from investors requesting the same information.

Claim by EL for payment of a management fee

121. As stated above, EL ceased distribution payments to EIF members in February 2011.
122. Pursuant to clause 21.1 of EIF's constitution (exhibited as "DW-2" to this affidavit), EL is entitled to be paid a management fee of 1.5% of EIF's gross assets per annum, plus GST.
123. However, this entitlement is subject to the provisions of clause 21.5 which provides that income distributions from the scheme are to be conducted in the following order:

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- (a) the Income Warranty (if any) has been paid;
 - (b) expenses of the Scheme;
 - (c) payment to each Member a distribution up to their Benchmark Return;
 - (d) the Manager will pay any management fee; and
 - (e) as provided in clause 8.5(d), being, a distribution to the holders of Subordinated Interests as between those Members in proportion to the number of Subordinated Interests they hold.
124. Given income distributions ceased in June 2010, since at least that time it is my view that under the terms of the constitution of the EIF, EL has not been entitled to draw a management fee.
125. During the course of the receivership, I became aware that the board of EL had agreed not to draw a management fee for the ongoing management of the EIF.
126. Notwithstanding this the board of EL sought to be paid a management fee for the 2011 financial year as well as reimbursement of EIF expenses.
127. I investigated this claim and advised the board of EL that, in my view, EL was not entitled to payment of a management fee under the terms of the EIF constitution.
128. Following the appointment of the administrators, I have continued to have further discussions with the administrators and now liquidators of EL regarding the management fee and the reimbursement of expenses and have sought legal advice in respect of this issue.

McIvor Self Managed Superannuation Fund

129. In or about early December 2011, I received a request from McIvor that I authorise repayment by EL as RE for the EIF of a loan to McIvor's self managed superannuation fund known as the **McIvor Self Managed Superannuation Fund (McIvor's Super Fund)**.
130. McIvor's Super Fund is a self managed superannuation fund regulated under the *Superannuation Industry (Supervision) Act 1993*.
131. Following correspondence with McIvor wherein I requested that he provide me with certain information to enable me to consider his request for repayment of the loan by the EIF, including the consent of EL's secured creditors to the repayment, I sought legal advice in relation to this matter. I declined this request for payment.
132. In dealing with this issue, in summary, I undertook the following tasks:
- (a) meetings and correspondence with McIvor and his solicitors;
 - (b) meetings with my solicitors;
 - (c) correspondence and discussions with other stakeholders, being CBA, NAB, BOSI and their respective solicitors; and
 - (d) correspondence and discussions with ASIC in relation to the undertakings provided to them by EL in separate proceedings.

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Promotion by EL of alternative strategy to winding up of EIF

133. In January 2012 McIvor introduced me to Hickie. I had not met Hickie previously. McIvor and Hickie proposed an alternative strategy for the EIF, which involved:
- (a) obtaining the approval of EIF members and the Court to transfer the units of the EIF into shares in a new public company, of which Hickie and Honeyman would be the directors; and
 - (b) floating that company on the "Newcastle Stock Exchange".
134. My attitude to any such proposal was that such a proposal was a matter for them, but that it should not interfere with the court order that was in place for me to wind up the EIF under the terms of its constitution, and that I did not expect to be interrupted in the conduct of the winding up of the EIF in accordance with their constitutions.
135. During the course of the receivership, I have had a number of discussions and correspondence with both the directors prior to the appointment of administrators and with the administrators/liquidators following their appointment in relation to this matter.

ASIC application to wind up EL

136. Prior to the administrators and receivers of EL being appointed, and during the course of the receivership, I became aware that ASIC were intending to make an application to wind up EL.
137. Given my role, and the knowledge obtained by me during the course of the receivership, ASIC requested that I depose to certain matters in an affidavit in support of their application.
138. As such, in respect of those proposed proceedings I (and my staff) undertook the following tasks, including:
- (a) liaising with ASIC regarding the content of an affidavit;
 - (b) instructing my solicitors with respect to an affidavit;
 - (c) attending at my solicitors office to provide instructions in respect of an affidavit; and
 - (d) collating material to be exhibited to an affidavit.

Assets

139. By way of background, EL as RE for the EIF (being a first mortgage fund) pooled the investors' funds and provided loans to third parties. As security for these loans, EL as RE for the EIF took *inter alia* mortgages over real property.
140. As stated above, all but one of these loans were in default at the time of my appointment. Accordingly, EL as RE for the EIF has been seeking to recover the moneys owing by selling the real properties pursuant to the terms of the mortgages held by EL as RE for the EIF, including taking possession of the properties with the intention of selling the properties as mortgagee exercising power of sale or appointing receivers to realise property.
141. Further details of these properties and the asset realisation strategy undertaken with respect to same are set out below.

Asset realisation strategy

142. From the date of my appointment as receiver, I have generally spent one to two days a week at

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the offices of the EIF overseeing the winding up and for the purpose of my role.

143. As part of this process I would meet with EL management and staff on a weekly basis to discuss the asset realisation strategy. Prior to the appointment of administrators, in conjunction with the EL directors and EL management, we documented the strategy being implemented for the recovery of each of EL's loans, which included:
- (a) when and how EL would dispose of the properties; and
 - (b) what was required to be done in relation to the properties to obtain the best return for EIF investors. Such tasks included, for example:
 - (i) engaging planning and other consultants as necessary;
 - (ii) obtaining valuations;
 - (iii) implementing sales campaigns;
 - (iv) considering and negotiating offers to purchase the properties;
 - (v) executing contracts of sale;
 - (vi) liaising with solicitors and agents leading up to settlement; and
 - (vii) receiving the proceeds of the sale of the properties.
144. In addition to the above, in respect of each property, I (and my staff) generally undertake the following tasks:
- (a) consider real estate agents' fees and approve same;
 - (b) engage agents to market the property for sale;
 - (c) liaise with the real estate agents to obtain updates of the status of the marketing campaign and any offers received;
 - (d) review current and forecasted sales;
 - (e) review marketing submissions;
 - (f) review sales campaign material including information memorandum, advertisements and brochures;
 - (g) review valuations in respect of properties to be realised; and
 - (h) consider and ensure the requirements of section 420A of the Act have been satisfied with respect to the assets (where properties are being sold by EL as mortgagee in possession or by a receiver appointed by EL).
145. Once a contract of sale has been signed and in order to progress and prepare to settlement, my staff and I undertake the following tasks:
- (a) liaise with receivers appointed by EL and the other secured creditors to obtain release of charges for the particular security property;
 - (b) review settlement statements; and

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(c) execute land title documents including releases.

146. Further details as to the steps undertaken by me and my staff and the reasons for same with respect to individual properties are set out further below.

Lot 953, Bruce Highway, Queensland

147. Shortly after I was appointed, one of the properties, being Lot 953 Bruce Highway, Queensland (**Lot 953**) was due to settle. This asset was held as security by EL as RE for the EIF.
148. In my role, I was required to consider the contract of sale for Lot 953 and confer with the CEO of EL and the board of EL to ensure it was in order that the settlement proceed for the benefit of the investors.
149. For the purposes of facilitating the settlement of the sale of Lot 953, I conferred with my solicitors and the creditors of the EIF to obtain the relevant releases.
150. These tasks were proper and necessary in order to ensure that settlement was effected and was for the benefit of the investors of the EIF in that it realised a security in order to repay amounts owing to the EIF.

Windsor Turf Farm, Cornwallis Road, Windsor, New South Wales

151. This property is a turf farm which includes eight individual allotments with a total area of approximately 100.32 hectares.
152. Prior to my appointment EL as RE for the EIF had appointed a receiver to realise this security property which is the subject of a mortgage held by EL as RE for the EIF.
153. During the course of my appointment, I have had correspondence and discussions with the receiver appointed and his solicitors regarding the realisation of this property and associated legal actions.
154. I have also had discussions with the second mortgagee of the property in relation to a potential offer for the property/securities.
155. A tender campaign was recently conducted for this property.

Lot 1, 42 Blue Seas Parade, Lennox Head, New South Wales

156. Prior to my appointment this property was marketed for sale by EL as RE for the EIF as mortgagee exercising power of sale and shortly after I was appointed receiver I became aware offers had been received to purchase the property.
157. In my role, I undertook the following tasks in respect of this asset:
- (a) considered the offers in light of the valuation of the property, the on-going holding costs and future advertising/marketing costs;
 - (b) considered the claim by the directors of EL to the proceeds of sale of the property on behalf of the EPF and, in particular, the potential conflict of interest and the terms of the priority agreement between the EIF and the EPF;
 - (c) liaised with the administrators regarding acceptance of the offer to purchase the property;
 - (d) correspondence and discussions with EIF staff regarding an insurance claim lodged prior to my appointment;

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- (e) reviewed and approved the settlement statement; and
- (f) attending to arrangements for the completion of the settlement.

325 Monaco Street, Broadbeach Waters, Queensland

- 158. EL as RE for the EIF holds a mortgage over this property.
- 159. The mortgage was provided as security to EL as RE for the EIF in relation to a loan provided to Bothers Pty Ltd (formerly Boothers Pty Ltd) as trustee for the Mackay Family Trust pursuant to which there are still moneys outstanding.
- 160. In my role, my staff and I have taken steps to obtain possession of the security property in order to repay the amount owing including arranging for the issue of a notice of exercise of power of sale in respect of the security property and arranging for the issue of a demand for possession. I have also engaged solicitors to act for me in obtaining possession of the property.
- 161. The notice and demand for possession have not been complied with, as such, I have taken steps to obtain vacant possession of the property in order to realise same for the benefit of the investors.

Wirrina Resort, Wirrina Cove, South Australia

- 162. Wirrina Corporation Pty Ltd ACN 131 742 151 (WC) is the mortgagee in possession of land located at Wirrina Cove in South Australia. EL is the sole shareholder of WC, owning 100% of the shares in WC. The shares in WC are held by EL as RE for the EIF. Accordingly, the Wirrina Cove land is property which is charged to WC ultimately for the benefit of the EIF.
- 163. The land is comprised of, among other things, a resort including a conference centre, restaurant, golf course and accommodation. The resort was formerly operated by a related entity of WC, WRCC.
- 164. McIvor was a director of WC between 18 September 2008 and 29 May 2012. Hickie was also a director of WC between 14 February 2012 and 29 May 2012 and Honeyman was a director of WC between 28 February 2012 and 27 May 2012.
- 165. Mark McIvor is the sole director of WRCC.
- 166. Now produced and shown to me and marked "DW-19" is a true copy of a company search of WC and WRCC each dated 19 September 2012.
- 167. In order to allow for the efficient continuing operation of the resort I agreed, on 29 May 2012, on behalf of EL as RE for the EIF (the sole shareholder of WC), to resolve to remove the existing directors of WC, being McIvor, Honeyman and Hickie and appoint Mr Aaron John Batts as sole director of WC. Mr Batts is the general manager of the resort at Wirrina Cove.
- 168. The resort is made up of land owned or leased by ICA (South Australia) Pty Ltd (Controller Appointed) which provided *inter alia* mortgages as security to EL as RE of EIF and security to WC, for a loan to Sunset Cove Developments Pty Ltd (now deregistered) which has been defaulted on.
- 169. A considerable amount of my time has been taken up dealing with this asset. This time has been necessary in my view to ensure the maximum value is realised from this asset for the benefit of the investors of the EIF. The matter has been further complicated by the fact the property was held by WC and the operation of the resort which is referred to above. A general description of the matters I have attended to appears below.
- 170. In January 2012, McIvor informed me and I verily believed that he was considering appointing

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administrators to WRCC, following the receipt of a statutory demand for approximately \$70,000. I informed McIvor that I was presently undertaking a review of the Worrina Cove file to determine the best way forward for the benefit of the EIF.

171. On 3 February 2012, McIvor informed me and I verily believed that during a telephone conversation that earlier that day he had appointed Blair Pleash, Richard Albarran and David Ross of Hall Chadwick as administrators of WRCC. This was done without any prior notice to, or discussions with, me.
172. The appointment of administrators to WRCC impacted on the ongoing ability of the resort to trade, and brought to light an associated liquor and gaming licence issue. I attended the resort on Monday and Tuesday, 5 and 6 February 2012. I discovered that the gaming and liquor licences granted by the Liquor and Gaming Authority in South Australia was granted to WC. WRCC did not appear to separately hold a gaming and liquor licence. I made enquiries regarding what authority, if any, WRCC had to operate the resort under the liquor and gaming licence held by WC. Those enquiries revealed that under the terms of the licence, the only entity entitled to trade under the licence is the licensee, WC.
173. On 7 February 2012, the administrators of WRCC threatened to close the resort if I, as receiver of the property of EIF, did not provide further funding to the administrators by close of business that day to allow the resort to continue to operate.
174. The Worrina Cove land is an important asset to be realised for the benefit of the members in the EIF in the winding up. The value of the Worrina Cove land is dependent upon the resort located on the land continuing to operate as a going concern. In my opinion, if the resort was not kept open and trading as a going concern at least in the short to medium term, there was a real risk of significant negative impact on the value of the resort and the prospects for the realisation of the resort for the benefit of EIF members. Two interested parties were due to visit the resort in the weeks after the administrators were appointed for the purposes of considering an offer to purchase the resort. Accordingly, in my opinion it was imperative that the resort remained operational in the short to medium term at least to attempt to preserve the value of the asset and, in any event, in order for the resort to be sold as a going concern.
175. In my view, the appointment of administrators was made without any, or any proper, consideration of the legal relationships which exists in relation to the operation of the resort and the financial status of the resort.
176. On 8 February 2012 I convened a meeting with McIvor, Honeyman and Hickie and such meeting also included the administrators to discuss the ongoing operation of the resort. I requested that McIvor, as sole director of WC, sever any relationship with WRCC and operate the resort directly as mortgagee. I informed McIvor that as receiver of the property of EIF, I would fund the operation of the resort in the short term to maintain the value in the asset for the benefit of investors in the EIF.
177. During the course of the meeting, I informed the administrators appointed to WRCC that they had no legal right to operate the resort and informed them that WC would take over and operate the resort. The administrators agreed.
178. At the conclusion of the meeting, McIvor agreed to sever the relationship with WRCC and for WC to operate the resort directly as mortgagee using its own liquor and gaming licence, such that the resort will continue to operate as a going concern so as to maximise the value of any future sale of the resort.
179. The resort has continued to be operated by WC as mortgagee. It is being traded as a going concern and continues to be marketed for sale. I and my staff have an ongoing role in monitoring the trading and operation of the resort given the funding provided by the EIF.

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180. In my role, my staff and myself have undertaken numerous tasks in respect of this asset, to protect the asset and to assist WC in running the resort and with a view to WC realising the asset, including:

- (a) considering and being involved in negotiations for offers to purchase Wirrina Cove;
- (b) assisting in liaising with local council and state government regarding outstanding rates and land tax;
- (c) considering and responding to queries raised by Rockcliffe Limited with respect to the securities assigned by OPI Pacific Investments Pty Ltd to WC;
- (d) reviewing and consideration of cash flow and meeting with the directors and general manager of the Resort and the financial controller to discuss same;
- (e) meeting with the Department of Aboriginal Affairs to discuss issues with respect to the Aboriginal cultural issues;
- (f) consideration of marina audit and water billings;
- (g) consideration of plant and equipment and offering to purchase some of this from the administrators appointed to WRCC;
- (h) meeting with the general manager of the resort to discuss the progress and ongoing status of the resort;
- (i) reviewing and consideration of a proposal to operate additional services at the marina;
- (j) meetings with the marina managers;
- (k) meetings with the appointed selling agents, Knight Frank;
- (l) meetings with real estate agents in relation to the provision of marketing submissions;
- (m) liaise with Blue Insolvency regarding the information required for insurance for the marina and the property;
- (n) consideration of resolution removing existing directors and appointing new directors;
- (o) consideration of the requirements of the Office of the Liquor and Gambling Commissioner in South Australia and compliance with the Gaming Machines Act 1992 (SA) and the Liquor Licensing Act 1997 (SA) in light of proposed change of directors;
- (p) meetings with time share operators to discuss potential interest in the resort; and
- (q) instructions to and liaising with a valuer with respect to an updated valuation of Wirrina Cove.

181. I consider that all of the above steps are necessary for the proper administration of this asset to preserve its value and to progress the realisation of this asset for the benefit of investors of the EIF.

241 – 267 Ruthven Street, Toowoomba, Queensland

182. This property was provided as security for a loan provided by EL and is the site on which a foundry has been located for 140 years.

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183. Like the Wirrina Cove asset, this asset represents a significant asset of the EIF. A considerable amount of time and effort has been involved in dealing with this asset. This time has been necessary (and will continue to be necessary) in my view to ensure the maximum value is realised from this asset for the benefit of the investors of the EIF.
184. The tenant who was in possession of a majority portion of the land has gone into liquidation. As a result, the liquidator has ceased trading from the property.
185. The owner of the land is also in liquidation and EL has been appointed controller of that entity although it is not in possession of the site.
186. In respect of this asset, the work undertaken relates to:
- (a) considering and negotiating offers to purchase the property;
 - (b) liaising with local council and state government regarding outstanding rates and land tax;
 - (c) consideration and obtaining an independent assessment of rehabilitation of the land; and
 - (d) liaising with the tenant with respect to the on-going tenancy and rental due.

Valencia Grove, Griffith, New South Wales

187. This is a completed residential development in Griffith, NSW with 59 lots available for sale.
188. A sales campaign is presently underway with an auction held on 16 August 2012.
189. As part of my role in respect of the property I have:
- (a) arranged for three marketing submissions from real estate agents;
 - (b) appointed the selling agents;
 - (c) arranged for and reviewed two valuations; and
 - (d) reviewed the agents' marketing reports.

Nirvana by the Sea, Gold Coast, Queensland

190. EL as RE for the EIF continues to hold a second registered mortgage over lots in the Nirvana by the Sea complex at the Gold Coast, Queensland.
191. These mortgages are held as security for a loan made to Star Sky Pty Ltd, an entity related to Niecon Developments Pty Ltd.
192. The first registered mortgagee is BOS International (Australia) Limited (**BOSI**).
193. BOSI has appointed receivers to this property and they are currently selling these properties.
194. In respect of this asset, the work undertaken relates to:
- (a) considering and approving settlement statements; and
 - (b) signing release forms to enable settlement to be effected.

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Industry Central, Murwillumbah

195. This is a large industrial sub division in northern New South Wales. The remaining 20 lots were subject to a recent sale campaign. Of these 20 lots:
- (a) 10 lots have now settled;
 - (b) 5 lots have been sold and the contracts have been exchanged;
 - (c) 1 lot has had offers accepted but is awaiting exchange of contract; and
 - (d) 4 lots remain to be sold.
196. Following my appointment, I met with Ray White to discuss the results of their previous sales campaigns and ask for a submission summarising all sale activities and their recommendations on the way forward to achieve a sale of all lots. Subsequently, they were appointed to undertake a sale campaign.
197. I then arranged for an updated valuation and liaised with Ray White and the valuer in relation to all offers received before accepting or rejecting any offers.
198. I also reviewed and approved advertisements, internet listings as well as the Information Memorandum for the property. I also reviewed the weekly reports of the agents which were received during the course of the sales campaign.

Lot 89, School Road, Redbank Plains, Queensland

199. This lot is residential land with an approval for sub division. It is currently subject to a sales campaign and tenders closed on 16 August 2012.
200. In my role, I reviewed and received submissions from three agents and ultimately appointed Ray White as the selling agent.
201. I also received and reviewed an up to date valuation for the property.
202. In my role, I was also required to review and approve advertisements, internet listings as well as the Information Memorandum. I was also required to review the weekly reports from the agents which were received during the sales campaign.

Border Park, Tweed Central

203. There was a signed heads of agreement in place between Landsolve Pty Ltd (**Landsolve**) and the Tweed Heads Coursing Club Limited (**TWCC**) involving a swap of land comprising a site at Murwillumbah charged to the EIF and a site owned by TWCC at Border Park, Tweed Heads (**Border Park site**). This deal involves Landsolve engaging contractors to build a new clubhouse facility for TWCC on the land at Murwillumbah and selling the Border Park site.
204. EL owns 100% of the shares of Landsolve. Landsolve's directors as at 19 September 2012 were Mark McIvor and Stacey McIvor. Now produced and shown to me and marked "DW-20" is a true copy of a company search of Landsolve conducted on 19 September 2012.
205. Upon my appointment, it was my understanding the formal documentation for the transaction described above had been drafted and provided to TWCC for execution, however, there were a number of outstanding issues which needed to be resolved including access/traffic lights to the Border Park site, arranging services to the site and negotiating an outcome with a potential purchaser of the site. A building contract for the Murwillumbah site was also required to be negotiated.

Signed: Taken by: 

206. The commercial arrangements around this deal were somewhat unclear and I was unable to locate any formal agreements between Landsolve and EL as RE for the EIF as to how the proceeds of any sale were to be dealt with and how the project was to be finalised.
207. It was necessary for me to undertake significant investigations into this matter to determine whether there was any benefit to the investors of the EIF in continuing with this transaction.
208. Mark McIvor, as director of Landsolve, did not cooperate in trying to finalise this commercial arrangement and despite numerous requests did not provide a proposal as to how the commercial arrangement could be completed. As receiver of the EIF, I had no control over the negotiation of the commercial arrangements (as the documents were entered into in the name of Landsolve). Ultimately the proposed commercial arrangements in relation to this property did not proceed due to a number of reasons including lack of cooperation from Mr McIvor.

335 – 351 Beenleigh-Redland Bay Road, Carbrook, Queensland

209. This property is a partially prepared townhouse development site with a total area of approximately 2.092 hectares.
210. In my role as receiver of the EIF, in respect of this property I have:
- (a) instructed valuers to prepare an updated valuation;
 - (b) reviewed updated valuation as well as previous valuations;
 - (c) considered and/or negotiated offers received to purchase the property;
 - (d) engaged planning consultants to provide advice in relation to the development approval which has lapsed and how best this can be reinstated; and
 - (e) reviewed and executed the contract of sale.

5/7 Murphy's Road, Kingscliff, New South Wales

211. This property is a residential penthouse apartment.
212. David Clout is the liquidator of Resort Corp Administration Pty Ltd (In Liquidation), being the registered owner of the property.
213. EL as RE for the EIF held a mortgage over the property as security for a loan made by the EIF.
214. I, as receiver of the EIF, made arrangements to pay the liquidators care, preservation and sale costs in order to obtain vacant possession of the property and ultimately achieve a sale of the property.
215. Upon obtaining vacant possession of the property the liquidators arranged for repairs to be undertaken to the property.
216. The liquidator then undertook a sales campaign in respect of this property which was successful and the property was sold at auction.
217. In my role, I obtained a number of updates from the liquidator during the course of the sales campaign with respect to this property.

Lot 8, Carrs Drive, West Yamba, New South Wales and Lot 2 and 3, Hogues Lane, Maclean, New South Wales

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218. The property located at Lot 8, Carrs Drive, West Yamba is a future residential development site with a total area of approximately 17.507 hectares.
219. The property located at Lot 2 and 3, Hogues Land, Maclean is a residential subdivision site with a total area of 13.75 hectares. The site has a development approval for a staged residential subdivision.
220. In my role as receiver of the EIF, I have received and reviewed three marketing submissions in respect of each property. I have also commissioned and reviewed updated valuations of each property.
221. In addition to the above, I also appointed Knight Frank as the selling agents. I reviewed the weekly reports prepared by the agents during the course of each of the selling campaigns and considered any offers received.
222. The West Yamba property is currently subject to a conditional offer.
223. With respect to the Maclean property, offers were received following the marketing campaign and I am presently engaged in on-going negotiations in relation to the sale of this property.

Lot 95, National Highway One, Stirling North, South Australia

224. This is an Englobo residential development site with a total area of approximately 53.8 hectares. The land has a provisional development approval for 301 residential allotments and 2 commercial allotments.
225. In my role as receiver of the EIF in respect of this property, I have received and reviewed three marketing submissions. I have also commissioned and reviewed updated valuations of the property.
226. In addition to the above, I also appointed Knight Frank as the selling agents for this property. I reviewed the weekly reports prepared by the agents during the course of the selling campaign and considered any offers received.
227. A contract of sale has been signed and settlement of the property is due 31 March 2013.


Lot 1, Richmond Road, Glenella, Queensland

228. This is a parcel of land zoned "rural" and is approximately 37.41 hectares. There are currently no planning approvals relating to the land.
229. In my role, I have reviewed the valuation of this property and also considered offers received for this property.
230. In addition, I have also liaised with the appointed receiver in relation to the negotiation of offers and final agreed sale of the property.
231. The property was sold with settlement on 4 September 2012.

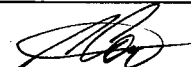
Moxey Dairy Farm, Francis Street, Richmond Lowlands, New South Wales

232. This is a dairy farm which includes seven individual allotments with a total area of approximately 58.977 hectares.
233. In my role, I have reviewed marketing submissions for the sale of each of the properties. I have also reviewed valuations for each of the properties.

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234. Each property also underwent a sales campaign and I reviewed the agents' reports in relation to those sales campaigns.
235. A tender campaign was recently conducted for this property and has now closed.

158 – 170 Pacific Drive, Port Macquarie, New South Wales

236. This is an Englobo residential development site with an area of approximately 2.8 hectares. There is no development approval in respect of this property.
237. The site is heavily overgrown and it is expected that there will be ecological issues with the site including flora and fauna.
238. In my role, I have considered offers for this property as well as reviewed the valuations obtained for this property.
239. In respect of this property, I have also reviewed planning consulting reports and requested they recommend options to deal with the site.
240. A marketing campaign will be undertaken in due course depending on the recommendations of the planning consultant.

Lots 1 & 65 – 67 "Eagle Street Estate", Collingwood Park Drive, Collingwood Park, Queensland

241. This is an Englobo residential development site with a total area of approximately 77 hectares. The site has development approval for high density housing (1,966 lots), a commercial component and over 30 hectares of open space.
242. In my role, I have, amongst other things:
- (a) met with planning and other consultants in order to discuss the strategy to be adopted in respect of the sale of the property;
 - (b) reviewed previous consultants reports;
 - (c) commissioned and reviewed two planning consultants reports;
 - (d) reviewed results of previous sales campaigns and sale negotiations;
 - (e) reviewed a report prepared by Landsolve Pty Ltd in relation to the strategy to sell the property;
 - (f) considered offers for the sale of the property;
 - (g) met with the agents;
 - (h) met with the proposed purchaser;
 - (i) prepared material for consideration by solicitors in relation to compliance with section 420 of the Act; and
 - (j) requested marketing submissions from three agents in relation to the proposed sale of the property.

Current court proceedings

243. In addition to the real property securities, EL as RE for the EIF is involved with a number of

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proceedings in various jurisdictions both in Queensland and elsewhere which relate to either the recovery of outstanding moneys to the EIF or to defend the security held by the EIF.

244. There are currently nine proceedings on foot, five of which are largely settled and relate solely to the recovery of costs.
245. In the course of the receivership, I have liaised with the loan managers formerly employed by EL (and now employed by myself direct) who had the day to day running of these matters in relation to legal actions relating to loans made by the EIF and the underlying security for those loans in order to understand the subject of the proceedings and to oversee the progress of these proceedings or providing instructions to solicitors were necessary.
246. In addition to the above, I have also liaised with the solicitors instructed in the proceedings in respect of the following:
- (a) the status/progress of the proceedings;
 - (b) any offers to settle;
 - (c) preparing, settling and swearing affidavits required in support of matters in the proceedings;
 - (d) considering the outcome of these proceedings; and
 - (e) any subsequent recovery action.
247. Again, such tasks are necessary for the proper administration of the receivership and to recover funds for the benefit of investors of the EIF.

Creditors

248. Since my appointment, I have been regularly reporting to the CBA and the NAB, the secured creditors of EL as RE for the EIF. I have also been liaising with CBA and NAB regarding their current position and discussing their ongoing requirements regarding the repayment of the debts owed to them. It is necessary and appropriate for me to liaise with the secured creditors to ensure the orderly realisation of the assets of the EIF for the benefit of the investors.
249. During the course of the receivership, I have provided cash flow forecasts to NAB and CBA for consideration and with a view to securing the release of funds held by NAB to allow for the on-going winding up of the EIF. This was necessary because, as discussed above, NAB froze the accounts held by the EIF shortly after my appointment and put EL and myself on notice that no person was authorised to dispose of or deal with the accounts held by the EIF without the prior consent of the NAB.
250. The monies held in these accounts form part of the property of the EIF to which I have been appointed receiver. Ordinarily these funds would be used to reimburse EL for costs it incurs as RE pursuant to the right of indemnify in favour of EL as RE in accordance with the constitutions of the EIF.
251. In addition to the above, my staff and I have also been communicating frequently with investors regarding:
- (a) the status of the receivership;
 - (b) reports to investors regarding the receivership;

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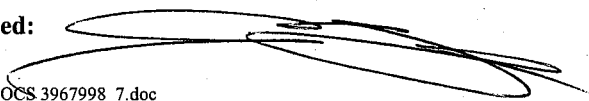
Taken by: 

- (c) the effect of the appointment of administrators to EL; and
 - (d) subsequent reports issued by the administrators/liquidators of EL.
252. The EIF is also a creditor of EL for approximately \$600,000.
253. As the EIF is a creditor of EL, my staff and I have undertaken work including:
- (a) reviewing reports issued by the administrators as to the progress of the administration, in particular the 439A Report; and
 - (b) attended at the creditor's meetings of EL in order to vote on behalf of the EIF.
254. Another significant task which I undertook was the replacement of the bank guarantees provided to EL as RE for the EIF through facilities with the CBA. The background and reasons for undertaking this task is discussed below.

Replacement of bank guarantee facility

255. From my review of the books and records of the EIF, I became aware that the CBA was a secured creditor of EL as RE for the EIF in respect of amounts outstanding in respect of certain bank guarantee facilities provided by the CBA (mainly to local councils). The amount outstanding to the CBA in respect of these bank guarantees, including fees and legal costs was approximately \$1,100,000.
256. Shortly after my appointment as part of my role and in order to familiarise myself with the position of secured creditors over the EIF, I had a number of discussions with the CBA concerning the security held by CBA over the property of the EIF and the debt secured by that security. I was advised by the CBA that the CBA required repayment of its bank guarantee facilities as soon as possible and that if this did not occur in the short term, the CBA were considering appointing an investigative accountant or a receiver under the bank guarantee facility with a view to being repaid as soon as possible.
257. As a result of my discussion with the CBA I considered, together with the board of EL, whether the NAB as the other secured creditor of the EIF may be willing to provide a replacement bank guarantee facility in order to repay the CBA and so as to avoid an appointment of receivers by the CBA. This appeared to me, as receiver of the property of the EIF, to be a sensible approach so as to provide for an orderly winding up of the EIF and, at the same time, would reduce the number of secured creditors claiming rights over EIF's property and with whom I would have to deal.
258. After a number of further discussions with the NAB and CBA and the board of EL as RE for the EIF, I was advised by the NAB that it agreed to provide facilities to replace the existing CBA bank guarantees.
259. Both myself and EL as RE for the EIF engaged Gadens Lawyers to act on our behalf in negotiating and finalising the documentation for the replacement by NAB of the bank guarantees provided by CBA.
260. On 29 February 2012, as stated above, following the appointment of the administrators to EL and the appointment of the receivers, I sought and was granted an Order from this Honourable Court which contained specific authority for me to deal with the implementation of the replacement NAB bank guarantee facility (a copy of this Order is exhibited as "DW-4" to this affidavit).
261. Following the making of this order and further negotiations with NAB, the administrators of EL and the receivers of EL, the documentation for the replacement by NAB of the bank guarantees provided by CBA was finalised.

Signed:



Taken by:



262. As receiver of the property of the EIF, I consider the replacement of the bank guarantees was proper and necessary and an important step to ensure the orderly realisation of the assets of the EIF and was ultimately for the benefit of investors.

Employees

263. Since my appointment, and in my role, my staff and I have considered various matters relating to employees of ECGA who have assisted me in the winding up of the EIF.
264. In particular, I have dealt with the termination of Bingham as CEO of EL and the transfer of employees from EL to my direct employment upon the disclaimer of the services agreement and their termination (discussed further above) and time has been allocated against "Trade-on" as well as "Employees".

Investigation

265. In my role, my staff and I have undertaken various tasks which can be described as falling within the category "investigation".
266. In essence, the remuneration claimed in this application in respect of this category, includes work undertaken by my staff and myself including:
- (a) undertaking and considering real property searches of the properties over which the EIF holds security;
 - (b) undertaking and considering company searches including searches of EL, MM Holdings Pty Ltd and Australasian Landbank Holdings Pty Ltd and other related entities;
 - (c) undertaking and considering searches in order to determine whether a guarantor had any personal assets or shareholdings in order to consider an offer to settle his personal guarantee;
 - (d) considering reimbursement of expenses and attending on site meetings with staff regarding same;
 - (e) consideration of the EIF balance sheet and income statement; and
 - (f) consideration of and confirming GST position with respect to the sale of properties.
267. These tasks were undertaken in order for myself and my staff to obtain a proper understanding of the assets of the EIF and the structure of the various companies in the EL group. These tasks were necessary in my view for the proper administration of the receivership.

Receipts and payments

268. Exhibit "DW-21" is a copy of a receipts and payments schedule for the period from 22 November 2011 to 31 August 2012.

Status of receivership

269. There are currently 16 properties remaining to be sold. Of these 16 properties:
- (a) two are under contract;
 - (b) one is subject to a deed of settlement;

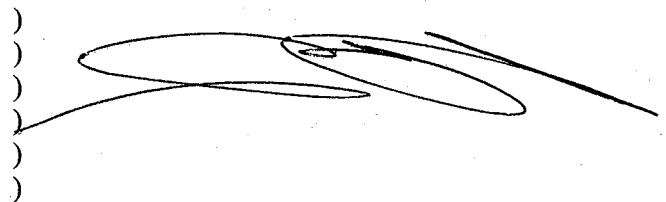
Signed: 

Taken by: 

- (c) two have had offers accepted;
 - (d) one is subject to possession proceedings;
 - (e) one is being prepared for sale; and
 - (f) the remainder are on the market for sale.
270. These properties are expected to realise between \$50,000,000 and \$67,000,000 with investors expected to receive a return of between 17 and 25 cents in the dollar (excluding future fees and legal recoveries).
271. Given the complexities involved with this receivership and the difficulties associated with dealing with the board of EL initially, I believe that the sum of \$841,000.60 inclusive of GST represents a fair and reasonable claim for remuneration and that the work undertaken to which the remuneration relates was necessary for the proper conduct of the receivership pursuant to the Orders.
272. I respectfully request this Honourable Court to make orders that my remuneration be determined in the amount of \$841,000.60 inclusive of GST.
273. As the receivership is ongoing there will be a need for further applications for approval of remuneration. These will be made on a regular basis.

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 19th
day of September 2012 at Brisbane in the
presence of:

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

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**

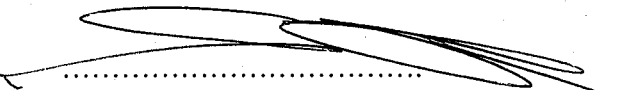
CERTIFICATE OF EXHIBIT

INDEX TO EXHIBITS

VOLUME 1 OF 3

Exhibits "**DW-1**" to "**DW-5**" to the affidavit of **DAVID WHYTE** sworn at Brisbane on this 19th day of September 2012.

Exhibit	Description	Page No.
DW-1	Orders of Justice Applegarth of 21 November 2011 and 23 November 2011 and Reasons for Judgment	1 – 32
DW-2	Consolidated Constitution for EIF dated 3 June 2011	33 – 84
DW-3	Replacement constitution for EPCIF dated 30 November 2010 and Deed Poll dated 13 December 2010	85 – 129
DW-4	Order of Justice Dalton dated 29 February 2012	130 – 131
DW-5	Company search of Equititrust Limited dated 19 September 2012	132 - 144


.....
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

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:

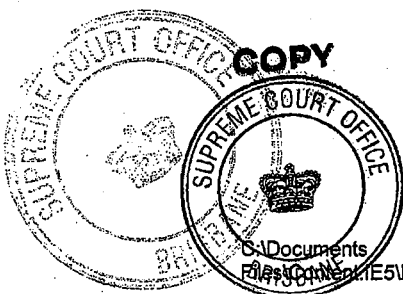
1. Pursuant to section 601ND (1)(a) of the *Corporations Act 2001* (Cth) (the "Act"):-
 - (a) Equititrust Limited ACN 061 383 944 be directed to wind up the Equititrust Income Fund ARSN 089 079 854, established by Deed Poll dated 9 August 1999 ("EIF");
 - (b) Equititrust Limited ACN 061 383 944 be directed 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

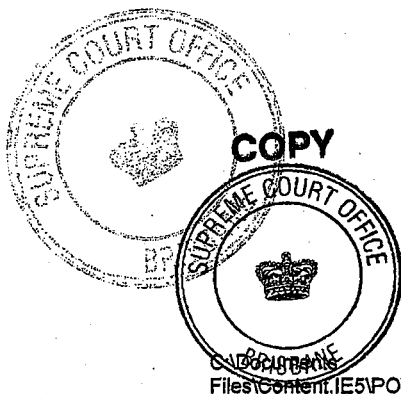
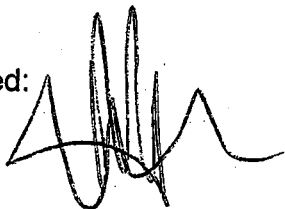
File on behalf of the Applicants

- (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), 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:



39

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

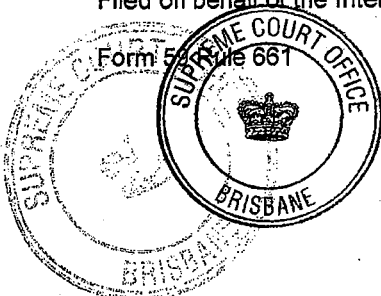
THE ORDER OF THE COURT IS THAT:

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)

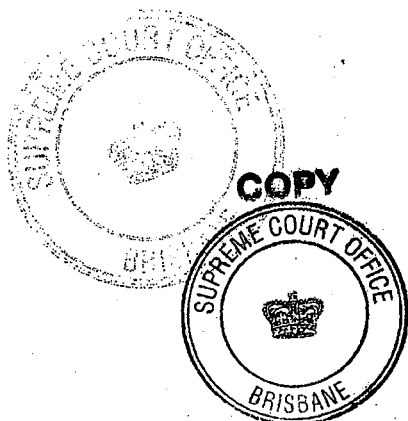
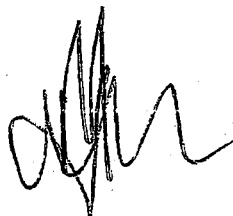


3. Pursuant to s.1101B(1) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to Order 1 above, the powers set out in s.420 of the Act in addition to the powers set out in s.1101B(8)(a) to (c) of the Act.
4. Pursuant to s.601NF(2) of the Act, Mr Whyte have, 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.

COPY



8. That by 4pm on Thursday 24 November 2011, Equititrust Ltd publish on its website (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.¹ A registered scheme may be wound up on the just and equitable ground because the administration and original arrangement have broken down.² The Court may wind up a registered scheme on the just and equitable ground if it is in the public interest to do so.³

[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.

¹ *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].

² *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].

³ *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*⁴ 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*⁵ and by the Full Court of the Federal Court in *Joye v Beach Petroleum N.L.*⁶ 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

⁴ [1992] 2 Qd R 76 at 78.

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

⁶ (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.⁷ 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*,⁸ 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.”⁹ 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.¹⁰ 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.¹¹ 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

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

⁹ Ibid at 541, [37].

¹⁰ Ibid at 537, [19].

¹¹ 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.”¹² 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.”¹³ 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*,¹⁴ 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.

¹² Ibid at 544, [52].

¹³ Ibid at 545, [55].

¹⁴ (2009) 74 ACSR 346, [2009] NSWSC 1068.

- [48] In *Mier v FN Management Pty Ltd*¹⁵, 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’.”¹⁶ (emphasis added)

- [49] In *Capelli v Shepard*¹⁷ 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

¹⁵ [2006] 1 Qd R 339, [2005] QCA 408.

¹⁶ Ibid at 348-349, [18] (footnotes omitted).

¹⁷ (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).¹⁸ The Court may appoint a receiver of trust property where that is necessary for the well-being of the trust.¹⁹ 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.²⁰ 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.²¹ 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

¹⁸ *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].

¹⁹ *Ibid.*

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

²¹ *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), 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), 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"

Lawyers

**McCullough
Robertson**

Consolidated constitution

Equititrust Income Fund ARSN 089 079 854

Equititrust Limited ACN 061 383 944

Version: 1

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Table of contents

Background	1
Agreed terms	1
1 DEFINITIONS AND INTERPRETATIONS	1
1.1 Defined Terms	1
1.2 Interpretation	8
2 CONSTITUTION AND DURATION	8
2.1 Equititrust Income Fund	8
2.2 Assets of the Scheme	8
2.3 Manager to act as responsible entity of the Scheme	8
2.4 Manager to establish Scheme	9
2.5 Interests	9
2.6 Different Classes of Interest	9
2.7 Creation of Additional Interests	9
2.8 Fractional Interests	9
2.9 Nature of Beneficial Interest	9
2.10 Minimum Investment Amounts and Holdings	9
2.11 Binding Effect of Constitution	9
2.12 Subordinated Interests	10
2.13 Conversion of Subordinated Interests to Access Investment Interests	10
3 APPLICATION PROCEDURES	11
3.1 Offer	11
3.2 Applications	11
3.3 Application Account	11
3.4 Application Money to be paid to Manager	11
3.5 Application Money with completed Application	11
3.6 Application Money without completed Application	11
3.7 Dealing with Application Money	11
3.8 Manager's discretion	12
3.9 Manager may withdraw Prospectus	12
3.10 Manager to Confirm Acceptance	12
3.11 Issue Price	12
3.12 Certificates	12
3.13 Form of Certificate	12
3.14 Joint Members	12

3.15	Replacement Certificates	12
3.16	Issue Price Adjustment	12
4	RESPONSIBILITIES, POWERS AND DUTIES OF MANAGER -----	13
4.1	Exercise of powers of the Manager	13
4.2	Power to Appoint Agent (Section 601FB(2))	13
4.3	Authority for Agent (Section 601FB(3))	13
4.4	Liability of Agent (Section 601FB(4))	13
4.5	Duties of Manager (Section 601FC)	13
5	DUTIES OF OFFICERS AND EMPLOYEES OF MANAGER -----	14
5.1	Duties of Officers of the Manager (Section 601FD(1))	14
5.2	Duties of Employees of the Manager (Section 601FE(1))	15
6	INDEMNITIES AND REIMBURSEMENTS OF EXPENSES -----	15
6.1	Indemnity	15
6.2	Limitation of liability	15
6.3	Further limitation of liability of the Manager	15
6.4	Transactions involving the Scheme	16
6.5	Further indemnity	16
6.6	General Compliance Related Party Transactions	16
6.7	Dealings by the Manager	16
7	INVESTMENT -----	16
7.1	Investment Management	16
7.2	Investment of Assets in another managed investment scheme (Section 601FC(4))	16
7.3	Investment Oversight	16
7.4	Income Warranty	16
7.5	Amending the Income Warranty	17
8	INCOME OF THE SCHEME -----	17
8.1	Manager to collect Income	17
8.2	Decision of Manager final	17
8.3	Distribution to Members	17
8.4	Distribution Period	17
8.5	Distribution Surplus	17
8.6	Manager to keep separate accounts	18
8.7	Reinvestment of income entitlement	18
8.8	Members presently entitled to Distributable Income	18
9	TERMINATION OF THE SCHEME -----	18
9.1	Termination of the Scheme	18
9.2	Defined Event of Winding Up	18

	9.3 Procedure for Winding Up	18
	9.4 Priority on a winding up	19
	9.5 Limitation of liabilities	19
10	TRANSFER AND TRANSMISSION OF MEMBERS INTERESTS -----	19
	10.1 General principles when dealing with Members' Interests	19
	10.2 Form of transfer	20
	10.3 Transmission	20
11	WITHDRAWAL -----	21
	11.1 Obligation to redeem	21
	11.2 Access and 7 day call Investment Interests	21
	11.3 Extension of Redemption Date	22
	11.4 Suspension by Manager	22
	11.5 Other suspension of redemption obligation	22
	11.6 Staggering of Redemption Dates	23
	11.7 Funding of redemption	23
	11.8 Time for Payment of Redemption Amount	23
	11.9 Resale and redemption of Interests by Manager	23
	11.10 Cancellation of Interests	23
	11.11 Transfer of specific assets	23
	11.12 Compulsory redemption of small holdings	23
	11.13 Components of Redemption Price and payment of accrued distributions	23
	11.14 No required disposal	23
	11.15 Early Redemption	23
	11.16 Liquidity Protection Rules	24
	11.17 Additional Investments	24
	11.18 Early Redemption	25
	11.19 Redemption Price Adjustment	25
12	REGISTERS -----	26
	12.1 Member Register	26
	12.2 Details on Register	26
	12.3 Expunging Information	26
	12.4 Inspection of Register	26
	12.5 Copies of Register	26
	12.6 Closure of Register	26
	12.7 Change of Member Details	26
13	MEMBER MEETINGS (PART 2G.4) -----	27
	13.1 Managers Power to call Members Meeting (Section 252A)	27

	13.2 Members power to call a meeting (Section 252B)	27
	13.3 Failure of Manager to call meeting of the Members (Section 252C)	27
	13.4 Calling of meetings of Members by Members (Section 252D)	28
14	HOW TO CALL MEETINGS OF MEMBERS -----	28
	14.1 Notice of meetings (Section 252F)	28
	14.2 Notice of meetings of Members to Members, directors and auditors (Section 252G)	28
	14.3 Auditors entitled to other communications (Section 252H)	28
	14.4 Contents of notice of meetings of Members (Section 252J)	28
	14.5 Notice of adjourned meetings (Section 252K)	29
15	MEMBERS' RIGHTS TO PUT RESOLUTIONS AT MEETINGS OF MEMBERS -----	29
	15.1 Members' resolutions (Section 252L)	29
	15.2 Manager giving notice of Members' resolutions (Section 252M)	29
	15.3 Members' statements to be distributed (Section 252N)	29
16	HOLDING MEETINGS OF MEMBERS -----	30
	16.1 Time and place for meetings of Members (Section 252P)	30
	16.2 Technology (Section 252Q)	30
	16.3 Quorum (Section 252R)	30
	16.4 Chairing meetings of Members (Section 252S)	31
	16.5 Auditors' right to be heard at meetings of Members (Section 252T)	31
	16.6 Adjourned meetings (Section 252U)	31
17	PROXIES AND BODY CORPORATE REPRESENTATIVES -----	31
	17.1 Who can appoint a proxy (Section 252V)	31
	17.2 Rights of proxies (Section 252W)	32
	17.3 Manager sending appointment forms or lists of proxies must send to all Members (Section 252X)	32
	17.4 Appointing a proxy (Section 252Y)	32
	17.5 Proxy documents (Section 252Z)	33
	17.6 Validity of proxy vote (Section 253A)	33
	17.7 Body corporate representative (Section 253B)	33
18	VOTING AT MEETINGS OF MEMBERS -----	34
	18.1 How many votes a Member has (Section 253C)	34
	18.2 Jointly held interests (Section 253D)	34
	18.3 Manager and associates cannot vote if interested in resolution (Section 253E)	34
	18.4 How to work out the value of an interest (Section 253F)	34
	18.5 Objections to a right to vote (Section 253G)	34
	18.6 Votes need not all be cast in the same way (Section 253H)	34
	18.7 How voting is carried out (Section 253J)	34

18.8	Matters on which a poll may be demanded (Section 253K)	34
18.9	When a poll is effectively demanded (Section 253L)	35
19	MINUTES AND MEMBERS' ACCESS TO MINUTES -----	35
19.1	Minutes (Section 253M)	35
19.2	Members' access to minutes (Section 253N)	35
20	CHANGING THE CONSTITUTION -----	36
20.1	Power to Amend	36
20.2	Lodgement of Amendment	36
21	REMUNERATION OF MANAGER -----	36
21.1	Management Fee	36
21.2	Custodian's fees	36
21.3	Disputes between the Manager and Members	36
21.4	Best Efforts to Resolve the Dispute	36
21.5	Priority	37
22	RETIREMENT, REMOVAL OR LIQUIDATION OF MANAGER -----	37
22.1	Retirement of the Manager (Section 601FL)	37
22.2	Removal of the Manager by Members (Section 601FM)	37
23	CONSEQUENCES OF CHANGE OF MANAGER -----	38
23.1	Former Manager to hand over books and provide reasonable assistance (Section 601FR)	38
23.2	Rights, obligations and liabilities of former Manager (Section 601FS)	38
24	NOTICES -----	38
24.1	Notices to be in writing	38
24.2	Notices to the Manager	38
24.3	Joint Members	38
24.4	Form of Notice	38
24.5	Time of delivery	38
24.6	Notices by post	39
24.7	Incomplete facsimile transmission	39
24.8	Facsimile transmission reasonably believed to be unintelligible	39
24.9	Request for re-transmission	39
24.10	Signatures	39
24.11	Address of Applicants	39
24.12	Address of Members	39
24.13	Changes of address for service of the Manager	39
25	FINANCIAL STATEMENTS -----	39
25.1	Preparation of Financial Statements (Section 292)	39

25.2	Compliance with Accounting Standards and Regulations (Section 296)	39
25.3	True and Fair View (Section 297)	39
25.4	Audit of annual financial report (Section 301)	40
25.5	Annual Financial Report to Members (Section 314)	40
25.6	Members choices for Annual Financial Information (Section 316)	40
25.7	Supplying information to the Auditor	40
25.8	Accounts of other Members	40
26	AUDITOR -----	41
26.1	Appointment	41
26.2	Removal or Retirement of Auditor	41
27	GENERAL -----	41
27.1	Payments to Members	41
27.2	Retention of documents	41
27.3	Copies of this Constitution	41
27.4	Governing law and jurisdiction	41
27.5	No Waiver	41
28	RESOLUTION OF DISPUTES -----	42
28.1	Complaints Handling System	42
28.2	Essential Elements	42
28.3	Disputes between the Manager and Members	42
28.4	Best Efforts to Resolve the Dispute	42
29	IMPACT OF INTERNATIONAL ACCOUNTING STANDARDS -----	43

Deed poll

Dated

3rd June 2011

By

Manager

Equititrust Limited ACN 061 383 944

of 67 Thomas Drive, Chevron Island, Queensland

In favour of

Members

Background

- A. The Manager is the responsible entity of the Equititrust Income Fund ARSN 089 079 854 established by Deed Poll dated 9 August 1999 as amended from time to time.
- B. Pursuant to a request from ASIC under section 601GC(3) of the Corporations Act the Manager lodges this consolidated copy of the Constitution. This consolidated Constitution is an amalgam of the original Deed Poll and all subsequent amendments to that Deed Poll.
- C. This Constitution is made with the intent that the Manager and each Member will be bound by it.

Agreed terms

Trust not Confirmed

- (a) Nothing expressly or impliedly contained in this consolidated Constitution (including the recitals) is effective to confirm, declare or otherwise acknowledge the trust declared under the original constitution, or to impress any new or additional trusts upon property held on trust as at the date of this consolidated Constitution.
- (b) Certain clauses (as identified) in this consolidated Constitution are reproduced (for the purpose of explanation only), but do not replace or restate the existing clauses.
- (c) Nothing in this consolidated Constitution should be interpreted as creating any new or further trust and at all times, the Scheme remains a simple trust.

Manager and Members bound

The Manager and the Members are bound by the terms of the Constitution as amended by this amending deed.

1 DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

In this Constitution unless the context otherwise requires:

'Accounting Standards' has the meaning given to that term in section 9 of the Law;

'Applicant' means a person who has completed and lodged with the Manager an Application, pursuant to a Prospectus, and has paid the Application Money to which the Application refers, and includes his or her successors in title and permitted assigns;

'Application' means a duly completed and signed application to invest in the Scheme, lodged with the Manager and accompanied by payment of the Application Money;

'Application Account' means the Bank account established by the Manager under clause 3.3;

'Application Money' means all money paid by the Applicant pursuant to a Prospectus, accepted by the Manager and held by the Manager in the Application Account;

'Approved Valuer' means any person or firm appointed by the Manager, to value any property and who is independent of the Manager and includes a person employed or engaged by a company or firm and who:

- (a) is authorised under any law of the State or Territory where the valuation takes place to practice as a valuer; and
- (b) has at least 2 years continuous experience of valuation; or
- (c) because of their experience or qualifications, the Manager considers is suitably qualified to provide an assessment of the value of the relevant property.

'Assets' means all assets and liabilities of the Scheme which are, or would be, recognised as assets or liabilities of the Scheme by the application of generally accepted accounting principles;

'Associate' means an associate as defined in division 2 of part 1.2 of the Law;

'Auditor' means the auditor for the Scheme, appointed by the Manager, as required under the Law;

'Authorised Investments' means:

- (a) Mortgage Investments;
- (b) deposits at call or for a term with any Bank;
- (c) bills of exchange (including commercial bills) issues, drawn accepted or endorsed by any Bank or negotiable certificates of deposit issued by any Bank; and
- (d) any authorised investment as defined in section 21 of the Queensland *Trusts Act 1973*.

'Bank' has the meaning given to an Authorised Deposit Taking Institution as that term is defined in the *Banking Act 1959* and also includes a bank constituted by or under a law of the State or Territory and a 'foreign bank' as that term is defined in section 5 of the *Banking Act 1959*;

'Benchmark Return' is the relevant distribution hurdle rate for each Member (as nominated by the Manager when the Member invests in the Scheme) which that Member must receive from their investment in the Scheme before the Manager is entitled to receive the management fee referred to in clause 21.1. The Benchmark Return is not a forecast or a representation that the Member will receive this return or indeed any return from their investment in the Scheme;

'Business Day' means any day on which trading banks on the Gold Coast are generally open for business;

'Cash' includes cheques, currency notes, bank cheques, bank transfers and bank drafts in the lawful currency of Australia or another country;

'Certificate' means a certificate or document issued by the Manager to the Applicant evidencing the acceptance by the Manager of the Application;

'Commencement Date' means the date on which the Constitution was originally registered by the Commission;

'Commission' means the Australian Securities and Investments Commission;

'Compliance Plan' means the compliance plan for the Scheme and registered by the Commission and includes any approved amendments to the compliance plan from time to time;

'Constitution' means this Deed, and prior to thereto, shall where the context permits, also include the Former Constitution;

'Current Interest Value' means:

- (a) In relation to an Interest for the purpose of determining the Issue Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time and adjusted as provided in clause 3.16; and
- (b) in relation to an Interest for the purpose of determining the Redemption Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time and adjusted as provided in clause 11.19;

'Current Liabilities' in respect of the Scheme includes all of those Liabilities of the Scheme that would in the ordinary course of business be due and payable within 12 Months from the date on which they are ascertained;

'Current Value' means in relation to the Scheme the amount derived by deducting from the Value of the Assets of the Scheme:

- (a) all amounts borrowed for the purpose of the Scheme and remaining owing;
- (b) the amount of all actual Liabilities of the Scheme (other than interest and those referred to in paragraph (a) of this definition) owing but unpaid;
- (c) such amounts as the Manager thinks necessary to provide for all accrued and contingent outgoings and Liabilities of the Scheme (other than those referred to in paragraphs (a) and (b) of this definition);
- (d) such amounts which the Manager thinks necessary or desirable to provide or allow for depreciation or the writing down or replacement of any Authorised Investments of the Scheme (including provision for amortising leasehold property) or for any other provisions or allowances; and
- (e) all other amounts which the Manager considers should be deducted for the purposes of making a fair and reasonable determination, in accordance with Accounting Standards, of the Current Value of the Scheme;

'Delay Event' means a circumstance where any of the following exist:

- (a) the Scheme's cash reserves fall and remain below 5% of the total assets of the Scheme for 10 consecutive Business Days; or
- (b) if in any period of 90 days, the Manager received valid net redemption requests equal to 10% or more of the Scheme's issued Interests and, during the period of 10 consecutive days falling within the 90 day period, the Scheme's cash reserves are less than 10% of the total assets of the Scheme; or

- (c) the Manager is not satisfied that sufficient cash reserves are available to pay the Redemption Price on the appropriate date and to pay all actual and contingent liabilities of the Scheme; or
- (d) any other event or circumstance arise which the Manager considers in its absolute discretion may be detrimental to the interests of the Members of the Scheme.

'Distribution Amount' means, in relation to the Scheme, the amount of any Income Warranty applicable to the particular Member;

'Distribution Period' means the period referred to in clause 8.4;

'Dispute Resolution Service' means the dispute resolution service approved by the Commission which the Manager nominates from time to time;

'Distributable Income' means subject to clause 8.5 any amount determined by the Manager from time to time to be distributed to Members, including –

- (a) the net income of the Scheme
- (b) other Income of the Scheme, and
- (c) any amount of capital of the Scheme.

'Distribution Surplus' means the surplus Income of the Scheme distributed in the manner provided in clause 8.5;

'Expert' includes solicitors, barristers, accountants, bankers, financial advisers, an Approved Valuer and other professionally qualified consultants;

'Facility Agreement' means any agreement (including any borrowing arrangements) to which the Manager is a party which may limit the capacity of the Manager to deal with Subordinated Interests;

'Fees' means all fees (including application and penalty), charges, late interest penalty payments paid by borrowers to the Manager on Mortgage Investments;

'Financial Statements' has the meaning given to that term in section 9 of the Law;

'Financial Year' means the period of 12 months ending on 30 June in each year during the continuance of this Constitution and includes the period commencing on the Commencement Date and expiring on the next succeeding 30 June and any period between 30 June last occurring before the termination of the Scheme;

'First Mortgage' means a registered first mortgage over the Land;

'Former Constitution' means the Deed Polls dated 9 August 1999 and 6 September 1999 made by the Manager and referred to in the Recitals;

'Gross Asset Value' means the aggregate of:

- (a) the Market Value of all investments of the Scheme including cash and amounts owing to the Scheme;
- (b) any prepayment of expenditure; and
- (c) such other increments or decrements as the Auditor approves to be included;

'GST' means a tax, impost or duty on goods, services or other things introduced by the Commonwealth, State or Territory either before or after the date of this Constitution;

'GST Act' means A New Tax System (Goods & Services Tax) Act 1999 as amended;

'Income' means all receipts from Authorised Investments which are paid into the Scheme Account;

'Income Warranty' has the meaning given to that term under Clause 8;

'Interest' means an undivided share in the Scheme as provided in clause 2;

'Interest Liabilities' means the liability of the Scheme to the Members for their undivided interest in the Assets.

'Investment Deed' is the deed by the holder of Subordinated Interests in favour of (amongst others) the Manager (in its capacity as responsible entity of the Scheme) relating to the acquisition, holding and redemption of Subordinated Interests;

'Issue Price' means in relation to the issue of an Interest, an amount equal to the Current Interest Value of the Interest at the time of issue plus:

- (a) the Statutory Revenue Charges (if any) payable by the Manager in connection with the issue of the Interest;
- (b) all other charges and disbursements of the Manager in connection with the issue of the Interest not included in the Issue Provision; and
- (c) the Issue Provision;

'Issue Provision' means such amount (if any) as may from time to time be determined by the Manager in respect of or as an allowance for costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, taxes and other costs that may be incurred or expected to be incurred in connection with the conversion of Application Money into Authorised Investments;

'Issued Interests' means all Interests for the time being created and issued and not cancelled;

'Land' means a freehold estate or interest in real property in any part of the Commonwealth of Australia or any State or Territory thereof and including buildings, fixtures and fittings (including furnishings) and other improvements erected or installed thereon;

'Law' means the Corporations Act 2001 and Corporations Regulation;

'Liabilities' in respect of the Scheme includes:

- (a) unpaid administrative costs and expenses, including fees of the Manager;
- (b) accrued charges in respect of or owing in relation to any Asset of Scheme;
- (c) amounts required to meet present liabilities of the Scheme;
- (d) amounts of all borrowings of the Scheme;
- (e) any provisions for Taxes which, in the opinion of the Manager, should be taken into account; and
- (f) any other amounts required to meet liabilities or other expenditure which, in the opinion of the Manager, should be taken into account and which have not otherwise been taken into account in determining the amount of the liabilities in any of the preceding paragraphs of this definition;

'Manager' means Equititrust Ltd or any other person for the time being acting as manager, provided that at all times the Manager is the responsible entity of the Scheme as defined in section 9 of the Law and the trustee of this trust;

'Market Value' of an investment means the current market value determined in accordance with a method agreed between the Manager and an Approved Valuer or Expert. If there is a

dispute between the Manager and the Approved Valuer, the decision of the Approved Valuer shall prevail;

'Member' means a person whose Application is accepted and for the time being is registered under the provisions of this Constitution as a member of the Scheme and includes persons jointly so registered;

'Minimum Investment Amount' is the minimum investment by the holder of a Subordinated Interest as provided under the Investment Deed;

'Minimum Redemption Amount' means the minimum amount a Member can withdraw from the Scheme at any time, as disclosed in the Prospectus;

'Month' means calendar month;

'Mortgage Investment' means a loan secured by a registered mortgage over Land and other property subject to the following provisions:

- (a) the mortgage will rank as a registered First Mortgage and/or Second Mortgage over the mortgaged Land; and
- (b) the total of all money advanced and secured over such Land and any other property, shall not exceed 80% of the value of the Land and other property that has been valued by an Approved Valuer as shown in the valuation furnished by an Approved Valuer; and
- (c) the loan shall be for a maximum period of 30 years.

'Officer' means a person who is a director, secretary or executive officer of the Manager;

'Prospectus' means a product disclosure statement or any offer document issued by the Manager inviting Applications or offers to join the Scheme established by the Constitution or where the context requires, means the documentation that forms part of the disclosure inviting Applications or offers to join the scheme established by the Constitution;

'Quarter' means each period of 3 months ending on the last days of March, June, September and December in each year;

'Redemption Amount' means the number of Interests to be redeemed or repurchased multiplied by the relevant Redemption Price less any Taxes;

'Redemption Date' means the date determined by the Manager in accordance with clause 11.1 or 11.17 with effect from which an Interest is to be redeemed or repurchased;

'Redemption Price' means in relation to the redemption of an Interest, an amount equal to the Current Interest Value of the Interest at the time of redemption less:

- (a) the Statutory Revenue Charges (if any) payable by the Manager in connection with the redemption of the Interest;
- (b) all other charges and disbursements of the Manager in connection with the redemption of the Interest not included in the Redemption Provision; and
- (c) the Redemption Provision.

'Redemption Provision' means such amount (if any) as may from time to time be determined by the Manager in respect of or as an allowance for costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, taxes and other costs that may be incurred or expected to be incurred in connection with the conversion of Authorised Investments into cash;

'Register' means the register of Members to be established and kept by the Manager under clause 12.1;

'Regulations' means the Corporations Regulations of Queensland;

'Related Party' means a related party as defined in part 5C.7 of the Law;

'Scheme' means the scheme established in accordance with the Constitution;

'Scheme Accounts' means the Bank accounts of the Scheme established and maintained in accordance with the Law and any ASIC policy;

'Second Mortgage' means a registered second mortgage over the Land;

'Statutory Revenue Charge' means a fee, tax, fine, duty, penalty, impost or other charge imposed by statute, rule or regulation and includes any bank account debit or financial institutions duty or tax;

'Subordinated Interest' is an Interest in the Scheme with the special rights and restrictions as provided in clause 2.12;

'Tax Act' means the *Income Tax Assessment Acts of 1936 and 1997* (Cth) and the regulations made thereunder from time to time; and

'Taxes' includes, without limitation, any:

- (a) present or future stamp or documentary taxes, or any other excise or property taxes, GST, charges or similar levies, interest, penalties, fees or other amounts (if any) imposed, levied, collected, withheld or assessed which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder or which are imposed on the Manager in respect of the Scheme, a Members Interest or any of the Authorised Investments thereof;
- (b) taxes, levies, imposts, duties, deductions or withholdings (however called), interest, GST, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed of any nature whatever, whensoever and howsoever imposed, and all liabilities with respect thereto which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder; or
- (c) taxes, interest, penalties, charges, fees GST, or other amounts (if any) imposed, levied, collected, withheld or assessed upon:
 - (i) Application Money;
 - (ii) the Scheme, a Members Interest, Scheme Accounts, or the Income, capital gains, profits, transactions, accounts, accruals, receivables or any change in the worth or value of the Scheme, a Members Interest, the Assets or the Authorised Investments; or
 - (iii) the Manager in its capacity as manager of the Scheme,
 - (iv) all such taxes and imposts to include, without limitation, all imposts made pursuant to the Tax Act, financial institutions duty, debits tax, withholding tax, GST, stamp or documentary taxes, or any other excise or property taxes, charges or similar levies (howsoever called) imposed, levied, collected withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction from, or to, which a payment is made by, or on behalf of a Member or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing;

'Value' of an Asset when the value of that Asset is required to be ascertained or taken into account under this Deed or the Scheme shall mean its Market Value as last determined.

'Wholesale Client' has the meaning contained in the Law;

'Withdrawal Date' is the date from which a Member is entitled to have their Interests redeemed by the Manager as provided in clause 11.

'Withdrawal Request Form' means the request form prescribed by the Manager and given to the Manager by a Member for the purposes of clause 11.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) words expressing the singular include the plural and vice versa;
- (b) words denoting a natural person include corporations and body corporates and vice versa;
- (c) words denoting gender include both genders;
- (d) a reference to a part, clause, paragraph or schedule is a reference to a part, clause, paragraph or schedule of this Constitution;
- (e) references to this Constitution are references to this Constitution as amended, supplemented or varied from time to time;
- (f) a reference to writing includes printing, engraving, typewriting, lithography, photography and any other mode of reproducing words in a visible form;
- (g) a reference to a thing or matter includes a reference to a part of the thing or matter;
- (h) headings are included for convenience only and do not affect interpretation;
- (i) references to a party to this Constitution include the party's successors and permitted assigns;
- (j) references to a document or agreement include references to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (k) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (l) references to dollars and '\$' refer to amounts in Australian currency;
- (m) the schedules to this Constitution form part of this Constitution; and
- (n) where any word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

2 CONSTITUTION AND DURATION

2.1 Equititrust Income Fund

[Not altered but reproduced]

The Constitution establishes the Equititrust Income Fund, which commences on the Commencement Date.

2.2 Assets of the Scheme

[Not altered but reproduced]

The Manager declares that it holds and will at all times hold the Assets on trust for Members of the Scheme subject to the provisions of the Constitution and the Law.

2.3 Manager to act as responsible entity of the Scheme

[Not altered but reproduced]

The appointment of the Manager as manager of the Scheme is hereby confirmed and the Manager agrees to manage the Scheme upon and subject to the terms and conditions contained in the Constitution.

2.4 Manager to establish Scheme

[Not altered but reproduced]

The Manager shall, on the execution of the Constitution, lodge and hold the sum of one hundred dollars (\$100) to establish and constitute the Scheme. The Manager may, from time to time, cause or cause to be received more cash by way of addition to the Scheme to be held upon the trusts of the Constitution.

2.5 Interests

The beneficial interest in the Scheme shall be divided into Interests.

2.6 Different Classes of Interest

The Manager may issue Interests or classes of Interests with special rights or restrictions and those rights and restrictions prevail over any inconsistent provision of this Constitution. The rights or restrictions of a particular Interest or class of Interest shall be disclosed in any disclosure document offering investors the opportunity to invest in the Scheme.

2.7 Creation of Additional Interests

As and when an addition is made to the Scheme pursuant to this Constitution, additional Interests equal in number to the number computed by dividing the amount of Cash so added by the relevant Issue Price shall be created. The Manager may, instead of Cash, accept Authorised Investments as consideration for the issue of Interests in the Scheme provided that the Manager shall be satisfied as to the Value of such Authorised Investments and the number of Interests to be issued in respect thereof shall be the Value of such Authorised Investments divided by the relevant Issue Price at the date of issue of the Interests.

2.8 Fractional Interests

The Manager may at its discretion create a fractional Interest in 100 parts for an amount less than a whole dollar notwithstanding any other provision of this Constitution, the expression 'Interest' shall, where the context will allow, be deemed to include such a fractional Interest and such fractional Interest shall carry with it the rights and obligations which attach to a whole Interest and limited to the proportion of those rights and obligation which the number of 100ths in such fractional Interests bears to 1. A fractional Interest may also be created by the redemption of part of a whole Interest.

2.9 Nature of Beneficial Interest

A Member shall be entitled as herein provided or as provided by the Law to a beneficial interest in the Scheme but such interest shall not entitle the Member other than as provided by this Constitution:

- (a) to interfere with the rights or powers of the Manager in its dealings with the Scheme or any part thereof; or
- (b) to exercise any rights, powers or privileges in respect of any Authorised Investment.

2.10 Minimum Investment Amounts and Holdings

The Manager may at any time determine minimum amounts which may be invested and accepted as Application Moneys in the Scheme including any minimum holding of Interests in the Scheme.

2.11 Binding Effect of Constitution

This Constitution operates as a deed and is binding on the Manager and each Member and all persons claiming through them as if they were parties to this Constitution, and each Applicant by signing the Application, acknowledges being so bound.

2.12 Subordinated Interests

The Manager may pursuant to clause 2.6, issue Subordinated Interests to itself or any other person, provided that person is a Wholesale Client. The rights and restrictions of Subordinated Interests are:

- (a) The holder of a Subordinated Interest will have the same rights to vote at meetings of Members as the holders of Interests.
- (b) The holder of a Subordinated Interest has no entitlement to participate in any Income Warranty.
- (c) The holder of a Subordinated Interest has the right to receive the Distribution Surplus to be shared between the holders of Subordinated Interests in proportion to the number of Subordinated Interests they hold when the Distribution Surplus is distributed in accordance with clause 8.5.
- (d) The holders of Subordinated Interests must maintain the Minimum Investment Amount.
- (e) Subordinated Interests cannot be issued at an Issue Price which is less than the current Issue Price for Interests which are not Subordinated Interests.
- (f) Subject to paragraph (d) above, the redemption of a Subordinated Interest can only occur:
 - (i) with the consent of the Manager; and
 - (ii) all valid Withdrawal Request Forms have been processed and paid at a Redemption Price of not less than \$1.00 per Interest; and
 - (iii) provided the redemption does not breach any existing Facility Agreement;
 - (iv) there being retained sufficient surplus in the Scheme to meet any Income Warranty for the current month; and
 - (v) the Manager has a reasonable belief that:
 - (A) any Income Warranty; and
 - (B) any Benchmark Return,
 - (C) will continue to be met.
- (g) In the event the Manager is removed as responsible entity of the Scheme (other than with its consent) all Subordinated Interests will (subject to any existing Facility Agreement) on its removal convert to Access Investment Interests in the manner provided in clause 2.13.

2.13 Conversion of Subordinated Interests to Access Investment Interests

Where Subordinated Interests are converted to Access Investment Interests the following formula applies:

$$A = B \times (C/D)$$

- (a) Where:
- (b) A is the number of Access Investment Interests to which the Subordinated Interests are converted.
- (c) B is the number of Subordinated Interests held by the Subordinated Interests holder.
- (d) C is the Current Interest Value of the Subordinated Interests.
- (e) D is the Current Interest Value of Access Investment Interests.

3 APPLICATION PROCEDURES

3.1 Offer

The Manager may, in accordance with the provisions of the Law and this Constitution, invite investment in the Scheme and issue a Prospectus in relation to such an invitation.

3.2 Applications

A person who wishes to invest in the Scheme must make an Application in the manner specified in the Prospectus and pay the Issue Price associated with the Application Money payable.

3.3 Application Account

Unless otherwise required by the Law, the Manager must establish and maintain a Bank account in the name of the Manager to be designated the Application Account for the Scheme. The Application Account must be established and operated in accordance with the requirements of the Law.

3.4 Application Money to be paid to Manager

The Manager must, in each Prospectus and other representations relating to the Scheme, direct how all cheques and other payment orders in respect of Applications are to be drawn on account of the Scheme.

3.5 Application Money with completed Application

Where the Manager receives Application Money with a completed Application relating to a current Prospectus, the Manager must pay the Application Money into the Application Account as soon as practicable after its receipt, but no later than the close of business on the next Business Day after the day of receipt.

3.6 Application Money without completed Application

Where the Manager receives Application Money that is not accompanied by a completed Application relating to a current Prospectus it will, as soon as practicable, return the Application Money to the Applicant or:

- (a) attempt to obtain the Application from the Applicant;
- (b) pay the Application Money into the Application Account; and
- (c) if interest accrues while the Application Money is held in the Application Account, ask the Applicant, in writing, whether the Applicant wants the interest to be dealt with as additional Application Money or to be paid to the Applicant.

3.7 Dealing with Application Money

Should the Manager pay the Application Money into the Application Account under clause 3.6, the Manager will:

- (a) hold the Application Money on trust for the Applicant, until the Application is received; and
- (b) If the Application is received by the Manager within 30 days after the Application Money is received:
 - (i) apply the Application Money to the Scheme Accounts as soon as practicable after receiving the Application; and
 - (ii) deal with any interest accrued while the Application Money was held by the Manager in the Application Account in the manner disclosed in the Prospectus; and
- (c) if the Application has not been received by the Manager within 30 days after the Application Money was received, return the Application Money and interest (if any) to the Applicant as soon as practicable.

3.8 Manager's discretion

The Manager has the sole discretion to determine whether to accept or reject an Application in whole or in part without giving reasons. Where the Manager determines to reject an Application, it must give written notice to the Applicant within a reasonable time after receipt of the Application. The Manager must within a further 10 Business Days after the notice of rejection is given, refund to the Applicant the Application Money.

3.9 Manager may withdraw Prospectus

The Manager may in its sole discretion determine at any time to withdraw a Prospectus. The Manager within 5 Business Days after the notice to withdraw the Prospectus is given, repay to all Applicants all Application Money paid pursuant to that Prospectus and held in the Application Account. Any interest that has accrued on Application Money in the Application Account shall be dealt with as disclosed in the Prospectus.

3.10 Manager to Confirm Acceptance

- (a) Once the Application is accepted the Manager must enter the Applicant on the Register as a Member.
- (b) The Manager must transfer the Application Money of the Member to the Scheme Accounts.

3.11 Issue Price

The issue price of an Interest shall be at the Issue Price and initially for each Interest shall be one dollar (\$1.00) of Application Money.

3.12 Certificates

The Manager

- (a) may issue to each Member a Certificate as evidence of the Members' investment in the Scheme; and
- (b) may cancel existing Certificates and reissue new Certificates where the Manager has been supplied with evidence to the satisfaction of the Manager that the existing Certificate has been lost, or stolen.

3.13 Form of Certificate

The Certificate is to be in the form as determined by the Manager.

3.14 Joint Members

In the case of joint Members, only the person whose name appears first in the Register is entitled to a Certificate relating to that Members Interest.

3.15 Replacement Certificates

Replacement Certificates may be issued in the circumstances and subject to such conditions as determined by the Manager.

3.16 Issue Price Adjustment

Where the Manager calculates the Issue Price of an Interest, and the Issue Price is less than \$1.00 per Interest the following will apply:

- A = the Current Value of the Scheme
- B = the total number of Issued Interests
- C = the total number of Subordinated Issued Interests
- $A/(B-C) = D$
- D - \$1.00 = E

If E is zero or a negative number then the Issue Price of Interests which are not Subordinated Interests will be D and the Issue Price of Subordinated Interests will also be D.

If E is a positive number then the Issue Price of Interests which are not Subordinated Interests will equal \$1.00 and the Issue Price of a Subordinated Interest will also be \$1.00.

4 RESPONSIBILITIES, POWERS AND DUTIES OF MANAGER

4.1 Exercise of powers of the Manager

- (a) Subject to the provisions of this Constitution and the Law, the Manager has absolute and uncontrolled discretion as to the exercise of its powers, authorities and duties, in relation to the manner, mode and time of exercise of those powers, authorities and duties.
- (b) The Manager has all the powers of a natural person and a body corporate, including the power to invest and to borrow or raise money for the purposes of the Scheme and on security of the relevant Assets.

4.2 Power to Appoint Agent (Section 601FB(2))

- (a) The Manager has power to appoint an agent, or otherwise engage a person, to do anything that it is authorised to do in connection with the Scheme.
- (b) For the purpose of determining whether:
 - (i) there is a liability to the Members; or
 - (ii) the Manager has properly performed its duties for the purposes of section 601GA(2) of the Law;

the Manager is taken to have done (or failed to do) anything that the agent or person has done (or failed to do) because of the appointment or engagement, even if they were acting fraudulently or outside the scope of their authority or engagement.

4.3 Authority for Agent (Section 601FB(3))

An agent appointed, or a person otherwise engaged, by:

- (a) the agent or person referred to in clause 4.2; or
- (b) a person who is taken under this clause to be an agent of the Manager;

to do anything that the Manager is authorised to do in connection with the Scheme is taken to be an agent appointed by the Manager to do that thing for the purposes of clause 4.2.

4.4 Liability of Agent (Section 601FB(4))

If:

- (a) an agent holds any Assets on behalf of the Manager; and
- (b) the agent is liable to indemnify the Manager against any loss or damage that:
 - (i) the Manager suffers as a result of a wrongful or negligent act or omission of the agent; and
 - (ii) relates to a failure by the Manager to perform its duties in relation to the Scheme;

then any amount recovered under the indemnity forms part of the Assets.

4.5 Duties of Manager (Section 601FC)

In exercising its powers and carrying out its duties, the Manager must:

- (a) act honestly;

- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Manager's position;
- (c) act in the best interests of the Members and, if there is a conflict between the Members' interests and the Manager's own interests, give priority to the Members' interests;
- (d) treat the Members of the same class equally and Members of different classes fairly;
- (e) not make use of information acquired through being the Manager in order to:
 - (i) gain an improper advantage for itself or another person; or
 - (ii) cause detriment to the Members of the Scheme;
- (f) ensure that the Constitution meets the requirements of sections 601GA and 601GB of the Law;
- (g) ensure that the Compliance Plan meets the requirements of section 601HA of the Law;
- (h) comply with the Compliance Plan;
- (i) ensure that the Assets are:
 - (i) clearly identified as Assets; and
 - (ii) held separately from property of the Manager, the assets of other Schemes established under the Constitution and the property of any other managed investments scheme;
- (j) ensure that all payments out of the Assets are made in accordance with the Constitution and the Law;
- (k) report to the Commission any breach of the law by the Manager that:
 - (i) relates to the Scheme; and
 - (ii) has had, or is likely to have, a materially adverse effect on the interests of Members;
 as soon as practicable after the Manager becomes aware of the breach; and
- (l) carry out or comply with any other duty, not inconsistent with the Law, that is conferred on the Manager by the Constitution.

5 DUTIES OF OFFICERS AND EMPLOYEES OF MANAGER

5.1 Duties of Officers of the Manager (Section 601FD(1))

An Officer of the Manager must:

- (a) act honestly;
- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Officer's position;
- (c) act in the best interests of the Members and, if there is a conflict between the Members' interests and the interests of the Manager, give priority to the Members' interests;
- (d) not make use of information acquired through being an Officer of the Manager in order to:
 - (i) gain an improper advantage for the Officer or another person; or
 - (ii) cause detriment to the Members;
- (e) not make improper use of their position as an Officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Members; and

- (f) take all steps that a reasonable person would take, if they were in the Officer's position, to ensure that the Manager complies with:
 - (i) the Law;
 - (ii) any conditions imposed by the Manager's licence;
 - (iii) the Constitution; and
 - (iv) the Compliance Plan.

5.2 Duties of Employees of the Manager (Section 601FE(1))

An employee of the Manager must not:

- (a) make use of information acquired through being an employee of the Manager in order to:
 - (i) gain an improper advantage for the employee or another person; or
 - (ii) cause detriment to Members; or
- (b) make improper use of their position as an employee to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Members.

6 INDEMNITIES AND REIMBURSEMENTS OF EXPENSES

6.1 Indemnity

To the extent permitted by statute the Manager is indemnified out of the Assets for all debts, liabilities, damages, costs, Taxes, charges, expenses and outgoings reasonably and properly incurred by it in the proper performance of its functions and duties and exercising its powers under this Constitution or at law, except in the case of debts, liabilities, damages, costs, Taxes, charges, expenses or outgoings incurred or payable in respect of or as a result of gross neglect, deceit or a material breach of covenant of the Manager.

6.2 Limitation of liability

Except in the case of a failure to exercise care and diligence, the Manager will not to the extent permitted by statute be liable to account to nor to indemnify the Scheme, a Member or person claiming under or on behalf of a Member, for anything done in good faith in the performance of its functions and duties and the exercise of its powers under this Constitution or at law including:

- (a) a failure to perform or do an act or thing which or the Manager is hindered, prevented or forbidden from doing or performing by reason of any present or future law (statutory or otherwise); or
- (b) payments made by the Manager in good faith to a duly empowered fiscal authority of the Commonwealth, a State or Territory for Taxes or other charges on the Scheme, an Authorised Investment or a Certificate, or with respect to any transaction reasonably and properly entered into under this Constitution, although the payment as a matter of law ought or need not have been made; or
- (c) anything done in good faith relying upon advice from an Expert instructed or appointed by the Manager and independent of the Manager; or
- (d) anything done in good faith by the Manager in respect of an Application or notice on which there is a forged signature or inaccurate details provided that there were at the time of the doing of the act, matter or thing no reasonable grounds to believe that the signature or detail was not genuine or accurate.

6.3 Further limitation of liability of the Manager

Except in the case of the Manager's failure to exercise care and diligence, the Manager is not to the extent permitted by statute liable to Members to any extent greater than the extent of the

Assets vested in the Manager or received and/or held by it in accordance with the provisions of this Constitution.

6.4 Transactions Involving the Scheme

Subject to the Law and the Manager's duties to Members, the Manager is entitled, in any capacity other than as manager of the Scheme, to contract with a Member, the Scheme or any Authorised Investment or any property proposed to be acquired as an Asset, without any liability to account to the Members only if:

- (a) the transaction is not in breach of any covenant contained in this Constitution; and
- (b) the Manager acts in the transaction with good faith to the Members.

6.5 Further indemnity

If the Manager acquires an Asset the holding of which exposes or may expose the Manager to personal liability or if the Manager enters into any contract, credit facility or other transaction on behalf of the Scheme which exposes or may expose the Manager to any personal liability, the Manager has a right of indemnity out of the Assets in respect of that liability.

6.6 General Compliance Related Party Transactions

- (a) The Manager must comply with part 5C.7 of the Law in respect of all Related Party transactions. In particular the Manager must not, unless permitted by the Law, give a financial benefit:
 - (i) to itself, or to a Related Party, out of the Assets; or
 - (ii) that could diminish or endanger the Assets;
- (b) Paragraph (a) does not prevent the Manager from paying itself fees, and exercising rights to an indemnity, in this Constitution and under section 601GA(2) of the Law and the law.

6.7 Dealings by the Manager

Nothing in this Constitution prevents the Manager or any person associated with the Manager from being a Member.

7 INVESTMENT

7.1 Investment Management

It is the role of the Manager to seek and invest the funds of the Scheme in Mortgage Investments.

7.2 Investment of Assets in another managed investment scheme (Section 601FC(4))

[Deleted and not replaced]

7.3 Investment Oversight

The Manager shall implement practices, systems and procedures to monitor the performance of Authorised Investments made by it and shall where considered prudent and appropriate take whatever action as may be necessary to protect the capital value of the Authorised Investments of the Scheme including institution of any recovery action under Mortgage Investments or other securities held in respect of Authorised Investments made in order to recover or maximise recovery of the capital and any unpaid income component of any Authorised Investment.

7.4 Income Warranty

- (a) The Manager may in a Prospectus or other offer document make provision for or representations as to the payment to Members of a minimum rate of distribution to be received by Members on their respective investments notwithstanding the percentage rates of interest payable under Mortgage Investments or Authorised Investments which

shall comprise Assets of the Scheme (in this and other clauses of the Deed to be called an Income Warranty').

- (b) The terms of any such Income Warranty may vary for each Prospectus or other offer document issued by the Manager on application to Applicants having regard to terms made by the Manager and based on the Manager's estimates of the Scheme's income, liabilities and expenses to be taken into account in estimating the likely return to Members and Applicants for periods (if any) nominated by the Manager in each prospectus or other offer document issued by it. The Manager may determine that the percentage rate of any Income Warranty be specified or provided for in any Application under a Prospectus or offer document issued by it or may leave such rate blank in any Application, with the Manager reserving the right to complete and/or accept an Application dependent upon the prevailing percentage rate of Income Warranty determined by and acceptable to the Manager at the time. Any Income Warranty given shall be deemed to be given by the Manager personally and shall not be binding on nor affect the Scheme notwithstanding that references to an Income Warranty may be included in an Application.

7.5 Amending the Income Warranty

The Manager may at any time amend the Income Warranty. In such circumstances the amendments must be notified to the Applicants before or at the time they complete their Application.

8 INCOME OF THE SCHEME

8.1 Manager to collect Income

The Manager will collect, receive and get in the Income of the Authorised Investments and will pay it into the Scheme Accounts. The Manager will make all payments relating to the Scheme from the Scheme Accounts.

8.2 Decision of Manager final

The decision of the Manager in consultation with the Auditor as to whether any amount to be distributed to Members is Income or capital shall be final.

8.3 Distribution to Members

The Manager shall distribute to the Members (excluding the holders of Subordinated Interests) the Distribution Amount within 14 days of the end of the Distribution Period for that Member.

8.4 Distribution Period

The Distribution Period for each Member (excluding the holders of Subordinated Interests) shall be:

- (a) quarterly, monthly, half yearly, or yearly as disclosed by the Manager in the Prospectus; or
- (b) if the Manager so provides, as agreed between the Member and the Manager at the time the Members Application is accepted.

8.5 Distribution Surplus

Following the payment in each Distribution Period to each Member (excluding the holders of Subordinated Interests), their Distribution Amount, any remaining surplus Income of the Scheme shall be paid in the following order of priority and subject to the provisions of clauses 2.12 and 21.5:

- (a) in payment of Scheme expenses;
- (b) payment to each Member a distribution up to their particular Benchmark Return;

- (c) in payment of the Manager's management fee; then the balance
- (d) as a distribution to the holders of Subordinated Interests as between those Members in proportion to the number of Subordinated Interests they hold.

8.6 Manager to keep separate accounts

The Manager may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to any Member.

8.7 Reinvestment of income entitlement

- (a) The Manager may invite Members in the Scheme to reinvest any or all of their Distribution Amount by way of application for additional Interests in the Scheme. The terms of any such invitation will be determined by the Manager and may, amongst other things, provide that unless a Member otherwise directs the Manager, that Member will be deemed to have elected to reinvest all or part of their Distribution Amount. Any invitation may be withdrawn or varied by the Manager.
- (b) Interests so applied for will be deemed to have been issued on the first day of the Distribution Period immediately following the Distribution Period in respect of which the Distribution Amount has accrued or such other date determined by the Manager.

8.8 Members presently entitled to Distributable Income

In accordance with clause 8.5, at the end of each Distribution Period the Members will be presently entitled (within the meaning of the Tax Act) to all Distributable Income derived during the relevant Distribution Period.

9 TERMINATION OF THE SCHEME

9.1 Termination of the Scheme

[Not altered but reproduced]

Subject to clause 9.2, the Scheme will terminate 80 years from the Commencement Date unless otherwise specified in the Prospectus for the Scheme.

9.2 Defined Event of Winding Up

The Manager must wind up the Scheme or cause the Scheme to be wound up on the occurrence of any one of the following circumstances:

- (a) the Scheme is without a Manager for whatever reason;
- (b) the Manager uses the mechanism provided for in Section 601NC of the Law;
- (c) the Members decide in a meeting called in accordance with this Constitution and the Law to wind up the Scheme;
- (d) the Scheme comes to the end of its term (as set out in clause 9.1);
- (e) any of the circumstances set out in Section 601NE of the Law apply such that the Manager is required to wind up the Scheme; or
- (f) a court orders the Scheme to be wound up pursuant to Section 601ND of the Law.

9.3 Procedure for Winding Up

- (a) Unless otherwise required by the Law, the Manager is responsible for winding up the Scheme.
- (b) The Manager must convert to money all Assets, deduct all proper costs and then distribute the money to each Member in proportion to the Members Interests in the Scheme. The Manager may make interim distributions during the winding up process.

- (c) The Manager must proceed with the winding up efficiently, diligently and without undue delay. The Manager must complete the winding up process within such time frame as it considers is available to do so, whilst complying with its duties under this Constitution.
- (d) The Manager may retain from the proceeds of winding up:
 - (i) sufficient funds to meet future obligations which the Manager reasonably believes will fall due after a distribution is made to Members; and
 - (ii) to pay its own remuneration expenses for work to be done following the realisation of the Assets.
- (e) During the winding up of the Scheme, the Manager may terminate any agreements or arrangements it has entered into with Members which relate to the Scheme. The Manager must give notice to the Members of the termination of those agreements or arrangements.
- (f) Once the Manager believes the winding up is complete, the Manager must engage a registered company auditor to audit the final accounts of the Scheme. The Manager must send a copy of any report made by the auditor to Members within 30 days after the Manager receives the report from the auditor.
- (g) The operation of this clause is subject to the priority obligations in clause 9.4.

9.4 Priority on a winding up

In the winding up of the Scheme the realisation of the assets of the Scheme will be applied in the following priority:

- (a) must apply the assets of the Scheme, or the proceeds of their realisation, to pay any Liabilities (excluding Interest Liabilities); then
- (b) pay to the holders of Interests (excluding the holders of Subordinated Interests) the sum equivalent to their Issue Price for their Interests;
- (c) pay to the holders of Subordinated Interests the sum equivalent to their Issue Price for their Subordinated Interests; and thereafter
- (d) distribute the remaining assets or the net proceeds to all Members in proportion to the number of Interests of which they are the registered holder on the date of termination of the Scheme.

9.5 Limitation of liabilities

A Member is not liable to contribute towards the debts or liabilities of the Manager and is not liable to indemnify the Manager or any creditor or either of them in the event of any deficiency of the Scheme. The only rights, if any, of indemnity of the Manager and their respective creditors shall be limited to the Assets. The limitation of liability of Members set out in this clause 9.5 also apply to any liability which is incurred by the Manager as a result of any directions or requests of the Members.

10 TRANSFER AND TRANSMISSION OF MEMBERS INTERESTS

10.1 General principles when dealing with Members' Interests

- (a) A Member may transfer their Interests only in accordance with the provisions of this Constitution and, in particular:
 - (i) the transferee must agree to be bound by the provisions of this Constitution; and
 - (ii) a stamped transfer of the Interests in the Scheme must be delivered to the Manager together with the Certificate or Certificates in respect of the Interests to be transferred.

- (b) The Manager will not be required to effect any transaction or dealing in any Interest on behalf of or for the benefit of or at the request of any Member unless the Member has paid or otherwise provided for, to the Manager's satisfaction, all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage fees and other charges (whether similar to the foregoing or not) which may have become or may be payable in respect of the transaction or dealing. The Manager is entitled, if it thinks fit, to pay and discharge all or any of those duties and charges on behalf of the Member concerned and retain the amount so paid out of any moneys to which the Member may be, or become, entitled.
- (c) The Manager may decline to register any transfer during the period that the Register is closed pursuant to clause 12.6.
- (d) Every instrument of transfer of an Interest which is registered will be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Constitution to the contrary) the Manager may destroy it.
- (e) Where the Manager refuses to register any instrument of transfer, within 2 Months after the date on which the instrument was deposited with the Manager, the Manager will give notice of the refusal to the person who deposited it and any instrument of transfer which the Manager refuses to register will (except in the case of suspected fraud) be returned to the person depositing it upon request by such person within 2 months of the giving of the notice.
- (f) The Manager may refuse to register or fail to register or give effect to any transfer of an Interest without assigning a reason.
- (g) Upon the registration of a transfer of any Interest, the Manager will within one Month after the date of such registration issue to the transferee or transmittee written confirmation of the transfer or transmission.

10.2 Form of transfer

The transfer of an Interest shall be form in the nominated by the Manager. The form will have regard to the need for the transferee to be bound to this Constitution and any other arrangements which go to the integrity of the Scheme.

10.3 Transmission

Subject to the provisions of this Constitution:

- (a) in the case of the death of any Member the survivor or survivors (where the deceased was a joint holder) or the executors or administrators (where the deceased was the sole holder) are the only persons recognised by the Manager as having any title to or interest in the Interests registered in the deceased's name;
- (b) any person becoming entitled to any Interests in consequence of the death or bankruptcy of a Member may upon:
 - (i) producing to the Manager evidence of the capacity in which they propose to act under the provisions of this clause or of their title to the Interests as the Manager deems sufficient;
 - (ii) in the case of the death of the Member, producing to the Manager evidence of payment of any duties the Manager may require; and
 - (iii) delivering up to the Manager for cancellation the Certificate for the Interests, be registered as the holder of the Interests and the Manager shall cancel the existing Certificate for Interests and issue a new Certificate for Interests in their name;
- (c) any person becoming entitled to any Interests because of the death or bankruptcy of a Member may give a good and sufficient discharge to the Manager for any money paid to

them but are not entitled to receive notices of or to attend or vote at any meetings of Members until they have become registered as a Member in respect of such Interests.

11 WITHDRAWAL

11.1 Obligation to redeem

- (a) The Withdrawal Date applicable to each Member who invests for a fixed 12 month investment term will be each annual anniversary of the date that Member's Application was accepted by the Manager and Interests are issued. For the avoidance of doubt, if a Member's Application is accepted by the Manager and Interests are issued on 2 December 1999, then the first Withdrawal Date for those funds invested by that Member will be 2 December 2000 or if this is not a Business Day, the next Business Day thereafter. If a Member does not lodge a Withdrawal Request Form within the time prescribed by this clause 11, then the Member's next Withdrawal Date will be 2 December 2001 or if this is not a Business Day, the next Business Day thereafter.
- (b) A Member or a Member's duly authorised agent approved by the Manager, must at least 30 days before the Withdrawal Date give the Manager a Withdrawal Request Form specifying the number of Interests to be redeemed and such notice is to be accompanied by the relevant Certificates (if any).
- (c) Subject to the following provisions of this clause 11 and the existence of a Delay Event, on receipt of a Withdrawal Request Form and Certificates (if any), the Manager must within 180 days of the Withdrawal Date redeem the required Interests out of the Scheme at the Redemption Price applicable on the date the Members Interests are redeemed by the Manager for that Member. The date the Members Interests are redeemed by the Manager pursuant to this clause is the Redemption Date for that Member.
- (d) Subject to the Manager's rights under clause 11.7, the days and times specified in clauses 11.1 and 11.2 may be varied upon not less than 60 days' notice to Members.
- (e) Notwithstanding this clause 11.1, the Manager may at its discretion allow the Member to withdraw from the Scheme all or part of the Member's funds at any time, in accordance with clause 11.18.

11.2 Access and 7 day call Investment Interests

- (a) Pursuant to clause 2.6 the Manager has created a separate class of Interests referred to as the Access Investment Interests and the 7 day call Investment Interests. Members who hold Interests of these classes, may lodge a Withdrawal Request Form with the Manager at any time they wish their Interest to be redeemed by the Manager on behalf of the Scheme.
- (b) From the date of this amendment 7 day call Investment Interests will thereafter be called and also referred to in this Constitution, as Access Investment Interests. The redemption provisions applying to Access Investment Interests apply equally to 7 day call Investment Interests.
- (c) Subject to the following provisions of this clause 11.2 and the existence of a Delay Event the Manager will generally redeem an Access Investment Interest within 7 days of receipt of that Members Withdrawal Request Form with respect to that Access Investment Interest. However, the Manager has up to 180 days from receipt of the Withdrawal Request Form, to redeem that Access Investment Interest and pay the Redemption Amount to the holder of the Access Investment Interest.
- (d) The date upon which the Manager redeems the Access Investment Interest in accordance with clause 11.2, will be the Redemption Date for that Access Investment Interests.

11.3 Extension of Redemption Date

- (a) Notwithstanding clauses 11.1(c) and 11.2, in the circumstances of a Delay Event the Manager must redeem Interests within 360 days of receiving a valid Withdrawal Request Form. Nothing in this clause 11.3 prohibits the Manager from redeeming Interests within these maximum timeframes.
- (b) The Manager is not required to process a redemption request where:
 - (i) the provisions of this Constitution relating to appropriate evidence of title have not been satisfied; or
 - (ii) the redemption would cause the Members Interests to fall below any minimum investment balance, as disclosed in the Prospectus.
- (c) The date the Manager redeems the Members Interests as provided in this clause 11.3 is the Redemption Date.
- (d) In satisfying redemption requests the Manager must treat all Members of the same class equally and as between classes fairly. Where the Manager holds more than one valid Withdrawal Request Form of the same class, it shall process them in order of receipt.

11.4 Suspension by Manager

The Manager may suspend the redemption of Interests for such period as it determines where it is impractical to calculate the Redemption Price due to:

- (a) the closure of a securities exchange or trading restrictions on a securities exchange;
- (b) an emergency or other state of affairs;
- (c) the declaration of a moratorium in a country where the Scheme has investments;
- (d) a closure of or restrictions on trading in the relevant foreign exchange market; or
- (e) the realisation of investments not being able to be effected at prices which would be realised if investments were realised in an orderly fashion over a reasonable period in a stable market.

No suspension may exceed 30 days unless a longer period is permitted by the Manager having regard to the circumstances. All outstanding redemptions with Redemption Dates which fall within that period of suspension and any Withdrawal Request Form received while the redemption of Interests is suspended, shall be reactivated with effect from the first Business Day after the suspension ceases.

11.5 Other suspension of redemption obligation

The Manager is not obliged to cause the redemption of Interests in the Scheme in any of the following circumstances:

- (a) the person making the request holds more than the Minimum Redemption Amount in the Scheme and the request relates to less than the Minimum Redemption Amount; or
- (b) carrying out the redemption will result in the person making the request holding less than the Minimum Redemption Amount in the Scheme; or
- (c) the request is made:
 - (i) after any notice convening a meeting of Members to vote on whether to wind up the Scheme has been sent by the Manager and before those eligible to vote have so voted; or
 - (ii) while the Scheme is being lawfully wound up, whether pursuant to a resolution to wind up the Scheme or in accordance with the Constitution or otherwise;

The Manager will remain entitled in its absolute discretion to or cause the redemption of Interests in accordance with clause 11.1 in the above circumstances.

11.6 Staggering of Redemption Dates

Despite any provision of this Constitution, the Manager may determine more than one Redemption Date for Interests to be redeemed pursuant to a Withdrawal Request Form and such Interests will be redeemed over those days in such proportions as the Manager determines, provided that all such Interests are redeemed within the time specified in clause 11.1.

11.7 Funding of redemption

To fund the redemption of Interests out of the Scheme, the Manager may apply or realise part of the Assets, and/or raise or borrow money, either unsecured or secured against Assets.

11.8 Time for Payment of Redemption Amount

The Manager will pay or cause to be paid to the Member the Redemption Amount in respect of any Interests within 90 days of the Redemption Date.

11.9 Resale and redemption of Interests by Manager

Where the Manager holds Interests for its own benefit, it may redeem those Interests out of the Scheme. This clause 11 will apply, with the necessary changes, to that redemption.

11.10 Cancellation of Interests

Interests which have been redeemed out of the Scheme will be cancelled and the Manager will record the cancellation in the Register.

11.11 Transfer of specific assets

The Manager may determine that the Redemption Amount will be satisfied wholly or in part by the transfer of investments of the Scheme at their Market Value. Expenses incurred in respect of the transfer must be paid by the Member.

11.12 Compulsory redemption of small holdings

If the Redemption Price of all Interests in the Scheme held by a Member is less than the Minimum Redemption Amount, the Manager may compulsorily redeem those Interests.

11.13 Components of Redemption Price and payment of accrued distributions

- (a) Unless the Manager otherwise notifies a Member whose Interests are redeemed, the Redemption Price paid to that Member will comprise capital only. The Manager may notify a Member that the Redemption Price comprises part capital and part Income. Where the Redemption Price paid to a Member comprises Income and capital, the Member will be presently entitled (within the meaning of the Tax Act) to the Income component and the Manager must notify the Member of the Income component of the Redemption Price paid to them. This notice may be given at the time of redemption but must in any case be given within 3 months of the end of the Financial Year of the Scheme in which the redemption occurs.
- (b) Where an Interest is redeemed after a right to a distribution, whether income or capital, has accrued in respect of that Interest, that distribution may be paid to the holder of the Interest at the time of payment of the applicable Redemption Price notwithstanding that the distribution has not been paid at that time to holders of other Interests.

11.14 No required disposal

A Member is not required to dispose of its Interests except as otherwise provided in this Constitution and the Corporations Law.

11.15 Early Redemption

Notwithstanding anything else contained in this clause 11:

- (a) A Member shall have no right of withdrawal during any period of twelve months following the application of funds by that Member other than as provided in clause 11.1.

- (b) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during the first six months following acceptance by the Manager of the Member's Application or during the first six months of any annual anniversary of a Member's Investment. In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed to the Member at the time of the request. In such circumstances the Redemption Date for the Member will be the date nominated by the Manager.
- (c) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during a period not otherwise provided in clause 11.111.15(a) or 11.15(b). In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed in the Prospectus. The Redemption Date for the Member in those circumstances shall be the date the Manager receives from the Member the Withdrawal Request Form.

11.16 Liquidity Protection Rules

Notwithstanding any provision in this clause 11, the Manager may withhold or suspend payment to a Member or Members of a Redemption Amount or Redemption Amounts payable and/or withhold or suspend for further processing, any Withdrawal Request Forms then on hand if:

- (a) The Manager in any 30 day period receives Withdrawal Request Forms from a Member or Members where the Redemption Amount or Redemption Amounts is equal to or greater than 5% of the total value of the Assets of the Scheme; or
- (b) During a period of 10 consecutive days falling within a 90 day period, the Scheme's cash reserves are less than 5% of the total value of the Assets of the Scheme. In these circumstances, the Manager may refuse to accept any new Withdrawal Request Forms and may refuse to accept any new Applications for such period not exceeding 12 months as may be required to realise, in an orderly manner, the Assets of the Scheme.

11.17 Additional Investments

- (a) Notwithstanding any other provision of clause 11, the Manager may (at its discretion) allow a Member to invest additional amounts to their 12 month investment for up to 30 days from the date their initial investment is accepted by the Manager and Interests issued. Where this occurs the Redemption Date for both the initial Interest and subsequent Interests will be the 12 month anniversary of the issue of the initial Interests. For example, the Member invests \$20,000 on 1 February 2006 and acquired 20,000 Interests (assuming the Issue Price is \$1.00 per Interest), and the Member (with the consent of the Manager) contributes a further \$15,000 and is issued 15,000 Interests on 25 February 2006 (assuming the Issue Price is (\$1.00 per Interest). In this circumstance the Redemption Date (assuming the Member has lodged a valid Redemption Withdrawal Request Form) of all the Members Interest is 31 January 2007.
- (b) The Manager (at its discretion) may also allow Members to add to their 12 month investment during the 30 days prior to their Redemption Date. In this instance such an additional investment will constitute the early termination of their initial investment with both their initial and subsequent investments being deemed to be reinvested for a further full 12 months. For example, the Member invests \$20,000 on 1 February 2006 and is issued 20,000 Interests (assuming the Issue Price is \$1.00 per Interest). On 25 January 2007 the Member advises the manager that the Member wishes to invest an additional \$15,000 in the Scheme as an additional investment to their original investment and not as a new investment. Then with the consent of the Manager, the original Interests of the Member are redeemed by the Manager on the Redemption Date nominated by the Manager (which for the purpose of this example is 25 January 2007), and (assuming the then Redemption Price and Issue Price of Interests is \$1.00 per Interest) 35,000 new Interest are issued by the Manager on 25 January 2007 with a new Redemption Date of 24 January 2008.

- (c) Notwithstanding any other provision in this Constitution, the Manager in exercising its discretion in this clause 11 or as otherwise contained in the Constitution:
- (i) must do so in accordance with its obligations under the Corporations Act 2001; and
 - (ii) nothing in any way obliges or requires the Manager to exercise its discretion in favour of the Member or redeem the Members Interests before their original Redemption Date.

11.18 Early Redemption

Notwithstanding anything else contained in this clause 11:

- (a) A Member who invests pursuant to clause 11.1 shall have no right of withdrawal during any period of twelve months following the application of funds by that Member other than as provided in clause 11.1.
- (b) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during the first six months following acceptance by the Manager of the Member's Application or during the first six months of any annual anniversary of a Member's Investment. In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed to the Member at the time of the request. In such circumstances the day the Manager allows the Member to withdraw early will be the Withdrawal Date (as provided in clause 11.1) and the process and timing of the withdrawal will be undertaken in the manner provided in clauses 11.1.
- (c) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during a period not otherwise provided in clauses 11.1 or 11.2. In such circumstances the day the Manager allows the Member to withdraw early will be the Withdrawal Date (as provided in clause 11.1) and the process and timing of the withdrawal will be undertaken in the manner provided in clause 11.1.

11.19 Redemption Price Adjustment

Where the Manager calculates the Redemption Price of an Interest, and the Redemption Price is less than \$1.00 per Interest the following will apply:

A = the Current Value of the Scheme

B = the total number of Issued Interests

C = the total number of Subordinated Issued Interests

$$A/(B-C) = D$$

$$D - \$1.00 = E$$

If E is zero or a negative number then the Redemption Price of Interests which are not Subordinated Interests will be D and the Redemption Price of Subordinated Interests will be nil.

If E is a positive number then the Redemption Price of Interests which are not Subordinated Interests will equal \$1.00 and the Redemption Price of Subordinated Interests will be H, calculated as:

$$(B-C) \times \$1.00 = F$$

$$A - F = G$$

$$G / \text{total number of Subordinated Issued Interests} = H.$$

12 REGISTERS

12.1 Member Register

The Manager will keep and maintain an up-to-date Register at the registered office or principal place of business of the Manager in such form and containing such particulars as are required by the Law or any declaration, exemption or ruling granted or made thereunder, and such other particulars as the Manager may from time to time considers appropriate.

12.2 Details on Register

Subject to clause 12.3, there will be entered in the Register:

- (a) the names and addresses of the Members from time to time;
- (b) the number of Interests from time to time held by each Member;
- (c) the date on which the name of each Member was entered in the Register, and
- (d) the date on which any person ceased to be a Member.

12.3 Expunging Information

The information relating to a Member (or any of it) may be expunged from the Register at any time after the first day of the Financial Year occurring 7 years after the Financial Year in which the Member ceased to be a Member.

12.4 Inspection of Register

The Manager need not allow inspection of the Register or any part thereof by any person except where:

- (a) the person seeking inspection is a Member or representative of a Member and the inspection relates to that part of the Register that contains particulars of the Member's Interest relevant to that person; or
- (b) the person provides to the Manager a written undertaking duly signed by the person and to the effect that inspection of the Register will not be used for any purpose other than the purpose of:
 - (i) calling a meeting of Members;
 - (ii) notifying a Member of a matter relating to the carrying out by the Manager of its functions and duties under the provisions of the Law or this Constitution; or
 - (iii) any other purpose approved in writing by the Commission.

12.5 Copies of Register

- (a) If any person has the right to inspect the Register then that person also has the right to obtain copies of those parts of the Register inspected. The costs of copying and handling will be a rate set by the Manager but shall not exceed \$2.50 per page.
- (b) Paragraph (a) does not require the Manager to make available or provide copies of the Register in excess of its obligations to do so under the Law having regard to any declaration or exemption made or given by the Commission.

12.6 Closure of Register

The Manager may close the Register or part of the Register for any time or times but so that no part of the Register may be closed for more than 30 days in the aggregate in each calendar year.

12.7 Change of Member Details

Each Member will give the Manager notice of any change of name or address on the part of such Member and the Manager, upon receiving such notification, will alter the Register accordingly.

13 MEMBER MEETINGS (PART 2G.4)

13.1 Managers Power to call Members Meeting (Section 252A)

The Manager may call a meeting of the Members at any time.

13.2 Members power to call a meeting (Section 252B)

- (a) The Manager must call and arrange to hold a meeting of the Members to consider and vote on a proposed special or extraordinary resolution on the request of:
 - (i) Members with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Members who are entitled to vote on the resolution.
- (b) The request by the Members must:
 - (i) be in writing; and
 - (ii) state any resolution to be proposed at the meeting; and
 - (iii) be signed by the Members proposing to move the resolution.
- (c) The request may be accompanied by a statement about the proposed resolution provided by the Members making the request.
- (d) Separate copies of a document setting out the request and statement (if any) may be used for signing by Members if the wording of the request and statement (if any) is identical in each copy.
- (e) The percentage of the votes that Members have is to be worked out as at the midnight before the request is given to the Manager.
- (f) The Manager must call the meeting within 21 days after the request is given to it. The meeting must be held not later than 2 months after the request is given to the Manager.
- (g) The Manager must give to each of the Members a copy of the proposed resolution and statement (if any) at the same time, or as soon as practicable afterwards, as it gives notice of the meeting. The Manager must distribute the copies in the same way in which it gives notice of the meeting.
- (h) The Manager does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.
- (i) The Manager is responsible for the expenses of calling and holding the meeting and making the distribution. The Manager may meet those expenses from the Assets.

13.3 Failure of Manager to call meeting of the Members (Section 252C)

- (a) Members with more than 50% of the votes carried by interests held by the Members who make a request under section 252B of the Law may call and arrange to hold a meeting of the Members and distribute the statement (if any) if the Manager does not do so within 21 days after the request is given to the Manager.
- (b) The meeting must be called and the statement is to be distributed in the same way, so far as is possible, in which meetings of the Members may be called by the Manager and information is distributed to Members by the Manager. The meeting must be held not later than 3 months after the request is given to the Manager.
- (c) To call the meeting the Members requesting the meeting may ask the Manager for a copy of the Register. The Manager must give the Members requesting the meeting the copy of the Register without charge.
- (d) The Manager must pay the reasonable expenses the Members incurred because the Manager failed to call and arrange to hold the meeting and to make the distribution (if any). The Manager must not pay or be reimbursed those expenses from the Assets.

13.4 Calling of meetings of Members by Members (Section 252D)

- (a) Members who hold interests carrying at least 5% of the votes that may be cast at a meeting of Members may call and arrange to hold a meeting of the Members to consider and vote on a proposed special resolution or a proposed extraordinary resolution. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which meetings of the Members may be called by the Manager.
- (c) The percentage of the votes carried by interests that Members hold is to be worked out as at the midnight before the meeting is called.

14 HOW TO CALL MEETINGS OF MEMBERS

14.1 Notice of meetings (Section 252F)

At least 21 days notice must be given of a meeting of Members.

14.2 Notice of meetings of Members to Members, directors and auditors (Section 252G)

- (a) Written notice of a meeting of Members must be given to:
 - (i) each Member entitled to vote at the meeting;
 - (ii) each director of the Manager;
 - (iii) the Auditor; and
 - (iv) the auditor of the Compliance Plan.
- (b) Notice to joint Members need only be given to the joint Member named first in the Register.
- (c) The Manager may give notice of the meeting to a Member:
 - (i) personally; or
 - (ii) by sending it by post to the address for the Member in the Register or an alternative address (if any) nominated by the Member; or
 - (iii) by sending it to the fax number or electronic address (if any) nominated by the Member.
- (d) A defect in the notice given or failure to receive the notice does not invalidate a meeting.
- (e) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

14.3 Auditors entitled to other communications (Section 252H)

The Manager must give the Auditor and the auditor of the Compliance Plan all communications relating to the meeting that a Member is entitled to receive.

14.4 Contents of notice of meetings of Members (Section 252J)

A notice of a meeting of Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special or extraordinary resolution is to be proposed at the meeting, set out an intention to propose the special or extraordinary resolution and state the resolution; and
- (d) contain a statement setting out the following information:

- (i) that the Member has a right to appoint a proxy;
- (ii) that the proxy does not need to be a Member; and
- (iii) that if the Member appoints 2 proxies the Member may specify the proportion or number of votes the proxy is appointed to exercise.

14.5 Notice of adjourned meetings (Section 252K)

When a meeting is adjourned, new notice of the adjourned meeting must be given if the meeting is adjourned for one month or more.

15 MEMBERS' RIGHTS TO PUT RESOLUTIONS AT MEETINGS OF MEMBERS

15.1 Members' resolutions (Section 252L)

- (a) The following Members may give the Manager notice of a special or extraordinary resolution that they propose to move at a meeting of Members:
 - (i) Members with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Members who are entitled to vote at a meeting of Members.
- (b) The notice must:
 - (i) be in writing;
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the Members giving the notice.
- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.
- (d) The percentage of the votes that Members have is to be worked out as at the midnight before the Members give the notice.

15.2 Manager giving notice of Members' resolutions (Section 252M)

- (a) If a Manager has been given notice of a special or extraordinary resolution under section 252L of the Law, the resolution is to be considered at the next meeting of Members that occurs more than 2 months after the notice is given.
- (b) The Manager must give all the Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Manager is responsible for the cost of giving Members notice of the resolution if the Manager receives the notice in time to send it out to Members with the notice of meeting.
- (d) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Manager in giving Members notice of the resolution if the Manager does not receive the Members' notice in time to send it out with the notice of meeting. A resolution may be passed at a meeting of Members that the Manager is to meet the expenses out of the Assets.
- (e) The Manager need not give notice of the resolution:
 - (i) if it is more than 1,000 words long or defamatory; or
 - (ii) if the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

15.3 Members' statements to be distributed (Section 252N)

- (a) Members may request a Manager to give to all its Members a statement provided by the Members making the request about:

- (i) a resolution that is proposed to be moved at a meeting of Members; or
- (ii) any other matter that may be properly considered at a meeting of Members.
- (b) The request must be made by:
 - (i) Members with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Members who are entitled to vote at the meeting.
- (c) The request must be:
 - (i) in writing; and
 - (ii) signed by the Members making the request; and
 - (iii) given to the Manager.
- (d) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (e) The percentage of the votes that Members have is to be worked out as at the midnight before the request is given to the Manager.
- (f) After receiving the request, the Manager must distribute to all the Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives a notice of a meeting.
- (g) The Manager is responsible for the cost of making the distribution if the Manager receives the statement in time to send it out to Members with the notice of meeting.
- (h) The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Manager in making the distribution if the Manager does not receive the statement in time to send it out with the notice of meeting. A resolution may be passed at a meeting of the Members that the Manager is to meet the expenses out of the Scheme's Assets.
- (i) The Manager need not comply with the request:
 - (i) if the statement is more than 1,000 words long or defamatory; or
 - (ii) if the Members making the request are responsible for the expenses of the distribution, unless the Members give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

16 HOLDING MEETINGS OF MEMBERS

16.1 Time and place for meetings of Members (Section 252P)

A meeting of Members must be held at a reasonable time and place.

16.2 Technology (Section 252Q)

A Manager may hold a meeting of the Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

16.3 Quorum (Section 252R)

- (a) The quorum for a meeting of Members is 2 Members and the quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Member has appointed more than one proxy or representative, these proxies or representatives only count as one person. If an individual is attending both as a Member and as a proxy or body corporate representative they shall all only be counted as one individual.

- (c) A meeting of Members that does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and place the Manager specifies. If the Manager does not specify one (1) or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified—the same day in the next week; and
 - (ii) if the time is not specified—the same time; and
 - (iii) if the place is not specified—the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, the meeting is dissolved.

16.4 Chairing meetings of Members (Section 252S)

- (a) The Manager may, in writing, appoint an individual to chair a meeting called under section 252A or 252B of the Law.
- (b) The Members present at a meeting called under section 252A or 252B of the Law must elect a Member present to chair the meeting (or part of it) if:
 - (i) a chairperson has not previously been appointed to chair the meeting; or
 - (ii) a previously appointed chairperson is not available, or declines to act for the meeting (or part of the meeting).
- (c) The Members present at a meeting called under sections 252C, 252D or 252E of the Law must elect a Member present to chair the meeting.

16.5 Auditors' right to be heard at meetings of Members (Section 252T)

- (a) The Auditor and the auditor of the Compliance Plan are entitled to attend any meeting of the Members.
- (b) An auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) An auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the Members.

16.6 Adjourned meetings (Section 252U)

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

17 PROXIES AND BODY CORPORATE REPRESENTATIVES

17.1 Who can appoint a proxy (Section 252V)

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) A Member may appoint one or 2 proxies. If the Member appoints 2 proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (d) Fractions of votes resulting from the application of paragraphs (b) and (c) are to be disregarded.

17.2 Rights of proxies (Section 252W)

- (a) A proxy appointed to attend and vote for a Member has the same rights as the Member:
 - (i) to speak at the meeting; and
 - (ii) to vote (but only to the extent allowed by the appointment).
- (b) A proxy is entitled to vote on a show of hands.
- (c) A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

17.3 Manager sending appointment forms or lists of proxies must send to all Members (Section 252X)

If the Manager sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list—the Manager must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise—the Manager must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

17.4 Appointing a proxy (Section 252Y)

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:
 - (i) the Member's name and address;
 - (ii) the Scheme's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used.
- (b) An appointment of a proxy remains valid even if paragraph (a) is not strictly complied with, provided in the reasonable opinion of the Manager the intentions of the Member is clear.
- (c) An undated appointment is taken to have been dated on the day it is given to the Manager.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
 - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and
 - (iii) if the proxy is the chairperson—the proxy must vote on a poll, and must vote that way; and
 - (iv) if the proxy is not the chairperson—the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (e) If a proxy is also a Member, this clause does not affect the way that the person can cast any votes they hold as a Member.
- (f) The appointment of a proxy does not have to be witnessed.
- (g) The later appointment of a proxy revokes an earlier appointment, if both appointments could not be validly exercised at the meeting.

17.5 Proxy documents (Section 252Z)

- (a) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Manager at least 48 hours before the meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Manager at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) A Manager receives an appointment authority when it is received at any of the following:
 - (i) the Manager's registered office;
 - (ii) a fax number at the Manager's registered office; or
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) An appointment of a proxy is ineffective if:
 - (i) the Manager receives either or both the appointment or authority at a fax number or electronic address; and
 - (ii) a requirement (if any) in the notice of meeting that:
 - (A) the transmission be verified in a way specified in the notice; or
 - (B) the proxy produce the appointment and authority (if any) at the meeting;
 is not complied with.

17.6 Validity of proxy vote (Section 253A)

- (a) Unless the Manager has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing Member dies; or
 - (ii) the Member is mentally incapacitated; or
 - (iii) the Member revokes the proxy's appointment; or
 - (iv) the Member revokes the authority under which the proxy was appointed by a third party; or
 - (v) the Member transfers the Interest in respect of which the proxy was given.
- (b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

17.7 Body corporate representative (Section 253B)

- (a) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of Members. The appointment may be a standing one.
- (b) The appointment must set out what the representative is appointed to do and may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (c) A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.

- (d) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

18 VOTING AT MEETINGS OF MEMBERS

18.1 How many votes a Member has (Section 253C)

- (a) On a show of hands, each Member has one vote.
 (b) On a poll, each Member has one vote for each dollar of the value of the total interests they have in the Scheme.

18.2 Jointly held interests (Section 253D)

If an interest is held jointly and more than one Member votes in respect of that interest, only the vote of the Member whose name appears first in the Register counts.

18.3 Manager and associates cannot vote if interested in resolution (Section 253E)

The Manager and its Associates are not entitled to vote their interest on a resolution at a meeting of Members if they have an interest in the resolution or matter other than as a Member.

18.4 How to work out the value of an interest (Section 253F)

The value of an interest of a Member in the Scheme is the amount that the Manager determines in writing to be the price that a willing but not anxious buyer would pay for the Members Interest if it was sold on the Business Day immediately before the day on which the poll is taken.

18.5 Objections to a right to vote (Section 253G)

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
 (b) must be determined by the chairperson, whose decision is final.

18.6 Votes need not all be cast in the same way (Section 253H)

On a poll a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
 (b) may cast their votes in different ways.

18.7 How voting is carried out (Section 253J)

- (a) A special or extraordinary resolution put to the vote at a meeting of Members must be decided on a poll.
 (b) Any other resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50% of the votes cast by Members entitled to vote on the resolution.
 (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

18.8 Matters on which a poll may be demanded (Section 253K)

- (a) A poll may be demanded on any resolution.
 (b) A poll cannot be demanded on any resolution concerning:
 (i) the election of the chairperson of a meeting; or
 (ii) the adjournment of a meeting.

- (c) A demand for a poll may be withdrawn.

18.9 When a poll is effectively demanded (Section 253L)

- (a) At a meeting of Members, a poll may be demanded by:
- (i) at least five (5) Members present entitled to vote on the resolution; or
 - (ii) Members present with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the chairperson.
- (b) The poll may be demanded:
- (i) before a vote is taken; or
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that Members have is to be worked out as at close of business on the day before the poll is demanded.

19 MINUTES AND MEMBERS' ACCESS TO MINUTES

19.1 Minutes (Section 253M)

- (a) A Manager must keep minute books in which it records within one month:
- (i) proceedings of meetings of Members; and
 - (ii) resolutions of meetings of Members.
- (b) The Manager must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chairperson of the meeting or the chairperson of the next meeting.
- (c) The Manager must keep the minute books at:
- (i) its registered office; or
 - (ii) its principal place of business in Australia; or
 - (iii) another place approved by the Commission.
- (d) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

19.2 Members' access to minutes (Section 253N)

- (a) The Manager must ensure that the minute books for the meetings of Members are open for inspection by Members free of charge.
- (b) A Member may ask the Manager in writing for a copy of any minutes of a meeting of the Members or an extract of the minutes.
- (c) The Manager is entitled to charge a Member a copying fee of not more than \$2.50 per page or an amount not exceeding any amount prescribed, whichever is the lesser.
- (d) If the Manager requires payment for the copy, the Manager must send it:
- (i) within 14 days after the Manager receives the payment; or
 - (ii) within any longer period that the Commission approves.

20 CHANGING THE CONSTITUTION

20.1 Power to Amend

The Constitution may be modified, or repealed and replaced with a new constitution:

- (a) by special resolution of the Members; or
- (b) by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights.

20.2 Lodgement of Amendment

The Manager must lodge with the Commission a copy of the modification or the new Constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

21 REMUNERATION OF MANAGER

21.1 Management Fee

- (a) Subject to clause 21.5, the:
 - (i) Manager is entitled to be paid out of the Income of the Scheme a management fee of up to 1.5% per annum of the Gross Asset Value of the Scheme; and
 - (ii) the fee is calculated and payable monthly in arrears.
- (b) The Manager's management fee must be paid up to the date of completion of the final winding up of the Scheme.

21.2 Custodian's fees

If a custodian is appointed, the Manager shall be responsible for payment of the custodian's fees and expenses.

21.3 Disputes between the Manager and Members

A Member claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing (including by email) or by telephone.

21.4 Best Efforts to Resolve the Dispute

- (a) On receipt of a dispute from the Member, the Manager shall promptly reply (within 5 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member seek to finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the Manager has been unable to substantially respond to the complaint within 45 days the dispute resolution officer will report in writing to the Member advising them reasons for the delay, when a response can be expected and referring them to the external dispute resolution scheme.
- (e) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

21.5 Priority

Income distributions from the Scheme are to be conducted in the following order:

- (a) the Income Warranty (if any) has been paid;
- (b) expenses of the Scheme;
- (c) payment to each Member a distribution up to their Benchmark Return;
- (d) the Manager will pay any management fee;
- (e) as provided in clause 8.5(d).

22 RETIREMENT, REMOVAL OR LIQUIDATION OF MANAGER

22.1 Retirement of the Manager (Section 601FL)

- (a) If the Manager wants to retire, it must call a Members' meeting to explain its reason for wanting to retire and to enable the Members to vote on an extraordinary resolution to choose a new Manager.
- (b) If the Members choose a manager and that person has consented, in writing, to becoming the Scheme's Manager:
 - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the current Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to the name of the new Manager;
 - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i) the person chosen by the Members to be the new Manager may lodge that notice.
- (c) If the Members do not choose a person to be the new Manager, or the person they choose does not consent to becoming the Scheme's Manager, the current Manager may apply to the court for the appointment of a temporary Manager under section 601FP of the Law.

22.2 Removal of the Manager by Members (Section 601FM)

- (a) If the Members want to remove the Manager, they must take action under clause 13.2 for the calling of a Members' meeting to consider and vote on:
 - (i) an extraordinary resolution that the current Manager should be removed; and
 - (ii) an extraordinary resolution choosing a person to be the new Manager.
- (b) If the Members vote to remove the Manager and, at the same meeting, choose a person to be the new Manager that consents, in writing, to becoming the Scheme's Manager:
 - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to name the person chosen as the Scheme's Manager; and
 - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i), the person chosen by the Members to be the new Manager may lodge that notice.

23 CONSEQUENCES OF CHANGE OF MANAGER

23.1 Former Manager to hand over books and provide reasonable assistance (Section 601FR)

If the Manager of the Scheme changes, the former Manager must:

- (a) as soon as practicable give the new Manger any books in the former Manager's possession or control that the Law requires to be kept in relation to the Scheme; and
- (b) give other reasonable assistance to the new Manger to facilitate the change of manager.

23.2 Rights, obligations and liabilities of former Manager (Section 601FS)

- (a) If the Manager of the Scheme changes the rights, obligations and liabilities of the former Manager in relation to the Scheme become rights, obligations and liabilities of the new Manager.
- (b) Despite paragraph (a), the following rights and liabilities remain rights and liabilities of the former Manager:
 - (i) any right of the former Manger to be paid fees for the performance of its functions before it ceased to be the manager; and
 - (ii) any right of the former Manager to be indemnified for expenses it incurred before it ceased to be the manger; and
 - (iii) any right, obligation or liability that the former Manager had as a Member of the Scheme; and
 - (iv) any liability for which the former Manager could not have been indemnified out of the Property if it had remained the Scheme's manager.

24 NOTICES

24.1 Notices to be in writing

Notices given under or for the purpose of this Constitution must be written in the English language.

24.2 Notices to the Manager

Notices to the Manager may be addressed to its principal place of business as disclosed in the Prospectus or notified to Members from time to time.

24.3 Joint Members

Notices to a joint Member may be addressed to the one of them whose name first appears in the Register, at that one's address shown in the Register, and may be served at that address.

24.4 Form of Notice

A notice may be delivered by hand, by prepaid post or by facsimile transmission.

24.5 Time of delivery

If, before 5 pm. local time on a Business Day in the place of delivery, a party delivers a notice:

- (a) by hand; or
- (b) by facsimile transmission and the party completes transmission,

the notice will be taken as given on the day of delivery or transmission and in any other case on the next following Business Day.

24.6 Notices by post

If a party gives a notice by prepaid post the notice will be taken as given on the second Business Day after the notice is posted.

24.7 Incomplete facsimile transmission

If a party gives a notice by facsimile transmission and the transmission is not fully legible, the party giving the notice may not rely on this clause to prove the giving of the notice.

24.8 Facsimile transmission reasonably believed to be unintelligible

A facsimile transmission may not be relied upon if the party giving the notice has reason to believe that the transmission or part of the transmission is illegible, or not an accurate representation of the original document.

24.9 Request for re-transmission

A party is not entitled to object to a facsimile transmission as being not fully legible or accurate unless the party requests re-transmission within 2 hours (being hours between 9 am. and 5 pm local time on a Business Day at the place of receipt) of completion of transmission; if a facsimile transmission is made within 2 hours before 5 pm on a Business Day and is unintelligible, the receiving party has until 10 am local time on the next Business Day at the place of receipt to request re-transmission.

24.10 Signatures

A notice given by the Manager must be signed by an Officer of the Manager.

24.11 Address of Applicants

The address for service of an Applicant is the address shown in its Application until it notifies the Manager of another address in accordance with this clause.

24.12 Address of Members

The address for service of a Member is the address shown in the Register, or in the case of joint Members, the address shown in the Register of the joint Member who is first named in the Register.

24.13 Changes of address for service of the Manager

The Manager may by notice to the Commission, change its address or facsimile number for service under this clause.

25 FINANCIAL STATEMENTS

25.1 Preparation of Financial Statements (Section 292)

A financial report and directors' report for the Scheme must be prepared for each Financial Year in accordance with the requirements of the Law.

25.2 Compliance with Accounting Standards and Regulations (Section 296)

- (a) The financial report for a Financial Year must comply with the Accounting Standards.
- (b) The financial report must comply with any further requirements in the Regulations.

25.3 True and Fair View (Section 297)

The Financial Statements and notes for a financial year must give a true and fair view of:

- (a) the financial position and performance of the Scheme; and
- (b) if consolidated Financial Statements are required - the financial position and performance of the consolidated entity.

25.4 Audit of annual financial report (Section 301)

Each Scheme must have the financial report for the Financial Year audited in accordance with division 3 of part 2M.3 of chapter 2M of the Law and obtain an Auditors report.

25.5 Annual Financial Report to Members (Section 314)

- (a) The Manager must report to Members for a Financial Year by either:
 - (i) sending Members copies of:
 - (A) financial report for the year; and
 - (B) the directors' report for the year (see sections 298 - 300 of the Law); and
 - (C) the Auditors report on the financial report; or
 - (ii) sending Members a concise financial report for the year the complies with the Law.
- (b) A Scheme must report to its Members within 3 months after the end of the Financial Year.

25.6 Members choices for Annual Financial Information (Section 316)

- (a) A Member may request the Manager:
 - (i) not to send them the annual financial reports; or
 - (ii) to send them a full financial report and the directors' report and Auditors report.

A request may be a standing request or for a particular Financial Year. The Member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.
- (b) The time for complying with a request under paragraph (a)(ii) is:
 - (i) 7 days after the request is received; or
 - (ii) 3 months after the end of the Financial Year;

whichever is later.
- (c) A full financial report, directors' report and Auditors report are to be sent free of charge unless the Member has already received a copy of them free of charge.

25.7 Supplying information to the Auditor

The Manager must supply the Auditor with any information the Auditor requests and which is necessary for the performance of the duties of the Auditor.

25.8 Accounts of other Members

- (a) The Manager must not prepare the financial report of the Scheme in such a way as to make it apparent to others reading the financial report (including Members) the details of individual Members Interest.
- (b) Nothing in this Constitution is to be read as requiring the Manager to send or make available reports of Member's Interests and to any person other than the Member concerned (or the Member's authorised agents).
- (c) The Manager may disclose details of the Members Interests to those involved in the preparation and auditing of the Scheme.
- (d) This clause is subject to any requirements imposed on the Manager by law.

26 AUDITOR

26.1 Appointment

- (a) The Manager will appoint the Auditor and the auditor of the Compliance Plan. The appointments will be a registered company auditor according to the provisions of the Law;
- (b) The appointee may be the auditor of the Manager unless otherwise restricted by the Law.

26.2 Removal or Retirement of Auditor

- (a) The Manager may remove the Auditor or auditor of the Compliance Plan at any time.
- (b) The auditors may retire after giving notice to the Manager. The auditors must give at least one month's notice unless otherwise agreed with by the Manager.

27 GENERAL

27.1 Payments to Members

Any money payable by the Manager to a Member under this Constitution may be paid by any means as directed by the Member from time to time and, in the absence of a direction, may be made by direct Bank transfer or by crossed not negotiable cheque payable to the Member or order and sent through the post to the Member at its address in the Register, or in the case of joint holders made payable to the joint holders or bearer and sent to the Members at the address shown in the register of the joint holder who is first named in the Register. Payment of a cheque drawn and posted in accordance with this clause is in full satisfaction of the monies payable to the Member and a good discharge to the Manager.

27.2 Retention of documents

The Manager is to retain, and make available to the auditor for inspection at reasonable times, for a period of at least 7 years from their respective dates, the following:

- (a) Applications;
- (b) cancelled Certificates; and
- (c) instruments of transfer and transmission.

27.3 Copies of this Constitution

A copy of this Constitution must be held by the Manager at its principal office and registered office and made available during normal business hours at those places for inspection by Members. A Member is entitled to a copy of this Constitution upon payment to the Manager of the reasonable costs and expenses of preparing a copy.

27.4 Governing law and jurisdiction

This Constitution is governed by and is to be construed in accordance with the laws of the State of Queensland. Each party and the Members and Applicants irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.

27.5 No Waiver

The failure of a party at any time to require full or partial performance of any provision of this Constitution shall not affect in any way the full right of that party to require that performance subsequently. The waiver by any party of a breach of a provision of this Constitution shall not be deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently. Any waiver of a breach of this Constitution shall be in writing signed by the party granting the waiver, and shall be effective only to the extent specifically set out in that waiver.

28 RESOLUTION OF DISPUTES

28.1 Complaints Handling System

The Manager shall establish a complaints handling framework that complies with AS ISO 10002-2006 Customer satisfaction - Guidelines for complaints handling in organizations (ISO 10002:2004, MOD) for the handling of disputes under this Constitution.

28.2 Essential Elements

The complaints handling process shall have as a minimum requirements for:

- (a) **(Commitment).** There shall be a commitment to efficient and fair resolution of complaints.
- (b) **(Fairness).** The complaints handling process shall recognise the need to be fair to both the complainant Member and the Manager.
- (c) **(Resources).** There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- (d) **(Visibility).** The complaints handling process shall be well publicised to Members and staff of the Manager and shall include information to Members about the right to complain.
- (e) **(Access).** The complaints handling process shall be assessable to all Members and information shall be readily available on the details of making and resolving complaints.
- (f) **(Assistance).** Assistance shall be available for Members in a formulation and lodgement of complaint.
- (g) **(Responsiveness).** Complaints shall be dealt with quickly and the Members shall be treated courteously.
- (h) **(Charges).** Complaints handling shall be at no charge to the particular complaining Member. The Manager shall be entitled to be reimbursed for its costs from Scheme assets in dealing with the particular complaints.
- (i) **(Remedies).** The complaints handling process shall have the capacity to determine and implement remedies.
- (j) **(Data collection).** There shall be appropriate systematic recording of complaints by Members and their outcome.
- (k) **(Systematic and recurring problems).** Complaints shall be classified and analysed for the identification and rectification of systematic and recurring problems.
- (l) **(Accountability).** There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- (m) **(Review).** The complaints handling process shall be reviewed annually to ensure that it is sufficiently delivering effective outcomes.

28.3 Disputes between the Manager and Members

A Member claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing.

28.4 Best Efforts to Resolve the Dispute

- (a) On receipt of the written notice of dispute from the Member, the Manager shall promptly reply (within 7 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.

- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the dispute is not resolved to the satisfaction of the Member the Member shall have 30 days from receipt of the report of the dispute resolution officer to refer the matter to the Manager's compliance committee if a compliance committee exists or alternatively the board of the Manager.
- (e) The Manager's board or compliance committee shall meet within 21 Business Days of receipt of a written complaint by a member, received pursuant to paragraph (j) to consider the dispute.
- (f) The Member shall be entitled to be present at the meeting of the board or compliance committee with or without legal representation and to be heard either in person or through the Member's legal representative.
- (g) Subsequent to hearing the Member's complaint the board or compliance committee shall have a maximum of 14 Business Days within which to consider the complaint and either accept, reject or resolve the dispute.
- (h) The board or compliance committee must notify the Member within 21 Business Days of the hearing under paragraph (e), of its decision.
- (i) If the Member is dissatisfied with the determination of board or compliance committee then the Member may refer the complaint to the Dispute Resolution Service.
- (j) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

29 IMPACT OF INTERNATIONAL ACCOUNTING STANDARDS

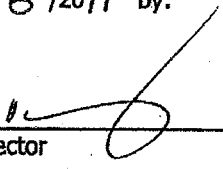
Notwithstanding anything to the contrary contained or implied by this Deed, where:

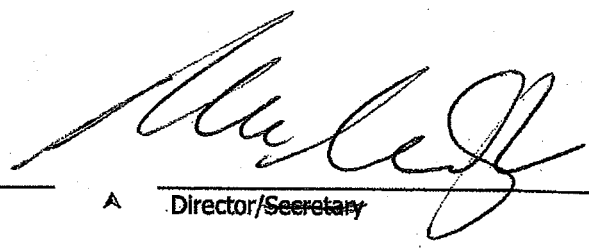
- (a) Assets;
- (b) Current Interest Value;
- (c) Current Value;
- (d) Gross Asset Value;
- (e) Income;
- (f) Issue Price;
- (g) Issue Provision;
- (h) Liabilities;
- (i) Market Value;
- (j) Net Income;
- (k) Redemption Price;
- (l) Redemption Amount;
- (m) Authorised Investments;
- (n) Scheme;
- (o) Value; or

- (p) similar terms or phrases ('the Items'),
- (q) are used for the purposes of calculating:
- (r) the issue or redemption price of Interests;
- (s) the fees payable to the Manager, any agent of the Manager or any custodian who holds Scheme property;
- (t) the extent of any limitation on borrowings or on investment of Scheme property; or
- (u) the amount of a distribution payable to Members,
- (v) the Items are to be calculated by reference to generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005.

EXECUTED as a Deed Poll

Signed sealed and delivered
by
EQUITRUST LTD ACN 061 383 944
on 3 16 / 2011 by:

^  _____
Director

^  _____
Director/Secretary

^ DAVID KENNEDY
Full name of Director

^ MARK MCIVOR
Full name of Director/Secretary

"DW-3"

**EQUITRUST PRIORITY CLASS INCOME
FUND**

ARSN 089 079 729

REPLACEMENT CONSTITUTION

REF: #188593

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATIONS	1
1.1 Defined Terms	1
1.2 Interpretation.....	8
2. CONSTITUTION AND DURATION	9
2.1 Equititrust Priority Class Income Fund	9
2.2 Assets of Scheme	9
2.3 Manager to act as responsible entity of the Scheme.....	9
2.4 Manager to establish Fund.....	9
2.5 Interests.....	9
2.6 Fractional Interests	9
2.7 Nature of Beneficial Interest.....	10
2.8 Classes of Interest.....	10
2.9 Binding Effect of Constitution.....	10
2.10 Minimum Investment Amounts and Holdings.....	10
3. APPLICATION PROCEDURES	10
3.1 Offer	10
3.2 Applications	11
3.3 Application Account.....	11
3.4 Application Money to be paid to Manager	11
3.5 Application Money with completed Application.....	11
3.6 Application Money without completed Application	11
3.7 Dealing with Application Money	11
3.8 Manager's discretion	12
3.9 Manager may withdraw Offer Document.....	12
3.10 Manager to Confirm Acceptance	12
3.11 Issue Price	12
3.12 Certificates.....	12
3.13 Form of Certificate.....	13
3.14 Joint Members.....	13
3.15 Replacement Certificates.....	13
3.16 Scheme Accounts	13
4. RESPONSIBILITIES, POWERS AND DUTIES OF MANAGER.....	13
4.1 Exercise of powers of the Manager	13
4.2 Power to Appoint Agent (Section 601FB(2)).....	13
4.3 Authority for Agent (Section 601FB(3)).....	14
4.4 Liability of Agent (Section 601FB(4))	14
4.5 Attorney	14
5. INDEMNITIES AND REIMBURSEMENTS OF EXPENSES	15
5.1 Indemnity	15
5.2 Limitation of liability.....	15

5.3	Further limitation of liability of the Manager.....	16
5.4	Transactions involving the Scheme.....	16
5.5	Further indemnity.....	16
5.6	Dealings by the Manager.....	17
6.	INVESTMENT.....	17
6.1	Investment Management.....	17
6.2	Investment in Authorised Investments.....	17
6.3	Investment Oversight.....	17
7.	INCOME OF THE SCHEME.....	17
7.1	Manager to collect Income.....	17
7.2	Decision of Manager final.....	17
7.3	Distribution of Income.....	17
7.4	Distribution Period.....	17
7.5	Distribution Surplus.....	18
7.6	Manager to keep separate accounts.....	18
7.7	Reinvestment of income entitlement.....	18
7.8	Members presently entitled to Distributable Income.....	18
8.	TERMINATION OF THE SCHEME.....	19
8.1	Termination of a Scheme.....	19
8.2	Defined Event of Winding Up.....	19
8.3	Procedure for Winding Up.....	19
9.	TRANSFER AND TRANSMISSION OF MEMBERS' INTERESTS.....	20
9.1	General principles when dealing with Members' Interests.....	20
9.2	Form of transfer.....	21
9.3	Transmission.....	21
10.	WITHDRAWAL.....	22
10.1	Withdraw Offers.....	22
10.2	Form of a Member's request.....	22
10.3	Accompanying evidence.....	22
10.4	No redemption obligation.....	22
10.5	Staggering of Redemption Dates.....	22
10.6	Funding of redemption.....	23
10.7	Resale and redemption of Interests by Manager.....	23
10.8	Cancellation of Interests.....	23
10.9	Transfer of specific assets.....	23
10.10	Compulsory redemption.....	23
10.11	Components of Redemption Price and payment of accrued distributions.....	23
10.12	No required disposal.....	24
11.	REGISTERS.....	24
11.1	Member Register.....	24
11.2	Details on Register.....	24

11.3	Expunging Information.....	24
11.4	Inspection of Register.....	24
11.5	Copies of Register	25
11.6	Closure of Register.....	25
11.7	Change of Member Details.....	25
12.	MEMBER MEETINGS.....	25
12.1	Managers Power to call Members Meeting.....	25
12.2	Meeting process.....	25
13.	CHANGING THE CONSTITUTION.....	25
13.1	Power to Amend	25
13.2	Lodgement of Amendment	26
14.	REMUNERATION OF MANAGER	26
14.1	Manager's Fee Payable.....	26
14.2	Custodian's fees:	26
14.3	Manager's Expenses.....	26
14.4	Goods and Services Tax	28
14.5	Priority.....	29
15.	RETIREMENT, REMOVAL OR LIQUIDATION OF MANAGER	29
15.1	Retirement of the Manager.....	29
15.2	Removal of the Manager by Members	29
16.	Consequences of change of manager.....	30
16.1	Former Manager to hand over books and provide reasonable assistance	30
16.2	Rights, obligations and liabilities of former Manager.....	30
17.	NOTICES.....	31
17.1	Notices to be in writing.....	31
17.2	Notices to the Manager	31
17.3	Joint Members.....	31
17.4	Form of Notice	31
17.5	Time of delivery	31
17.6	Notices by post	31
17.7	Incomplete facsimile transmission.....	31
17.8	Facsimile transmission reasonably believed to be unintelligible	32
17.9	Request for re-transmission.....	32
17.10	Signatures.....	32
17.11	Address of Applicants	32
17.12	Address of Members	32
17.13	Changes of address for service of the Manager	32
18.	FINANCIAL STATEMENTS.....	32
18.1	Preparation of Financial Statements (Section 292).....	32
18.2	Compliance with Accounting Standards and Regulations (Section 296)	32

18.3	Annual Financial Report to Members (Section 314)	33
19.	Auditor	33
19.1	Appointment	33
19.2	Removal or Retirement of Auditor	33
20.	GENERAL	33
20.1	Payments to Members	33
20.2	Retention of documents	34
20.3	Copies of this Constitution	34
20.4	Governing law and jurisdiction	34
20.5	No Waiver	34
21.	RESOLUTION OF DISPUTES	34
21.1	Complaints Handling System	34
21.2	Essential Elements	35
21.3	Disputes between the Manager and Members	36
21.4	Best Efforts to Resolve the Dispute	36

EQUITITRUST PRIORITY CLASS INCOME FUND

REPLACEMENT CONSTITUTION

THIS DEED POLL is made on 30 November 2010

BY **EQUITITRUST LIMITED ACN 061 383 944** of 67 Thomas Drive,
Chevron Island in the State of Queensland

(Manager)

RECITALS

- A. The Manager is the responsible entity of the Equititrust Priority Class Income Fund ARSN 089 079 729 established by Deed Poll dated 9 August 1999 ('Original Deed') as amended from time to time ('the Former Constitution').
- B. Pursuant to Clause 20.1(a) of the Former Constitution, the sole Member of the Scheme approved the amendments to the Former Constitution contained in this Deed Poll in accordance with the requirements of the Australian Securities and Investments Commission Class Order 09/552 on 30 November 2010.
- C. With effect from the date of this Deed Poll the Former Constitution is replaced with this Deed Poll including amending the name of the Scheme from the Equititrust Income Fund No. 2 to the Equititrust Priority Class Income Fund.
- D. From time to time the Manager may invite persons to invest in the Scheme and anyone who wants to participate in the Scheme may invest by completing and sending the Application and Application Money to the Manager.
- E. This Constitution is made with the intent that the Manager and each Member will be bound by it.

1. DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

In this Constitution unless the context otherwise requires:

'Accounting Standards' has the meaning given to that term in section 9 of the Law;

'Applicant' means a person who has completed and lodged with the Manager an Application, pursuant to a Offer Document, and has paid the Application Money to which the Application refers, and includes their successors in title and permitted assigns;

'Application' means a duly completed and signed application to invest in a Scheme, lodged with the Manager and accompanied by payment of the Application Money;

'Application Account' means the Bank account established by the Manager under clause 3.3;

'Application Money' means all money paid by the Applicant pursuant to a Offer Document, accepted by the Manager and held by the Manager in the Application Account;

'Approved Valuer' means any person or firm appointed by the Manager, to value any property and who is independent of the Manager and includes a person employed or engaged by a company or firm and who:

- (a) is authorised under any law of the State or Territory where the valuation takes place to practice as a valuer; and
- (b) has at least 2 years continuous experience of valuation.

'Assets' means all assets and liabilities of the Scheme which are, or would be, recognised as assets or liabilities of the Scheme by the application of generally accepted accounting principles;

'Associate' means an associate as defined in Division 2 of Part 1.2 of the Law;

'Auditor' means the auditor for the Scheme, appointed by the Manager, as required under the Law;

'Authorised Investments' means:

- (a) Mortgage Investments;
- (b) loans of any kind including a loan to Equititrust Limited as the responsible entity of the Equititrust Income Fund ARSN 089 079 854 secured by a fixed and floating charge or such other appropriate security;
- (c) deposits at call or for a term with any Bank;
- (d) bills of exchange (including commercial bills) issues, drawn accepted or endorsed by any Bank or negotiable certificates of deposit issued by any Bank; and
- (e) any authorised investment as defined in section 21 of the *Queensland Trusts Act 1973*.

'Bank' has the meaning given to that term in section 5 of the *Banking Act 1959* and also includes a bank constituted by or under a law of the State or Territory and a 'foreign bank' as that term is defined in section 5 of the *Banking Act 1959*;

Benchmark Return is the relevant distribution hurdle rate for each Member (as nominated by the Manager when the Member invests in the Scheme) which that Member must receive from their investment in the Scheme before the Manager is entitled to receive the management fee referred to in clause 14. The Benchmark Return is not a forecast or a representation that the Member will receive this return or indeed any return from their investment in the Scheme;

Borrower means a person who borrows or is lent funds from the Manager under a Mortgage Investment or other loan which forms an Authorised Investment;

Business Day means any day on which trading banks on the Gold Coast are generally open for business;

Cash includes cheques, currency notes, bank cheques, bank transfers and bank drafts in the lawful currency of Australia or another country;

Certificate means a certificate or document issued by the Manager to the Applicant evidencing the acceptance by the Manager of the Application;

Class has the meaning given to that term by clause 2.8.

Commencement Date means the date on which the Constitution was registered by the Commission;

Commission means the Australian Securities and Investments Commission;

Compliance Plan means the compliance plan for the Scheme and registered by the Commission and includes any approved amendments to the compliance plan from time to time;

Constitution means this Deed, and prior to thereto, shall where the context permits, also include the Former Constitution;

Current Interest Value means:

- (i) in relation to an Interest for the purpose of determining the Issue Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time; and
- (ii) in relation to an Interest for the purpose of determining the Redemption Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time;

Current Liabilities includes all of the Liabilities of the Scheme that would in the ordinary course of business be due and payable within 12 Months from the date on which they are ascertained;

'Current Value' means in relation to the Scheme the amount derived by deducting from the Value of the Assets of the Scheme:

- (a) all amounts borrowed for the purpose of the Scheme and remaining owing;
- (b) the amount of all actual Liabilities of the Scheme (other than interest and those referred to in paragraph (a) of this definition) owing but unpaid;
- (c) such amounts as the Manager thinks necessary to provide for all accrued and contingent outgoings and Liabilities of the Scheme (other than those referred to in paragraphs (a) to (c) of this definition);
- (d) such amounts which the Manager thinks necessary or desirable to provide or allow for depreciation or the writing down or replacement of any Authorised Investments of the Scheme (including provision for amortising leasehold property) or for any other provisions or allowances; and
- (e) all other amounts which the Manager considers should be deducted for the purposes of making a fair and reasonable determination, in accordance with Accounting Standards, of the Current Value of the Scheme;

'Default' means and includes any event of default under a document that secures a Mortgage Investment or loan which forms an Authorised Investment ;

'Dispute Resolution Service' means the dispute resolution service approved by the Commission which the Manager nominates from time to time;

'Distributable Amount' means, in relation to the Scheme, any amounts determined by the Manager from time to time to be distributed to Members including:

- (a) the Net Income of the Scheme;
 - (b) other Income of the Scheme; and
 - (c) any amount of capital of the Scheme,
- up to that Member's Benchmark Return.

'Distribution Period' is the regular period, being either monthly, quarterly, yearly or some other regular period, as agreed between the Manager and Member that Income from the Scheme will be distributed to Members.

'Expert' includes solicitors, barristers, accountants, bankers, financial advisers and other professionally qualified consultants;

'Financial Statements' has the meaning given to that term in section 9 of the Law;

'Financial Year' means the period of 12 Months ending on 30 June in each year during the continuance of this Constitution and includes the period commencing on the Commencement Date and expiring on the next succeeding 30 June and any period between 30 June last occurring before the termination of the Scheme;

'Former Constitution' means the Deed Polls dated 9 August 1999 and 6 September 1999 made by the Manager and referred to in the Recitals;

'GST' has the meaning given to that term by the GST Act;

'GST Act' means *A New Tax System (Goods & Services Tax) Act 1999* as amended;

'Income' means all amounts which are, or would be recognised as, income by the application of generally accepted accounting principles;

'Interest' means the beneficial interest of a Member in the Scheme;

'Issue Price' means in relation to the issue of an Interest, an amount equal to the Current Interest Value of the Interest at the time of issue.

'Issued Interests' means all Interests for the time being created and issued and not cancelled;

'Land' means a freehold estate or interest in real property in any part of the Commonwealth of Australia or any State or Territory thereof and includes buildings, fixtures and fittings (including furnishings) and other improvements erected or installed thereon;

'Law' means the *Corporations Act 2001* (Cth);

'Liabilities' in respect of the Scheme includes:

- (a) unpaid administrative costs and expenses, including fees of the Manager;
- (b) accrued charges in respect of or owing in relation to any Asset of the Scheme;
- (c) amounts required to meet present liabilities of the Scheme;
- (d) amounts of all borrowings of the Scheme;
- (e) any provisions for Taxes which, in the opinion of the Manager, should be taken into account; and
- (f) any other amounts required to meet liabilities or other expenditure which, in the opinion of the Manager, should be taken into account and which have not otherwise been taken into account in determining the amount of the liabilities in any of the preceding paragraphs of this definition;

'Manager' means Equititrust Limited ACN 061 383 944 or any other person for the time being acting as manager, provided that at all times the Manager is the responsible entity of the Scheme as defined in section 9 of the Law;

'Margin Fee' has the meaning given to that term under Clause 14.

'Market Value' of an investment means the current market value determined in accordance with a method agreed between the Manager and an Approved Valuer or Expert. If there is a dispute between the Manager and the Approved Valuer, the decision of the Approved Valuer shall prevail;

'Member' means a person whose Application is accepted and for the time being is registered under the provisions of this Constitution as a member of the Scheme and includes persons jointly so registered;

'Month' means calendar month;

'Mortgage Investment' means a loan secured by a registered mortgage over Land and any other Security Property;

'Net Income' means in relation to the Scheme, 'net income' as that term is defined in section 95 *Tax Act 1936* as calculated each Financial Year;

'Officer' means a person who is a director, secretary or executive officer of the Manager;

'Offer Document' means a offer document inviting Applications or offers to join the Scheme established by the Constitution;

'Quarter' means each period of 3 Months ending on the last days of March, June, September and December in each year;

'Redemption Amount' means in respect to a Member, the number of Interests held by the Member which are to be redeemed multiplied by the Redemption Price calculated at the time of redemption;

'Redemption Date' means the date the Manager agrees to redeem a Members' Interests;

'Redemption Price' means in relation to the redemption of an Interest, an amount equal to the Current Interest Value of the Interest at the time of redemption.

'Register' mean the register of Members to be established and kept by the Manager under clause 11.2;

'Regulations' means the *Corporations Regulations 2001* (Cth);

'Related Party' means a related party as defined in Part 5C.7 of the Law;

'Scheme' means the scheme established in accordance with this Constitution;

'Scheme Accounts' means the Scheme's bank account;

'Security Property' means the property offered as security by a Borrower;

'Tax Act' means the *Income Tax Assessment Acts of 1936 and 1997* (Cth) and the regulations made thereunder from time to time;

'Taxes' includes, without limitation, any:

- (a) present or future stamp or documentary taxes, or any other excise or property taxes, GST, charges or similar levies, interest, penalties, fees or other amounts (if any) imposed, levied, collected, withheld or assessed which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder or which are imposed on the Manager in respect of the Scheme or any of the Authorised Investments thereof;
- (b) taxes, levies, imposts, duties, deductions or withholdings (however called), interest, GST, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed of any nature whatever, whensoever and howsoever imposed, and all liabilities with respect thereto which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder; or
- (c) taxes, interest, penalties, charges, GST, fees or other amounts (if any) imposed, levied, collected, withheld or assessed upon:
 - (i) Application Money;
 - (ii) the Scheme, Scheme Accounts, or the Income, capital gains, profits, transactions, accounts, accruals, receivables or any change in the worth or value of the Scheme, the Assets or the Authorised Investments; or
 - (iii) the Manager in its capacity as manager of the Scheme,

all such taxes and imposts to include, without limitation, all imposts made pursuant to the Tax Act, financial institutions duty, debits tax, withholding tax, GST, stamp or documentary taxes, or any other excise or property taxes, charges or similar levies (howsoever called) imposed, levied, collected withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction from, or to, which a payment is made by, or on behalf of a Member or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing;

'Value' of an Asset when the value of that Asset is required to be ascertained or taken into account under this Deed or the Scheme shall mean its Market Value as last determined.

'Withdraw Offer' means a withdraw offer made by the Manager in accordance with Part 5C.6 Corporations Act.

'Withdrawal Request Form' means the request form prescribed by the Manager in accordance with clause 10.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) words expressing the singular include the plural and vice versa;
- (b) words denoting a natural person include corporations and body corporates and vice versa;
- (c) words denoting gender include both genders;
- (d) a reference to a part, clause, paragraph or schedule is a reference to a part, clause, paragraph or schedule of this Constitution;
- (e) references to this Constitution are references to this Constitution as amended, supplemented or varied from time to time;
- (f) a reference to writing includes printing, engraving, typewriting, lithography, photography and any other mode of reproducing words in a visible form;
- (g) a reference to a thing or matter includes a reference to a part of the thing or matter;
- (h) headings are included for convenience only and do not affect interpretation;
- (i) references to a party to this Constitution include the party's successors and permitted assigns;
- (j) references to a document or agreement include references to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (k) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (l) references to dollars and '\$' refer to amounts in Australian currency;
- (m) the schedules to this Constitution form part of this Constitution; and

- (n) where any word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

2. CONSTITUTION AND DURATION

2.1 Equititrust Priority Class Income Fund

This trust established by the Original Deed is now called the Equititrust Priority Class Income Fund, which commenced on the Commencement Date.

2.2 Assets of Scheme

The Manager declares that it holds and will at all times hold Assets on trust for Members of the Scheme subject to the provisions of the Constitution and the Law.

2.3 Manager to act as responsible entity of the Scheme

The appointment of the Manager as manager of the Scheme is hereby confirmed and the Manager agrees to manage the Scheme upon and subject to the terms and conditions contained in the Constitution.

2.4 Manager to establish Fund

The Manager shall, on the execution of the Constitution, lodge and hold the sum of one hundred dollars (\$100) to establish and constitute the Scheme. The Manager may, from time to time, cause or cause to be received more cash by way of addition to the Scheme to be held upon the trusts of the Constitution.

2.5 Interests

- (a) The beneficial interest in the Scheme shall be divided into Interests.
- (b) Subject to this Constitution, each Interest represents an undivided part of beneficial interest in the Assets of the Scheme as a whole and not any particular Asset.
- (c) The Manager must issue an Interest at the Issue Price.

2.6 Fractional Interests

The Manager may at its discretion create a fractional Interest in 100 parts for an amount less than a whole dollar notwithstanding any other provision of this Constitution, the expression 'Interest' shall, where the context will allow, be deemed to include such a fractional Interest and such fractional Interest shall carry with it the rights and obligations which attach to a whole Interest but be limited to the proportion of those rights and obligation which the number of 100ths in such fractional Interests bears to 1. A fractional Interest may also be created by the redemption of part of a whole Interest.

2.7 Nature of Beneficial Interest

A Member shall be entitled under this Constitution or as provided by the Law to a specific beneficial interest in the Scheme but such interest shall not entitle the Member other than as provided by this Constitution:

- (a) to interfere with the rights or powers of the Manager in its dealings with the Scheme or any part thereof; or
- (b) to exercise any rights, powers or privileges in respect of any Authorised Investment.

2.8 Classes of Interest

- (a) The Manager may create and issue Interests with different rights and restrictions as contained in an Offer Document or as otherwise determined by the Manager (**Class**).
- (b) Subject to the rights and restrictions of a Class as provided in paragraph (a) each Interest confers on its holder identical rights to those conferred by each other Interest of that Class.
- (c) The Manager may divide issued Interests into different Classes.

2.9 Binding Effect of Constitution

The Constitution operates as a deed and is binding on the Manager and each Member and all persons claiming through them as if they were parties to the Constitution, and each Applicant by signing the Application, acknowledges being so bound.

2.10 Minimum Investment Amounts and Holdings

The Manager may at any time determine minimum amounts which may be invested and accepted as Application Moneys in the Scheme including any minimum holding of Interests in the Scheme.

3. APPLICATION PROCEDURES

3.1 Offer

The Manager may, in accordance with the provisions of the Law and this Constitution, invite investment in the Scheme and issue a Offer Document in relation to such an invitation.

3.2 Applications

A person who wishes to invest in the Scheme must make an Application in the manner specified in the Offer Document and pay the Issue Price associated with the Application Money payable.

3.3 Application Account

Unless otherwise required by the Law, the Manager must establish and maintain a Bank account in the name of the Manager to be designated the Application Account for the Scheme. The Application Account must be established and operated in accordance with the requirements of the Law.

3.4 Application Money to be paid to Manager

The Manager must, in each Offer Document and other representations relating to the Scheme, direct how all cheques and other payment orders in respect of Applications are to be drawn on account of the Scheme.

3.5 Application Money with completed Application

Where the Manager receives Application Money with a completed Application relating to a current Offer Document, the Manager must pay the Application Money into the Application Account as soon as practicable after its receipt, but no later than the close of business on the next Business Day after the day of receipt.

3.6 Application Money without completed Application

Where the Manager receives Application Money that is not accompanied by a completed Application relating to a current Offer Document it will, as soon as practicable, return the Application Money to the Applicant or:

- (a) attempt to obtain the Application from the Applicant;
- (b) pay the Application Money into the Application Account; and
- (c) if interest accrues while the Application Money is held in the Application Account, ask the Applicant, in writing, whether the Applicant wants the interest to be dealt with as additional Application Money or to be paid to the Applicant.

3.7 Dealing with Application Money

If the Manager pays the Application Money into the Application Account under clause 3.6, the Manager will:

- (a) hold the Application Money on trust for the Applicant, until the Application is received; and

- (b) if the Application is received by the Manager within 30 days after the Application Money is received:
 - (i) apply the Application Money to the Scheme Accounts as soon as practicable after receiving the Application; and
 - (ii) deal with any interest accrued while the Application Money was held by the Manager in the Application Account in the manner disclosed in the Offer Document; and
- (c) if the Application has not been received by the Manager within 30 days after the Application Money was received, return the Application Money and interest (if any) to the Applicant as soon as practicable.

3.8 Manager's discretion

The Manager has the sole discretion to determine whether to accept or reject an Application in whole or in part without giving reasons. Where the Manager determines to reject an Application, it must give written notice to the Applicant within a reasonable time after receipt of the Application. The Manager must within a further 10 Business Days after the notice of rejection is given, refund to the Applicant the Application Money, subject to clearance of the Application Money.

3.9 Manager may withdraw Offer Document

The Manager may in its sole discretion determine at any time to withdraw a Offer Document. The Manager within 5 Business Days after the notice to withdraw the Offer Document is given, repay to all Applicants their Application Money paid pursuant to that Offer Document and held in the Application Account. Any interest that has accrued on Application Money in the Application Account shall be dealt with as disclosed in the Offer Document.

3.10 Manager to Confirm Acceptance

- (a) Once the Application is accepted the Manager must enter the Applicant on the Register as a Member.
- (b) The Manager must transfer the Application Money of the Member to the Scheme Accounts and issue Interests to the Member at the Issue Price.

3.11 Issue Price

Interests are issued at the Issue Price.

3.12 Certificates

The Manager

- (a) may issue to each Member a Certificate as evidence of the Interest held by a Member; and
- (b) may cancel existing Certificates and reissue new Certificates where the Manager has been supplied with evidence to the satisfaction of the Manager that the existing Certificate has been lost, or stolen.

3.13 Form of Certificate

The Certificate is to be in the form as determined by the Manager.

3.14 Joint Members

In the case of joint Members, only the person whose name appears first in the Register is entitled to a Certificate relating to that Interest.

3.15 Replacement Certificates

Replacement Certificates may be issued in the circumstances and subject to such conditions as determined by the Manager.

3.16 Scheme Accounts

- (a) The Scheme Accounts may pool individual Member's funds.
- (b) The Manager shall at all times invest the Scheme Accounts in Authorised Investments.

4. RESPONSIBILITIES, POWERS AND DUTIES OF MANAGER

4.1 Exercise of powers of the Manager

- (a) Subject to the provisions of this Constitution and the Law, the Manager has absolute and uncontrolled discretion as to the exercise of its powers, authorities and duties, in relation to the manner, mode and time of exercise of those powers, authorities and duties.
- (b) The Manager has all the powers of a natural person and a body corporate, including the power to invest and to borrow or raise money for the purposes of a Scheme and on security of the relevant Assets.

4.2 Power to Appoint Agent (Section 601FB(2))

- (a) The Manager has power to appoint an agent, or otherwise engage a person, to do anything that it is authorised to do in connection with the Scheme.
- (b) For the purpose of determining whether:
 - (i) there is a liability to the Members; or

- (ii) the Manager has properly performed its duties for the purposes of section 601GA(2) of the Law;

the Manager is taken to have done (or failed to do) anything that the agent or person has done (or failed to do) because of the appointment or engagement, even if they were acting fraudulently or outside the scope of their authority or engagement.

4.3 Authority for Agent (Section 601FB(3))

An agent appointed, or a person otherwise engaged, by:

- (a) the agent or person referred to in clause 4.2; or
- (b) a person who is taken under this clause to be an agent of the Manager;

to do anything that the Manager is authorised to do in connection with a Scheme is taken to be an agent appointed by the Manager to do that thing for the purposes of clause 4.2.

4.4 Liability of Agent (Section 601FB(4))

If:

- (a) an agent holds any Assets on behalf of the Manager; and
- (b) the agent is liable to indemnify the Manager against any loss or damage that:
 - (i) the Manager suffers as a result of a wrongful or negligent act or omission of the agent; and
 - (ii) relates to a failure by the Manager to perform its duties in relation to a Scheme;

then any amount recovered under the indemnity forms part of the Assets.

4.5 Attorney

Each person who completes an Application accepted by the Manager or acquires an Interest, appoints the Manager and any director, officer, attorney or substitute nominated by the Manager severally for this purpose as its attorney with the rights and powers to:

- (a) sign complete or otherwise arrange any mortgage, loan, charge and all other documents required by the Manager in respect of any Authorised Investment;
- (b) sign a Withdrawal Request Form on behalf of the person/Member to facilitate that Members withdrawal from the Scheme;

- (c) appoint substitutes or otherwise delegate its powers (including this power of delegation);
- (d) execute any document or take any action in the Managers opinion it is reasonably necessary to protect the interests of the Member, Members or the Manager in respect of any Authorised Investment;
- (e) conduct or deal with any Security Property provided in respect of a Authorised Investment where the Borrower Defaults;
- (f) exercise any rights (including its right to exercise a power of sale) pursuant to any mortgage and/or the *Property Law Act 1974*;
- (g) subject to any mortgage documentation, execute any document or instrument required for conducting any power of sale, transfer, lease or other disposition partial or in full the property offered as security for the Authorised Investment;
- (h) may incur any debts in relation to any property offered as security for a Authorised Investment and generally manage the Scheme property on behalf of the Members; and
- (i) without limiting the aforementioned, do everything and anything which in the attorneys reasonable opinion is necessary or expedient to enable the exercise of any rights of the Manager, the Member or the Members under the Authorised Investment in relation to any Authorised Investment or the Scheme property.

5. INDEMNITIES AND REIMBURSEMENTS OF EXPENSES

5.1 Indemnity

The Manager is indemnified out of the Assets for all debts, liabilities, damages, costs, taxes, charges, expenses and outgoings reasonably and properly incurred by it in the proper performance of its functions and duties and exercising its powers under this Constitution or at law, except in the case of debts, liabilities, damages, costs, taxes, charges, expenses or outgoings incurred or payable in respect of or as a result of gross neglect, deceit or a material breach of covenant of the Manager.

5.2 Limitation of liability

Except in the case of a failure to exercise care and diligence, the Manager will not be liable to account to nor to indemnify the Scheme, or a Member or person claiming under or on behalf of a Member, for anything done in good faith in the performance of its functions and duties and the exercise of its powers under this Constitution or at law including:

- (a) a failure to perform or do an act or thing which or the Manager is hindered, prevented or forbidden from doing or performing by reason of any present or future law (statutory or otherwise);
- (b) payments made by the Manager in good faith to a duly empowered fiscal authority of the Commonwealth, a State or Territory for Taxes or other charges on the Scheme, an Authorised Investment or a Certificate, or with respect to any transaction reasonably and properly entered into under this Constitution, although the payment as a matter of law ought or need not have been made;
- (c) anything done in good faith relying upon advice from an Expert instructed or appointed by the Manager and independent of the Manager;
- (d) anything done in good faith by the Manager in respect of an Application or notice on which there is a forged signature or inaccurate details provided that there were at the time of the doing of the act, matter or thing no reasonable grounds to believe that the signature or detail was not genuine or accurate; or
- (e) any other action taken by the Manager in respect of the Scheme where the Manager has acted in good faith.

5.3 Further limitation of liability of the Manager

Except in the case of the Manager's failure to exercise care and diligence, the Manager is not liable to Members to any extent greater than the extent of the Assets vested in the Manager or received and/or held by it in accordance with the provisions of this Constitution.

5.4 Transactions involving the Scheme

Subject to the Law and the Manager's duties to Members, the Manager is entitled, in any capacity other than as manager of the Scheme, to contract with a Member, a Scheme or any Authorised Investment or any property proposed to be acquired as an Asset, without any liability to account to the Members of that Scheme only if:

- (a) the transaction is not in breach of any covenant contained in this Constitution; and
- (b) the Manager acts in the transaction with good faith to the Members.

5.5 Further indemnity

If the Manager acquires an Asset the holding of which exposes or may expose the Manager to personal liability or if the Manager enters into any contract, credit facility or other transaction on behalf of a Scheme which exposes or may expose the Manager to any personal liability, the Manager has a right of indemnity out of the Assets in respect of that liability.

5.6 Dealings by the Manager

Nothing in this Constitution prevents the Manager or any person associated with the Manager from being a Member.

6. INVESTMENT

6.1 Investment Management

It is the role of the Manager to invest funds held in the Scheme Account in Authorised Investments for Members.

6.2 Investment in Authorised Investments

The Manager subject to the terms of this Constitution has complete and unfettered discretion to invest Members' funds in Authorised Investments.

6.3 Investment Oversight

The Manager shall implement practices, systems and procedures to monitor the performance of Authorised Investments made by it and shall where considered prudent and appropriate take whatever action as may be necessary to protect the capital value of the Authorised Investments of the Scheme including institution of any recovery action under Mortgages or other securities held in respect of Authorised Investments made in order to recover or maximise recovery of the capital and any unpaid income component of any Authorised Investment.

7. INCOME OF THE SCHEME

7.1 Manager to collect Income

The Manager will receive and collect the Income of the Authorised Investments and will pay it into the Scheme Accounts. The Manager will make all payments relating to the Scheme from the Scheme Accounts.

7.2 Decision of Manager final

The decision of the Manager as to whether any item amount to be distributed to Members is Income or capital shall be final.

7.3 Distribution of Income

The Manager must distribute to each Member, that Member's Income entitlement, accrued pursuant to clause 7.4 not less than 14 days after the end of the Distribution Period.

7.4 Distribution Period

The Distribution Period for each Member shall be:

- (a) quarterly, monthly, half yearly, or yearly as disclosed by the Manager in the Offer Document; or
- (b) if the Manager so provides, as agreed between the Member and the Manager at the time the Members Application is accepted.

7.5 Distribution Surplus

Notwithstanding any other provision in this Constitution, following each Distribution Period the Distributable Amount shall be paid in the following order of priority and subject to the provisions of clauses 2.8 and 14.5:

- (a) payment to each Member a distribution up to their particular Benchmark Return;
- (b) payment of the Manager's management fee;
- (c) payment of Scheme expenses; then the balance
- (d) a further distribution to Members commensurate with the number of Interests they hold.

7.6 Manager to keep separate accounts

The Manager may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to any Member.

7.7 Reinvestment of income entitlement

- (a) The Manager may invite Members in the Scheme to reinvest any or all of their distribution by way of application for additional Interests in the Scheme. The terms of any such invitation will be determined by the Manager and may, amongst other things, provide that unless a Member otherwise directs the Manager, that Member will be deemed to have elected to reinvest all or part of their distribution. Any invitation may be withdrawn or varied by the Manager.
- (b) Interests so applied for will be deemed to have been issued on the first day of the Distribution Period immediately following the Distribution Period in respect of which the distribution has accrued or such other date determined by the Manager.

7.8 Members presently entitled to Distributable Income

In accordance with clause 7.5, at the end of each Distribution Period the Members will be presently entitled (within the meaning of the Tax Act) to all distributable income derived during the relevant Distribution Period in proportion to the Interests of which they are registered as the holders at such time.

8. TERMINATION OF THE SCHEME

8.1 Termination of a Scheme

Subject to clause 8.2, the Scheme will terminate 80 years from the Commencement Date unless otherwise specified in the Offer Document for the Scheme.

8.2 Defined Event of Winding Up

The Manager must wind up the Scheme or cause the Scheme to be wound up on the occurrence of any one of the following circumstances:

- (a) The Scheme is without a Manager for whatever reason;
- (b) The Manager uses the mechanism provided for in Section 601NC of the Law;
- (c) The Members decide in a meeting called in accordance with this Constitution and the Law to wind up the Scheme;
- (d) The Scheme comes to the end of its term (as set out in clause 8.1);
- (e) Any of the circumstances set out in Section 601NE of the Law apply such that the Manager is required to wind up the Scheme; or
- (f) A court orders the Scheme to be wound up pursuant to Section 601ND of the Law.

8.3 Procedure for Winding Up

- (a) Unless otherwise required by the Law, the Manager is responsible for winding up the Scheme.
- (b) The Manager must convert to money all Authorised Investments, deduct all proper costs and then distribute to each Member funds in proportion to the number of Interest held by a Member divided by the total number of Interests on issue. The Manager may make interim distributions during the winding up process.
- (c) The Manager must proceed with the winding up efficiently, diligently and without undue delay. The Manager must complete the winding up process within such time frame as it considers is available to do so, whilst complying with its duties under this Constitution.
- (d) The Manager may retain from the proceeds of winding up:
 - (i) sufficient funds to meet future obligations which the Manager reasonably believes will fall due after a distribution is made to Members; and

- (ii) to pay its own remuneration expenses for work to be done following the realisation of Members' Funds.
- (e) During the winding up of the Scheme, the Manager may terminate any other agreements or arrangements it has entered into with Members which relate to the Scheme. The Manager must give notice to the Members of the termination of those agreements or arrangements.
- (f) Once the Manager believes the winding up is complete, the Manager must engage a registered company auditor to audit the final accounts of the Scheme. The Manager must send a copy of any report made by the auditor to Members within 30 days after the Manager receives the report from the auditor.

9. TRANSFER AND TRANSMISSION OF MEMBERS' INTERESTS

9.1 General principles when dealing with Members' Interests

- (a) A Member may transfer their Interests only in accordance with the provisions of this Constitution and, in particular:
 - (i) the transferee must agree to be bound by the provisions of this Constitution; and
 - (ii) a transfer of the Interests in the Scheme must be delivered to the Manager together with the Certificate or Certificates (if any) in respect of the Interests to be transferred.
- (b) The Manager will not be required to effect any transaction or dealing in any Interest on behalf of or for the benefit of or at the request of any Member unless the Member has paid or otherwise provided for, to the Manager's satisfaction, all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage fees and other charges (whether similar to the foregoing or not) which may have become or may be payable in respect of the transaction or dealing. The Manager is entitled, if it thinks fit, to pay and discharge all or any of those duties and charges on behalf of the Member concerned and retain the amount so paid out of any moneys to which the Member may be, or become, entitled.
- (c) The Manager may decline to register any transfer during the period that the Register is closed pursuant to clause 11.6.
- (d) Every instrument of transfer of an Interest which is registered will be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Constitution to the contrary) the Manager may destroy it.

- (e) Where the Manager refuses to register any instrument of transfer, within 2 Months after the date on which the instrument was deposited with the Manager, the Manager will give notice of the refusal to the person who deposited it and any instrument of transfer which the Manager refuses to register will (except in the case of suspected fraud) be returned to the person depositing it upon request by such person within 2 Months of the giving of the notice.
- (f) The Manager may refuse to register or fail to register or give effect to any transfer of an Interest without assigning a reason.
- (g) Upon the registration of a transfer of any Interest, the Manager will within one Month after the date of such registration issue to the transferee or transmittee written confirmation of the transfer or transmission.

9.2 Form of transfer

The transfer of an Interest shall be form in the nominated by the Manager. The form will have regard to the need for the transferee to be bound to this Constitution and any other arrangements which go to the integrity of the Scheme.

9.3 Transmission

Subject to the provisions of this Constitution:

- (a) in the case of the death of any Member the survivor or survivors (where the deceased was a joint holder) or the executors or administrators (where the deceased was the sole holder) are the only persons recognised by the Manager as having any title to or interest in the Interests registered in the deceased's name;
- (b) any person becoming entitled to any Interests in consequence of the death or bankruptcy of a Member may upon:
 - (i) producing to the Manager evidence of the capacity in which they propose to act under the provisions of this clause or of their title to the Interests as the Manager deems sufficient;
 - (ii) in the case of the death of the Member, producing to the Manager evidence of payment of any duties the Manager may require; and
 - (iii) delivering up to the Manager for cancellation the Certificate for the Interests,

be registered as the holder of the Interests and the Manager shall cancel the existing Certificate for Interests and issue a new Certificate for Interests in their name;

- (c) any person becoming entitled to any Interests because of the death or bankruptcy of a Member may give a good and sufficient discharge to the Manager for any money paid to them but are not entitled to receive notices of or to attend or vote at any meetings of Members until they have become registered as a Member in respect of such Interests.

10. WITHDRAWAL

10.1 Withdraw Offers

- (a) Members will only be able to redeem their Interests under a Withdraw Offer made by the Manager in accordance with Part 5C.6 of the Law.
- (b) The Manager may, in its absolute discretion, determine whether or not to make a Withdraw Offer and the Manager may determine that the Withdraw Offer apply to Members in a specific Class of Members.

10.2 Form of a Member's request

- (a) The Manager will prescribe from time to time a Withdrawal Request Form.
- (b) The Manager must keep a supply (either hard copy or on computer) of Withdrawal Request Forms at its registered office and principal place of business.
- (c) The Manager must provide Members on request with the current Withdrawal Request Form free of charge.

10.3 Accompanying evidence

Any Member who makes a request for withdrawal must do so on the current Withdrawal Request Form and also provide satisfactory evidence to the Manager of the Member's title or authority to deal with the Member's Interest. The Manager must act reasonably in determining what is satisfactory evidence.

10.4 No redemption obligation

The Manager is not obliged to cause the redemption of Interests in the Scheme in any circumstances.

10.5 Staggering of Redemption Dates

Despite any provision of this Constitution, the Manager may determine more than one Redemption Date for Interests to be redeemed pursuant to a Withdrawal Request Form and such Interests will be redeemed over those days in such proportions as the Manager determines, provided that all such Interests are redeemed within the time specified in clause 10.1.

10.6 Funding of redemption

To fund the redemption of Interests out of the Scheme, the Manager may apply or realise part of the Assets, and/or raise or borrow money, either unsecured or secured against Assets.

10.7 Resale and redemption of Interests by Manager

Where the Manager holds Interests for its own benefit, it may redeem those Interests out of the Scheme. This clause 10 will apply, with the necessary changes, to that redemption.

10.8 Cancellation of Interests

Interests which have been redeemed out of the Scheme will be cancelled and the Manager will record the cancellation in the Register.

10.9 Transfer of specific assets

The Manager may determine that the Redemption Amount will be satisfied wholly or in part by the transfer of investments of the Scheme at their Market Value. Expenses incurred in respect of the transfer must be paid by the Member.

10.10 Compulsory redemption

The Manager may compulsorily redeem any Members Interests under a Withdraw Offer provided they are paid the relevant Redemption Amount for their redeemed Interests.

10.11 Components of Redemption Price and payment of accrued distributions

- (a) Unless the Manager otherwise notifies a Member whose Interests are redeemed, the Redemption Price paid to that Member will comprise capital only. The Manager may notify a Member that the Redemption Price comprises part capital and part Income. Where the Redemption Price paid to a Member comprises Income and capital, the Member will be presently entitled (within the meaning of the Tax Act) to the Income component and the Manager must notify the Member of the Income component of the Redemption Price paid to them. This notice may be given at the time of redemption but must in any case be given within 3 months of the end of the Financial Year of the Scheme in which the redemption occurs.
- (b) Where an Interest is redeemed after a right to a distribution, whether income or capital, has accrued in respect of that Interest, that distribution may be paid to the holder of the Interest at the time of payment of the applicable Redemption Price notwithstanding that the distribution has not been paid at that time to holders of other Interests.

10.12 No required disposal

A Member is not required to dispose of its Interests except as otherwise provided in this Constitution and the Corporations Law.

11. REGISTERS

11.1 Member Register

The Manager covenants that it will keep and maintain an up-to-date Register at the registered office or principal place of business of the Manager in such form and containing such particulars as are required by the Law or any declaration, exemption or ruling granted or made thereunder, and such other particulars as the Manager may from time to time considers appropriate.

11.2 Details on Register

Subject to clause 11.3, there will be entered in the Register:

- (a) the names and addresses of the Members from time to time;
- (b) the Interests held by each Member from time to time;
- (c) the date on which the name of each Member was entered in the Register, and
- (d) the date on which any person ceased to be a Member.

11.3 Expunging Information

The information relating to a Member (or any of it) may be expunged from the Register at any time after the first day of the Financial Year occurring 7 years after the Financial Year in which the Member ceased to be a Member.

11.4 Inspection of Register

The Manager need not allow inspection of the Register or any part thereof by any person except where:

- (a) the person seeking inspection is a Member or representative of a Member and the inspection relates to that part of the Register that contains particulars relating to the Member; or
- (b) the person provides to the Manager a written undertaking duly signed by the person and to the effect that inspection of the Register will not be used for any purpose other than the purpose of:
 - (i) calling a meeting of Members;

- (ii) notifying a Member of a matter relating to the carrying out by the Manager of its functions and duties under the provisions of the Law or this Constitution; or
- (iii) any other purpose approved in writing by the Commission.

11.5 Copies of Register

- (a) If any person has the right to inspect the Register then that person also has the right to obtain copies of those parts of the Register inspected. The costs of copying and handling will be a rate set by the Manager but shall not exceed \$2.50 per page.
- (b) Paragraph (a) does not require the Manager to make available or provide copies of the Register in excess of its obligations to do so under the Law having regard to any declaration or exemption made or given by the Commission.

11.6 Closure of Register

The Manager may close the Register or part of the Register for any time or times but so that no part of the Register may be closed for more than 30 days in the aggregate in each calendar year.

11.7 Change of Member Details

Each Member will give the Manager notice of any change of name or address on the part of such Member and the Manager, upon receiving such notification, will alter the Register accordingly.

12. MEMBER MEETINGS

12.1 Managers Power to call Members Meeting

The Manager may call a meeting of the Members at any time.

12.2 Meeting process

Meetings of Members are to be called and conducted in the manner prescribed by the Law.

13. CHANGING THE CONSTITUTION

13.1 Power to Amend

The Constitution may be modified, or repealed and replaced with a new constitution:

- (a) by special resolution of the Members; or

- (b) by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights.

13.2 Lodgement of Amendment

The Manager must lodge with the Commission a copy of the modification or the new Constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

14. REMUNERATION OF MANAGER

14.1 Manager's Fee Payable

Subject to any restrictions contained in the Offer Document, the Manager is entitled to claim from the Assets a fee of up to 0.15% of the gross value of the assets of the Scheme for managing the Scheme.

14.2 Custodian's fees:

If a custodian is appointed, the Manager shall be responsible for payment of the custodian's fees and expenses.

14.3 Manager's Expenses

The Manager will be paid or reimbursed on a full indemnity basis out of the Assets for all expenses and liabilities which the Manager may incur in connection with the relevant Scheme or in performing its obligations or exercising its powers under the Constitution including but not limited to the following:

- (a) all costs, charges and expenses incurred in connection with the acquisition, maintenance, improvement, custody, transfer, financing or disposal of the Assets, including commissions, procuration fees, brokerage, legal fees, Taxes, Bank charges and stamp duty;
- (b) the fees and expenses of the auditors;
- (c) stamp duty on cheques;
- (d) all costs, charges and expenses incurred in connection with the borrowing of money on behalf of the Scheme or in connection with the Assets including stamp duty, Taxes, establishment fees, legal fees and interest together with discount and acceptance fees in respect of bill facilities;
- (e) all Taxes (save those payable in respect of the Income of the Manager) whether payable or which may become payable in respect of the Scheme;
- (f) fees and charges of any regulatory authority including, without limitation, local government, titles office, stamps office and the Commission;

- (g) fees and expenses of any Approved Valuer and of any Expert from time to time employed by the Manager in the discharge of its duties under this Constitution but no reimbursement of the fees and expenses of such Expert will be paid from the Scheme where such expert is appointed to perform the functions of the Manager;
- (h) all costs, charges and expenses of and incidental to the preparation, execution and stamping of any deeds supplemental hereto;
- (i) the costs of convening and holding any meeting of Members;
- (j) costs of printing, postage and other fees in respect of all electronic transfers or cheques, accounts, distribution statements, notices and other documents posted to all or any Members in accordance with provisions of this Constitution including envelopes enclosing same;
- (k) all costs charges and expenses incurred in relation to the preparation, and the distribution of any periodical or other report or document required by law to be prepared in respect of the Scheme or prepared by the Manager in good faith in respect of the Scheme;
- (l) expenses in connection with the keeping and maintaining of financial records and registers (including the Register);
- (m) all agents' fees and expenses;
- (n) costs incurred by the Manager in taking necessary action in respect of any Authorised Investment made on behalf of a Member (eg. legal proceedings instituted against a Borrower in default);
- (o) costs and disbursements incurred by or on behalf of the Manager in connection with the retirement of or the appointment of a substitute responsible entity or agent;
- (p) costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings to enforce any provisions of the Constitution;
- (q) insurance premiums involved in insuring any Asset;
- (r) costs and disbursements incurred in the preparation and lodgment of returns under the law or any other statute;
- (s) costs of acquiring, establishing and developing computer software systems required for the administration of the Scheme;
- (t) all other costs and disbursements and outgoings in connection with the management and administration of the Assets and the performance of the functions and duties of the Manager under the Constitution;

- (u) all costs, charges and expenses associated with the establishment and maintenance of the Compliance Plan, compliance committee and a dispute resolution service for the Scheme; and
- (v) all costs, charges and expenses (including legal, accounting, tax, financial and other services) of establishing the Constitution including all costs of preparation, execution and stamping of this Constitution and any constitution supplemental thereto, and including the preparation, due diligence, registration, promotion and distribution of the Offer Document and the preparation, registration, distribution, due diligence and promotion of any other document prepared in respect of the Constitution, or the Scheme.

14.4 Goods and Services Tax

If any supply made by the Manager to the Members under this Constitution or any variation to it is a taxable supply for the purposes of the GST Act:

- (a) then in addition to any amount or consideration expressed as payable to the Manager elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Manager shall be entitled to recover from the Members an additional amount on account of GST, such amount to be equal to the amount of the Manager's GST liability in respect of each supply and shall be recoverable at the same time as the amount or consideration is payable for such supply;
- (b) the Manager will review in good faith the terms of this Constitution, other than the timing of the recovery of GST, and make such amendments (if any) as are necessary to ensure that, having regard to paragraph (a), neither the Manager nor the Members are unfairly disadvantaged (nor advantaged) by the consequences of the GST and associated measures (such as the decreasing or removal of existing taxes, duties, levies and excise by the Commonwealth, State or Territory);
- (c) in the event that Members by way of ordinary resolution resolve that the amendments proposed under clause 14.3(b) are not in accordance with that clause then the changes to the arrangement will be determined by a person with expertise in goods and services tax and its application nominated by the president of the Institute of Chartered Accountants;
- (d) the Manager and the Members acknowledge and agree that each supply made by the Manager under this Constitution is made:
 - (i) on a progressive or periodic basis;
 - (ii) for consideration that is to be provided on a progressive or periodic basis; and

- (iii) each progressive or periodic component of the supply is to be treated as a separate supply.

14.5 Priority

Notwithstanding any other provision in this Constitution, Income (which unless the Manager determines otherwise will exclude capital) from the Scheme is to be applied in the following order:

- (a) payment to each Member a distribution up to their Benchmark Return;
- (b) payment of any management fee;
- (c) expenses of the Scheme; and thereafter
- (d) a further distribution to Members commensurate with the number of Interests they hold.

15. RETIREMENT, REMOVAL OR LIQUIDATION OF MANAGER

15.1 Retirement of the Manager

- (a) If the Manager wants to retire, it must call a Members' meeting to explain its reason for wanting to retire and to enable the Members to vote on an extraordinary resolution to choose a new Manager.
- (b) If the Members choose a manager and that person has consented, in writing, to becoming a Scheme's Manager:
 - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the current Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to the name of the new Manager;
 - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i) the person chosen by the Members to be the new Manager may lodge that notice.
- (c) If the Members do not choose a person to be the new Manager, or the person they choose does not consent to becoming the Scheme's Manager, the current Manager may apply to the court for the appointment of a temporary Manager under section 601FP of the Law.

15.2 Removal of the Manager by Members

- (a) If the Members want to remove the Manager, they must take action under clause 12.2 for the calling of a Members' meeting to consider and vote on:

- (i) an extraordinary resolution that the current Manager should be removed; and
 - (ii) an extraordinary resolution choosing a person to be the new Manager.
- (b) If the Members vote to remove the Manager and, at the same meeting, choose a person to be the new Manager that consents, in writing, to becoming the Scheme's Manager:
- (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to name the person chosen as the Scheme's Manager; and
 - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i), the person chosen by the Members to be the new Manager may lodge that notice.

16. CONSEQUENCES OF CHANGE OF MANAGER

16.1 Former Manager to hand over books and provide reasonable assistance

If the Manager of the Scheme changes, the former Manager must:

- (a) as soon as practicable give the new Manager any books in the former Manager's possession or control that the Law requires to be kept in relation to the Scheme; and
- (b) give other reasonable assistance to the new Manager to facilitate the change of manager.

16.2 Rights, obligations and liabilities of former Manager

- (a) If the Manager of the Scheme changes the rights, obligations and liabilities of the former Manager in relation to the Scheme become rights, obligations and liabilities of the new Manager.
- (b) Despite paragraph (a), the following rights and liabilities remain rights and liabilities of the former Manager:
 - (i) any right of the former Manager to be paid fees for the performance of its functions before it ceased to be the manager; and
 - (ii) any right of the former Manager to be indemnified for expenses it incurred before it ceased to be the manager; and
 - (iii) any right, obligation or liability that the former Manager had as a Member of the Scheme; and

- (iv) any liability for which the former Manager could not have been indemnified out of the Property if it had remained the Scheme's manager.

17. NOTICES

17.1 Notices to be in writing

Notices given under or for the purpose of this Constitution must be written in the English language.

17.2 Notices to the Manager

Notices to the Manager may be addressed to its principal place of business as disclosed in the Offer Document or notified to Members from time to time.

17.3 Joint Members

Notices to a joint Member may be addressed to the one of them whose name first appears in the Register, at that one's address shown in the Register, and may be served at that address.

17.4 Form of Notice

A notice may be delivered by hand, by prepaid post or by facsimile transmission.

17.5 Time of delivery

If, before 5 p.m. local time on a Business Day in the place of delivery, a party delivers a notice:

- (a) by hand; or
- (b) by facsimile transmission and the party completes transmission,

the notice will be taken as given on the day of delivery or transmission and in any other case on the next following Business Day.

17.6 Notices by post

If a party gives a notice by prepaid post the notice will be taken as given on the second Business Day after the notice is posted.

17.7 Incomplete facsimile transmission

If a party gives a notice by facsimile transmission and the transmission is not fully legible, the party giving the notice may not rely on this clause to prove the giving of the notice.

17.8 Facsimile transmission reasonably believed to be unintelligible

A facsimile transmission may not be relied upon if the party giving the notice has reason to believe that the transmission or part of the transmission is illegible, or not an accurate representation of the original document.

17.9 Request for re-transmission

A party is not entitled to object to a facsimile transmission as being not fully legible or accurate unless the party requests re-transmission within 2 hours (being hours between 9 a.m. and 5 p.m. local time on a Business Day at the place of receipt) of completion of transmission; if a facsimile transmission is made within 2 hours before 5 p.m. on a Business Day and is unintelligible, the receiving party has until 10 a.m. local time on the next Business Day at the place of receipt to request re-transmission.

17.10 Signatures

A notice given by the Manager must be signed by an Officer of the Manager.

17.11 Address of Applicants

The address for service of an Applicant is the address shown in its Application until it notifies the Manager of another address in accordance with this clause.

17.12 Address of Members

The address for service of a Member is the address shown in the Register, or in the case of joint Members, the address shown in the Register of the joint Member who is first named in the Register.

17.13 Changes of address for service of the Manager

The Manager may by notice to the Commission, change its address or facsimile number for service under this clause.

18. FINANCIAL STATEMENTS

18.1 Preparation of Financial Statements (Section 292)

A financial report and directors' report for a Scheme must be prepared for each Financial Year in accordance with the requirements of the Law.

18.2 Compliance with Accounting Standards and Regulations (Section 296)

- (a) The financial report for a Financial Year must comply with the Accounting Standards.
- (b) The financial report must comply with any further requirements in the Regulations.

18.3 Annual Financial Report to Members (Section 314)

- (a) The Manager must report to Members for a Financial Year by either:
 - (i) sending Members copies of:
 - (A) financial report for the year; and
 - (B) the directors' report for the year (see sections 298 - 300 of the Law); and
 - (C) the Auditors report on the financial report; or
 - (ii) sending Members a concise financial report for the year the complies with the Law.
- (b) A Scheme must report to its Members within 3 Months after the end of the Financial Year.

19. AUDITOR

19.1 Appointment

- (a) The Manager will appoint the Auditor and the auditor of the Compliance Plan. The appointments will be a registered company auditor according to the provisions of the Law;
- (b) The appointee may be the auditor of the Manager unless otherwise restricted by the Law.

19.2 Removal or Retirement of Auditor

- (a) The Manager may remove the Auditor or auditor of the Compliance Plan at any time.
- (b) The auditors may retire after giving notice to the Manager. The auditors must give at least one Month's notice unless otherwise agreed with by the Manager.

20. GENERAL

20.1 Payments to Members

Any money payable by the Manager to a Member under this Constitution may be paid by any means as directed by the Member from time to time and, in the absence of a direction, may be made by direct Bank transfer or by crossed not negotiable cheque payable to the Member or order and sent through the post to the Member at its address in the Register, or in the case of joint holders made payable to the joint holders or bearer and sent to the Members at the address shown in the register of the joint holder who is first named in the Register. Payment of a cheque

drawn and posted in accordance with this clause is in full satisfaction of the monies payable to the Member and a good discharge to the Manager.

20.2 Retention of documents

The Manager is to retain, and make available to the auditor for inspection at reasonable times, for a period of at least 7 years from their respective dates, the following:

- (a) Applications;
- (b) cancelled Certificates; and
- (c) instruments of transfer and transmission.

20.3 Copies of this Constitution

A copy of this Constitution must be held by the Manager at its principal office and registered office and made available during normal business hours at those places for inspection by Members. A Member is entitled to a copy of this Constitution upon payment to the Manager of the reasonable costs and expenses of preparing a copy.

20.4 Governing law and jurisdiction

This Constitution is governed by and is to be construed in accordance with the laws of the State of Queensland. Each party and the Members and Applicants irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.

20.5 No Waiver

The failure of a party at any time to require full or partial performance of any provision of this Constitution shall not affect in any way the full right of that party to require that performance subsequently. The waiver by any party of a breach of a provision of this Constitution shall not be deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently. Any waiver of a breach of this Constitution shall be in writing signed by the party granting the waiver, and shall be effective only to the extent specifically set out in that waiver.

21. RESOLUTION OF DISPUTES

21.1 Complaints Handling System

The Manager shall establish a complaints handling framework that complies with the Law and the Regulations.

21.2 Essential Elements

The complaints handling process shall have as a minimum requirement for:

- (a) **(Recognition of complaint)** The framework shall recognise that a complaint is an expression of dissatisfaction made to the Manager, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- (b) **(Commitment).** There shall be a commitment to efficient and fair resolution of complaints.
- (c) **(Fairness).** The complaints handling process shall recognise the need to be fair to both the complainant Member and the Manager.
- (d) **(Resources).** There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- (e) **(Visibility).** The complaints handling process shall be well publicised to Members and staff of the Manager and shall include information to Members about the right to complain.
- (f) **(Access).** The complaints handling process shall be assessable to all Members and information shall be readily available on the details of making and resolving complaints.
- (g) **(Assistance).** Assistance shall be available for Members in a formulation and lodgment of complaint.
- (h) **(Responsiveness).** Complaints shall be dealt with quickly and the Members shall be treated courteously.
- (i) **(Charges).** Complaints handling shall be at no charge to the particular complaining Member. The Manager shall be entitled to be reimbursed for its costs from Scheme assets in dealing with the particular complaints.
- (j) **(objectivity)** The Manager shall ensure complaints are treated in an equitable, objective and unbiased manner.
- (k) **(confidentiality)** The framework shall recognise that personally identifiable information about Members should be available when needed but used only to the extent necessary, and be actively protected from disclosure, unless a Member expressly consents to the disclosure.
- (l) **(customer-focused approach)** The framework shall have a customer-focused approach, facilitate the receipt and collection of feedback and foster commitment to resolving complaints which is demonstrated by the Manager's actions.

- (m) **(Remedies)**. The complaints handling process shall have the capacity to determine and implement remedies.
- (n) **(Data collection)**. There shall be appropriate systematic recording of complaints by Members and their outcome.
- (o) **(Systematic and recurring problems)**. Complaints shall be classified and analysed for the identification and rectification of systematic and recurring problems.
- (p) **(Accountability)**. There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- (q) **(Review)**. The complaints handling process shall be reviewed annually to ensure that it is sufficiently delivering effective outcomes.

21.3 Disputes between the Manager and Members

A Member claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing (including by email) or by telephone.

21.4 Best Efforts to Resolve the Dispute

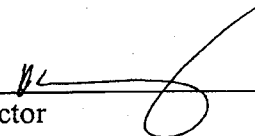
- (a) On receipt of the written notice of dispute from the Member, the Manager shall promptly reply (within 7 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the dispute is not resolved to the satisfaction of the Member the Member shall have 30 days from receipt of the report of the dispute resolution officer to refer the matter to the board of the Manager.
- (e) The Manager's board shall meet within 21 Business Days of receipt of a written complaint by a Member, received pursuant to paragraph (d) to consider the dispute.
- (f) The Member shall be entitled to be present at the meeting of the board with or without legal representation and to be heard either in person or through the Member's legal representative.

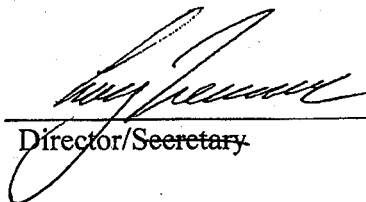
- (g) Subsequent to hearing the Member's complaint the board shall have a maximum of 14 Business Days within which to consider the complaint and either accept, reject or resolve the dispute.
- (h) The board must notify the Member within 21 Business Days of the hearing under paragraph (e), of its decision and what avenues are available to the Member to pursue the complaint further, including referring the Member to the Dispute Resolution Service.
- (i) If the Member is dissatisfied with either:
 - (i) the dispute resolution officer's report; or
 - (ii) the determination of board or compliance committee,then the Member may refer the complaint to the Dispute Resolution Service.
- (j) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

EXECUTED as a Deed Poll

Signed sealed and delivered

by
EQUITRUST LIMITED ACN 061 383 944
on 30 11 /2010 by:

^  _____
Director

^  _____
Director/Secretary

^ DAVID JOHN KENJEVS
Full name of Director

^ CRAIG GRANVILLE TREASURE
Full name of Director/Secretary

DEED POLL

Equititrust Priority Class Income Fund

Equititrust Limited

ACN 061 383 944

DEED POLL

Made on 13 December 2010

BY **Equititrust Limited ACN 061 383 944** of 67 Thomas Drive, Chevron Island in the State of Queensland
(**Manager**)

BACKGROUND

- A. The Equititrust Priority Class Income Fund ('Scheme') was originally constituted as the Equitiloan Income Fund No.2 under a Deed Poll dated 9 August 1999 and has been amended from time to time by the Manager ('Constitution').
- B. Clause 20.1(b) of the Constitution provides that the Constitution may be modified or repealed and replaced by the Manager if it reasonably considers the change will not adversely affect members' rights.
- C. The Manager is satisfied the changes contemplated by this deed poll will not adversely affect Unit Holders rights.

OPERATIVE PROVISIONS

RESOLUTION OF DISPUTES.

1. Clause 21.4 of the Constitution is deleted in its entirety and replaced with:

21.4 Best Efforts to Resolve the Dispute

- (a) On receipt of a dispute from the Member, the Manager shall promptly reply (within 5 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the Member in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member seek to finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the Manager has been unable to substantially respond to the complaint within 45 days the dispute resolution officer will report in writing to the Member advising them reasons for the delay, when a response can be expected and referring them to the external dispute resolution scheme.
- (e) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

CONFIRMATION

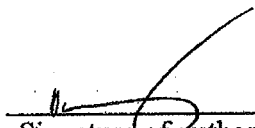
2. The Trustee confirms that, save for the amendments made by this Deed Poll, the provisions of the Constitution shall remain in full force and effect and that by such

amendments the Trustee is not resettling or redeclaring the Trust nor are such amendments removing or changing the rights of Unit Holders to vote or receive distributions in respect of a Unit or Option.

EFFECTIVE DATE


3. In accordance with section 601 GC (2) of the Corporations Act 2001, the amendments to the Constitution contained in this Deed Poll will take effect when a copy of this Deed Poll is lodged with ASIC.

SIGNED SEALED AND DELIVERED BY)
EQUITRUST LIMITED ACN 061 383 944)
in accordance with its constitution in the)
presence of:)

^ 
Signature of authorised person

^ DAVID JOHN KENNEDY
Name of authorised person

^ DIRECTOR
Office held

^ 
Signature of authorised person

^ MARK M. J. J. J.
Name of authorised person

^ DIRECTOR
Office held

"DW-4"

SUPREME COURT OF QUEENSLAND

uplicate

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

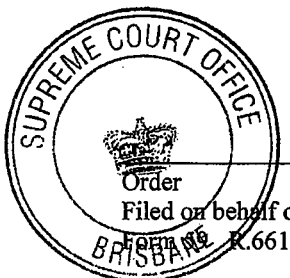
Date: 29 February 2012

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;



Filed on behalf of the Court Appointed Receiver

R.661

29 FEB 2012

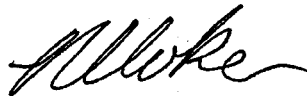
GADENS LAWYERS
Level 25, 240 Queen Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SZC:JSK:201110996

- (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-5"

ASIC & Business Names

ORGANISATIONAL SEARCH ON EQUITRUST LIMITED

Current Extract

This information was extracted from ASIC database on 19 September 2012 at 10:12AM

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

061 383 944	EQUITRUST LIMITED	DOCUMENT NO.
ABN	061 383 944 74 061 383 944	
Registered in	QLD	
Date Registered	18-Aug-1993	
Review Date	18-Aug-2013	

Current Organisation Details

Name	EQUITRUST LIMITED	7E4277681
Name Start	25-Jan-2002	
Status	EXTERNALLY ADMINISTERED	
	For information about this status refer to the documents listed under the heading "External Administration and/or Appointment of Controller", below.	
Type	AUSTRALIAN PUBLIC COMPANY	
Class	LIMITED BY SHARES	
Subclass	UNLISTED PUBLIC COMPANY	
Disclosing Entity	NO	

Current Registered Office

Address	65-67 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217	015950413
Start Date	12-May-2000	

Current Principal Place of Business

Address	65-67 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217	06138394G
Start Date	11-Jun-1997	(AR 1996)

Current Director

Officer Name	ROSS JAMES HONEYMAN	7E4106959
ABN	Not available	
Birth Details	02-Apr-1957 SYDNEY NSW	
Address	UNIT 13, 3508 MAIN BEACH PARADE, MAIN BEACH, QLD, 4217	
Appointment Date	21-Nov-2011	

Officer Name MARK MCIVOR 7E4106959
ABN Not available
Birth Details 27-Mar-1956 DALBY QLD
Address 1 SOUTHERN CROSS DRIVE, CHEVRON ISLAND, QLD, 4217
Appointment Date 21-Nov-2011

Officer Name DAVID HICKIE 7E4245817
ABN Not available
Birth Details 21-Sep-1951 MELBOURNE VIC
Address UNIT 5, 78 QUEEN ROAD, MELBOURNE, VIC, 3004
Appointment Date 12-Jan-2012

Current Secretary

Officer Name ROSS JAMES HONEYMAN 7E4034319
ABN Not available
Birth Details 02-Apr-1957 SYDNEY NSW
Address UNIT 13, 3508 MAIN BEACH PARADE, MAIN BEACH, QLD, 4217
Appointment Date 17-Oct-2011

Current Appointed Auditor

Officer Name KPMG 024300137
Number 024510530 (FR 2007)
ABN Not available
Address 'CORPORATE CENTRE ONE LEVEL 11', CNR BUNDALL & SLATER AVENUE, BUNDALL, QLD, 4217
Appointment Date 06-Jun-2001

Current Receiver Manager

Officer Name WILLIAM MARTIN COLWELL 7E4286099
ABN Not available
Address FERRIER HODGSON (QLD), ROYAL & SUN ALLIANCE BUILDING LEVEL 7, 145 EAGLE STREET, BRISBANE, QLD, 4000
Appointment Date 16-Feb-2012

Officer Name GREGORY MICHAEL MOLONEY 7E4286099
ABN Not available
Address FERRIER HODGSON (QLD), LEVEL 7, 145 EAGLE STREET, BRISBANE, QLD, 4000
Appointment Date 16-Feb-2012

Officer Name MICHAEL RICHARD PELDAN 7E4686885
ABN Not available
Address LEVEL 8, 102 ADELAIDE STREET, BRISBANE, QLD, 4000
Appointment Date 27-Aug-2012

Officer Name CHRISTOPHER RICHARD COOK 7E4686885
ABN Not available

Address LEVEL 8, 102 ADELAIDE STREET, BRISBANE, QLD, 4000
Appointment Date 27-Aug-2012

Current Petitioner Court Action

Officer Name IAN DAVID LAZAR 027770829
ABN Not available
Address 4 MOROTAI CRESCENT, CASTLECRAG, NSW, 2068
Appointment Date 21-Sep-2011
Court details affecting role
Court Type Federal Court State New South Wales
Court application No 1614 Court application year 2011

Current Appointed Liquidator (Creditors Voluntary Winding Up)

Officer Name RICHARD ALBARRAN 7E4412884
ABN Not available
Address HALL CHADWICK, 'ST MARTINS TOWER' LEVEL 29, 31 MARKET STREET, SYDNEY, NSW, 2000
Appointment Date 20-Apr-2012
Officer Name BLAIR ALEXANDER PLEASH 7E4412884
ABN Not available
Address HALL CHADWICK, 'ST MARTINS TOWER' LEVEL 29, 31 MARKET STREET, SYDNEY, NSW, 2000
Appointment Date 20-Apr-2012
Officer Name GLEN PETER OLDHAM 7E4412884
ABN Not available
Address LEVEL 19, 144 EDWARD STREET, BRISBANE, QLD, 4000
Appointment Date 20-Apr-2012
Officer Name RICHARD ALBARRAN 7E4412913
ABN Not available
Address HALL CHADWICK, 'ST MARTINS TOWER' LEVEL 29, 31 MARKET STREET, SYDNEY, NSW, 2000
Appointment Date 20-Apr-2012
Officer Name BLAIR ALEXANDER PLEASH 7E4412913
ABN Not available
Address HALL CHADWICK, 'ST MARTINS TOWER' LEVEL 29, 31 MARKET STREET, SYDNEY, NSW, 2000
Appointment Date 20-Apr-2012
Officer Name GLEN PETER OLDHAM 7E4412913
ABN Not available
Address LEVEL 19, 144 EDWARD STREET, BRISBANE, QLD, 4000
Appointment Date 20-Apr-2012

Current Issued Capital

Type Current 06138394G

Class	ORD	(AR 1996)
	ORDINARY SHARES	
Number of Shares/Interests issued	500	
Total amount paid/taken to be paid	\$4097385.00	
Total amount due and payable	\$0.00	

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

Documents Relating to External Administration and/or Appointment

This extract may not list all documents relating to this status. State and territory records should be searched.

Received	Form Type	Processed	No. Pages	Effective	
03-Sep-2012 524N	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	03-Sep-2012	11	15-Aug-2012	7E4693473
30-Aug-2012 504B	504 NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER	30-Aug-2012	4	27-Aug-2012	028216061
30-Aug-2012 505B	505 NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER	30-Aug-2012	2	27-Aug-2012	7E4686885
28-Aug-2012 505L	505 NOTIFICATION OF RECEIVER MANAGER CEASING TO ACT	28-Aug-2012	2	27-Aug-2012	7E4681504
25-May-2012 5011B	5011 COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A	25-May-2012	19	20-Apr-2012	7E4478241
08-May-2012 5011A	5011 COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	08-May-2012	5	16-Apr-2012	7E4441212
02-May-2012 524Z	524 PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF FINAL ACCOUNTS OF ADMINISTRATOR	02-May-2012	8	20-Apr-2012	7E4428908
24-Apr-2012 505Y	505 NOTIFICATION OF RESIGNATION OR REMOVAL OF ADMINISTRATOR OF COMPANY UNDER ADMINISTRATION UNDER S.436E(4), 449B OR 449C	24-Apr-2012	2	20-Apr-2012	7E4412932
24-Apr-2012 505J	505 NOTIFICATION OF APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)	24-Apr-2012	2	20-Apr-2012	7E4412913
24-Apr-2012 509DA	509D NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY	24-Apr-2012	2	20-Apr-2012	7E4412884

RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)

02-Apr-2012	5011	02-Apr-2012	44	27-Feb-2012	7E4374020
5011B	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A				
22-Mar-2012	507	10-Apr-2012	8	21-Feb-2012	028013819
507G	REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER				
24-Feb-2012	504	27-Feb-2012	4	16-Feb-2012	028033729
504B	NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER				
22-Feb-2012	505	24-Feb-2012	3	21-Feb-2012	028016776
505B	NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER				
22-Feb-2012	504	23-Feb-2012	4	21-Feb-2012	028033519
504B	NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER				
20-Feb-2012	505	20-Feb-2012	2	16-Feb-2012	7E4286099
505B	NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER				
15-Feb-2012	505	15-Feb-2012	2	15-Feb-2012	7E4277681
505U	NOTIFICATION OF APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)				
03-Oct-2011	519	21-Nov-2011	3	21-Sep-2011	027770829
519A	NOTIFICATION OF FILING OF APPLICATION FOR WINDING UP ORDER				
09-May-2011	519	09-May-2011	3	06-May-2011	027527066
519C	NOTIFICATION OF DISMISSAL OF APPLICATION FOR WINDING UP ORDER				

Document Details

Received	Form Type	Processed	No. Pages	Effective	
31-Jan-2012	484	31-Jan-2012	2	31-Jan-2012	7E4245817
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
20-Dec-2011	484	20-Dec-2011	2	20-Dec-2011	7E4173170
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
14-Dec-2011	FS67	14-Dec-2011	8	14-Dec-2011	026082473
FS67	Order Suspending Afs Licence				
22-Nov-2011	484	22-Nov-2011	3	22-Nov-2011	7E4107256
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
22-Nov-2011	484	22-Nov-2011	3	22-Nov-2011	7E4106959
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				

26-Oct-2011 484E	484	26-Oct-2011	2	26-Oct-2011	7E4044308
Change to Company Details Appointment or Cessation of A Company Officeholder					
21-Oct-2011 484E	484	21-Oct-2011	2	21-Oct-2011	7E4034358
Change to Company Details Appointment or Cessation of A Company Officeholder					
21-Oct-2011 484E	484	21-Oct-2011	4	21-Oct-2011	7E4034319
Change to Company Details Appointment or Cessation of A Company Officeholder					
26-Aug-2011 312A	312	04-Oct-2011	2	26-Aug-2011	027621512
Notification of Discharge					
28-Jul-2011 484E	484	28-Jul-2011	2	28-Jul-2011	7E3844445
Change to Company Details Appointment or Cessation of A Company Officeholder					
15-Jun-2011 484E	484	15-Jun-2011	2	15-Jun-2011	7E3737048
Change to Company Details Appointment or Cessation of A Company Officeholder					
03-May-2011 519G	519	03-May-2011	3	03-May-2011	027211980
NOTIFICATION OF APPLICATION TO WIND UP COMPANY UNDER S. 459P, 462 OR 464					
27-Apr-2011 FS02	FS02	27-Apr-2011	23	27-Apr-2011	0L0309086
COPY OF AFS LICENCE					
07-Feb-2011 FS90A	FS90	07-Feb-2011	1	07-Feb-2011	7E3456767
NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE					
07-Feb-2011 FS90A	FS90	07-Feb-2011	1	07-Feb-2011	7E3456753
NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE					
15-Dec-2010 FS88A	FS88	15-Dec-2010	3	15-Dec-2010	7E3366502
PDS IN-USE NOTICE - BY AFS LICENSEE					
09-Nov-2010 484E	484	09-Nov-2010	2	09-Nov-2010	7E3283613
CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER					
09-Nov-2010 484E	484	09-Nov-2010	2	09-Nov-2010	7E3283588
CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER					
30-Sep-2010 388A	388	08-Nov-2010	58	30-Jun-2010	027362052 (FR 2010)
FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY					
24-Sep-2010 484E	484	24-Sep-2010	2	24-Sep-2010	7E3191967
CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A					

COMPANY OFFICEHOLDER

13-Sep-2010 FS02	FS02 COPY OF AFS LICENCE	13-Sep-2010	23	13-Sep-2010	0L0308402
11-Aug-2010 484A1	484 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	11-Aug-2010	2	11-Aug-2010	7E3099509
21-May-2010 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	21-May-2010	2	21-May-2010	7E2908272
18-Jan-2010 FS02	FS02 COPY OF AFS LICENCE	18-Jan-2010	22	18-Jan-2010	0L0502165
30-Sep-2009 388A	388 FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	28-Oct-2009	60	30-Jun-2009	025950974 (FR 2009)
21-Sep-2009 5120	5120 NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME	22-Sep-2009	6	21-Sep-2009	024768053
25-Aug-2009 484A1	484 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	25-Aug-2009	2	25-Aug-2009	7E2388579
11-Feb-2009 FS88A	FS88 PDS IN-USE NOTICE - BY AFS LICENSEE	11-Feb-2009	3	06-Feb-2009	7E2032162
28-Dec-2008 FS90A	FS90 NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE	05-Jan-2009	6	28-Dec-2008	024857933
25-Nov-2008 5120	5120 NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME	26-Nov-2008	6	14-Nov-2008	024668943
25-Nov-2008 5122	5122 NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	26-Nov-2008	5	14-Nov-2008	024668944
31-Oct-2008 388A	388 FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	06-Jan-2009	60	30-Jun-2008	025343802 (FR 2008)
05-Sep-2008 484A1	484 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	05-Sep-2008	4	05-Sep-2008	1F0208790
21-Apr-2008 FS55	FS55 ORDER ISSUED PURSUANT TO S1020E(2)	21-Apr-2008	1	21-Apr-2008	018714168
18-Apr-2008 FS53A	FS53 NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	11-Jun-2008	11	18-Apr-2008	024614380
20-Mar-2008 FS55	FS55 ORDER ISSUED PURSUANT TO S1020E(2)	20-Mar-2008	2	20-Mar-2008	018714080

28-Sep-2007	388	23-Oct-2007	41	30-Jun-2007	024300137
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2007)
01-Aug-2007	FS53	07-Sep-2007	11	31-Jul-2007	024030038
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
05-Jul-2007	350	09-Jul-2007	1	05-Jul-2007	023936368
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE				
	Alters 023 956 177				
05-Jul-2007	350	09-Jul-2007	1	05-Jul-2007	023936367
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE				
	Alters 023 956 176				
15-Mar-2007	FS56	15-Mar-2007	1	15-Mar-2007	023083091
FS56	REVOCATION OF STOP ORDER S1020E(5)				
15-Mar-2007	FS53	05-Apr-2007	11	15-Mar-2007	023103489
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
01-Mar-2007	FS53	15-Mar-2007	11	16-Feb-2007	023099191
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
27-Feb-2007	FS54	06-Mar-2007	1	27-Feb-2007	023083052
FS54	INTERIM ORDER ISSUED PURSUANT TO S1020E(5)				
23-Jan-2007	484	23-Jan-2007	6	23-Jan-2007	1F0001132
484	CHANGE TO COMPANY DETAILS				
484A1	CHANGE OFFICEHOLDER NAME OR ADDRESS				
484G	NOTIFICATION OF SHARE ISSUE				
484O	CHANGES TO SHARE STRUCTURE				
484N	CHANGES TO (MEMBERS) SHARE HOLDINGS				
02-Nov-2006	FS55	10-Nov-2006	1	02-Nov-2006	022523692
FS55	ORDER ISSUED PURSUANT TO S1020E(2)				
01-Nov-2006	388	28-Nov-2006	47	30-Jun-2006	023394275
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2006)
16-Oct-2006	FS54	19-Oct-2006	1	16-Oct-2006	022523542
FS54	INTERIM ORDER ISSUED PURSUANT TO S1020E(5)				
21-Jul-2006	484	21-Jul-2006	3	21-Jul-2006	022876207
484	CHANGE TO COMPANY DETAILS				
484H	NOTIFICATION OF SHARE CANCELLATION - REDEEMABLE PREFERENCES				
484O	CHANGES TO SHARE STRUCTURE				
27-Jan-2006	350	27-Jan-2006	1	27-Jan-2006	019271258
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE				

Alters 022 351 727

23-Dec-2005	484	24-Jan-2006	3	23-Dec-2005	1F0077488
484	CHANGE TO COMPANY DETAILS				
484G	NOTIFICATION OF SHARE ISSUE				
484O	CHANGES TO SHARE STRUCTURE				
08-Dec-2005	FS53	10-Jan-2006	11	01-Dec-2005	022353958
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
03-Oct-2005	388	26-Oct-2005	25	30-Jun-2005	022285929
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR				(FR 2005)
	DISCLOSING ENTITY				
03-Oct-2005	484	09-Nov-2005	4	06-Oct-2005	022285487
484	CHANGE TO COMPANY DETAILS				
484G	NOTIFICATION OF SHARE ISSUE				
484O	CHANGES TO SHARE STRUCTURE				
484N	CHANGES TO (MEMBERS) SHARE HOLDINGS				
07-Feb-2005	FS53	09-Feb-2005	6	09-Nov-2004	020981780
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
25-Oct-2004	484	25-Oct-2004	3	25-Oct-2004	020745645
484	CHANGE TO COMPANY DETAILS				
484A1	CHANGE OFFICEHOLDER NAME OR ADDRESS				
484A2	CHANGE MEMBER NAME OR ADDRESS				
30-Sep-2004	388	26-Nov-2004	24	30-Jun-2004	020866482
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR				(FR 2004)
	DISCLOSING ENTITY				
19-Aug-2004	350	19-Aug-2004	1	19-Aug-2004	020496816
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY				
	PROVISIONAL CHARGE				
	Alters 020 503 332				
19-Aug-2004	350	19-Aug-2004	1	19-Aug-2004	020496815
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY				
	PROVISIONAL CHARGE				
	Alters 019 654 728				
06-Aug-2004	350	06-Aug-2004	1	06-Aug-2004	020501044
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY				
	PROVISIONAL CHARGE				
	Alters 020 496 010				
26-Feb-2004	484	02-Mar-2004	4	25-Feb-2004	020058392
484J	CHANGE TO COMPANY DETAILS NOTIFICATION OF SHARE				
	CANCELLATION				
	- COMPANY BUY-BACK				
06-Feb-2004	280	10-Feb-2004	2	06-Feb-2004	020053042
280	NOTICE OF MEETING AND DOCUMENTS RE BUY-BACK				

23-Jan-2004	484	06-Feb-2004	7	15-Jan-2004	020045260
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
12-Nov-2003	5120	14-Nov-2003	1	12-Nov-2003	017914658
5120	NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME				
14-Oct-2003	FS02	14-Oct-2003	19	14-Oct-2003	0L0200526
FS02	COPY OF AFS LICENCE				
26-Sep-2003	388	13-Oct-2003	29	30-Jun-2003	019777182
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2003)
02-Apr-2003	FS50	08-Apr-2003	3	02-Apr-2003	018172296
FS50	PDS OPT-IN NOTICE				
23-Jan-2003	766C	23-Jan-2003	2	23-Jan-2003	017914312
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
	Alters 017 937 276				
15-Jan-2003	7113	17-Feb-2003	1	15-Jan-2003	017914326
7113	NOTICE OF DECLARATION RE FUNDRAISING CHAPTER 6D				
20-Dec-2002	316	30-Dec-2002	4	18-Dec-2002	06138394M
316	ANNUAL RETURN				(AR 2002)
316P	CHANGE OF NAME OR ADDRESS OF OFFICEHOLDER				
316G	ANNUAL RETURN - UNLISTED PUBLIC COMPANY				
21-Nov-2002	211	11-Dec-2002	1	09-May-1996	018618125
211	RETURN SHOWING DIVISION OR CONVERSION OF SHARES INTO CLASSES				
30-Sep-2002	388	06-Jan-2003	30	30-Jun-2002	018250503
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2002)
11-Feb-2002	766C	11-Feb-2002	1	11-Feb-2002	017944744
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
	Alters 017 937 276				
11-Feb-2002	754H	11-Feb-2002	42	11-Feb-2002	017944743
754H	REPLACEMENT SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME				
	Alters 017 937 276				
05-Feb-2002	7109	05-Feb-2002	1	13-Feb-2002	016702403
7109	NOTICE OF EXTENSION OF EXPOSURE PERIOD UNDER SECTION 727				
	Alters 017 937 276				
29-Jan-2002	764H	29-Jan-2002	41	06-Feb-2002	017937276

764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME				
	Altered by 016 702 403				
	Altered by 017 944 743				
	Altered by 017 944 744				
	Altered by 017 944 744				
	Altered by 017 914 312				
	Altered by 017 914 312				
25-Jan-2002	205	25-Jan-2002	4	24-Jan-2002	015946604
205A	NOTIFICATION OF RESOLUTION CHANGING COMPANY NAME				
23-Jan-2002	316	01-Feb-2002	4	15-Jan-2002	06138394L
316G	ANNUAL RETURN - UNLISTED PUBLIC COMPANY				(AR 2001)
21-Dec-2001	766C	24-Dec-2001	1	21-Dec-2001	017933781
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
	Alters 016 700 170				
14-Dec-2001	7113	18-Dec-2001	1	14-Dec-2001	016702330
7113	NOTICE OF DECLARATION RE FUNDRAISING CHAPTER 6D				
20-Nov-2001	410	20-Nov-2001	2	20-Nov-2001	015946433
410F	APPLICATION FOR EXTENSION OF A NAME RESERVATION.				
25-Oct-2001	437	25-Oct-2001	3	25-Oct-2001	017244466
437	INSTRUMENT OF CONSENT TO NAME				
01-Oct-2001	428	05-Oct-2001	4	01-Oct-2001	017244237
428B	APPLICATION FOR MINISTERIAL CONSENT TO A NEW NAME FOR A COMPANY				
28-Sep-2001	388	26-Oct-2001	32	30-Jun-2001	017677206
388	FINANCIAL REPORT				(FR 2001)
388E	COMPANY - APPOINT CHANGE NAME/ADDRESS OF AUDITOR				
388A	FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				
26-Sep-2001	410	26-Sep-2001	2	26-Sep-2001	015948246
410F	APPLICATION FOR EXTENSION OF A NAME RESERVATION				
01-Aug-2001	410	01-Aug-2001	2	01-Aug-2001	015946206
410B	APPLICATION FOR RESERVATION OF A NEW NAME UPON CHANGE OF NAME				
24-Jul-2001	343	09-Aug-2001	4	24-Jul-2001	017262091
343	NOTICE UNDER SUBSECTION 329(1A) TO REMOVE AUDITOR				
29-Jun-2001	315	09-Aug-2001	1	28-Jun-2001	017128316
315B	NOTICE OF RESIGNATION OR REMOVAL OF AUDITOR REMOVAL OF AUDITOR				
25-Jan-2001	316	31-Jan-2001	4	24-Jan-2001	06138394K
316G	ANNUAL RETURN - UNLISTED PUBLIC COMPANY				(AR 2000)
11-Jan-2001	754H	11-Jan-2001	44	11-Jan-2001	016703893

754H	REPLACEMENT SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME				
	Alters 016 700 170				
21-Dec-2000	388	10-Jan-2001	29	30-Jun-2000	016703322
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2000)
20-Dec-2000	7105	20-Dec-2000	0	20-Dec-2000	016545312
7105	INTERIM ORDER THAT NO SECURITIES BE OFFERED, ISSUED, SOLD OR TRANSFERRED				
	Alters 016 700 170				
05-Dec-2000	764H	05-Dec-2000	45	13-Dec-2000	016700170
764H	SHORT FORM PROSPECTUS FOR MANAGED INVESTMENT SCHEME				
	Altered by 016 545 312				
	Altered by 016 703 893				
	Altered by 016 703 893				
	Altered by 017 933 781				
	Altered by 017 933 781				
23-Aug-2000	304	23-Aug-2000	2	10-Aug-2000	014224882
304A	NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY				
18-Jul-2000	304	18-Jul-2000	1	03-Jul-2000	015943136
304A	NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY				
15-May-2000	205	18-May-2000	1	13-Mar-2000	015950526
205J	NOTIFICATION OF RESOLUTION ALTERING THE CONSTITUTION				
05-May-2000	203	05-May-2000	1	05-May-2000	015950413
203A	NOTIFICATION OF CHANGE OF ADDRESS				
17-Dec-1999	7068	17-Dec-1999	4	17-Dec-1999	015864264
7068	COPY OF PROSPECTUS APPLICATION FORM CONTAINING INCORPORATED INFORMATION				
06-Dec-1999	764	10-Dec-1999	51	06-Dec-1999	014793634
764C	COPY OF PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
29-Nov-1999	388	10-Dec-1999	28	30-Jun-1999	015497012
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 1999)

THERE ARE FURTHER DOCUMENTS LODGED BY THIS COMPANY. SELECT THE 'ORDER COMPANY DOCUMENTS' OPTION FROM THE ORGANISATIONAL SEARCH SUMMARY SCREEN TO OBTAIN A COMPLETE LIST OF COMPANY DOCUMENTS.

Financial Reports

Balance	Report	AGM	Extended AGM	AGM Held	Outstanding
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Date	Due Date	Due Date	Due Date	Date		
30-Jun-1999	31-Oct-1999	Unknown	Unknown	Unknown	N	015497012
30-Jun-2000	31-Oct-2000	Unknown	Unknown	Unknown	N	016703322
30-Jun-2001	31-Oct-2001	Unknown	Unknown	Unknown	N	017677206
30-Jun-2002	31-Oct-2002	Unknown	Unknown	Unknown	N	018250503
30-Jun-2003	31-Oct-2003	Unknown	Unknown	Unknown	N	019777182
30-Jun-2004	31-Oct-2004	Unknown	Unknown	Unknown	N	020866482
30-Jun-2005	31-Oct-2005	Unknown	Unknown	Unknown	N	022285929
30-Jun-2006	30-Nov-2006	Unknown	Unknown	Unknown	N	023394275
30-Jun-2007	31-Oct-2007	Unknown	Unknown	Unknown	N	024300137
30-Jun-2008	31-Oct-2008	Unknown	Unknown	Unknown	N	025343802
30-Jun-2009	31-Oct-2009	Unknown	Unknown	Unknown	N	025950974
30-Jun-2010	31-Oct-2010	Unknown	Unknown	Unknown	N	027362052

Section 146A of the *Corporations Act 2001* states 'A contact address is the address to which communications and notices are sent from ASIC to the company.'

Address PO BOX 8111, GOLD COAST MC, QLD, 9726
Start Date 28-Jun-2003

*** End of Extract ***