

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**

AMENDED APPLICATION

TAKE NOTICE that Mr David Whyte, the receiver of the property of the Equititrust Income Fund ARSN 089 079 854 (EIF) and the person appointed pursuant to section 601NF(1) of the *Corporations Act 2001* (Cth) to take responsibility for ensuring that the EIF is wound up in accordance with its constitution is applying to the Court pursuant to rule 1.8 of Schedule 1A of the Uniform Civil Procedure Rules 1999 (Qld) and/or rule 116 of the *Uniform Civil Procedure Rules 1999 (Qld)* and/or the general liberty to apply granted to any person affected by the Order of Justice Applegarth dated 23 November 2011, for the following orders:

1. That notice of the application filed by Mr Whyte dated 21 September 2012 (**the application**) be effected on the members of the EIF by:
 - (a) placing an advertisement of the application in The Australian, The Courier Mail and the Gold Coast Bulletin newspapers;
 - (b) posting a notice of the application in a prominent location on the Equititrust Limited website of www.equititrust.com.au;
 - (c) posting a notice of the application in a prominent location on the Equititrust Income Fund website of www.equititrustincomefund.com.au; and
 - (d) sending a notice by ordinary post to all members at their last known address.
2. That the form of the advertisement and respective notices be in substantially the same form as the notice set-out in "Annexure A" to this application.
3. Alternatively, that service of the application filed by Mr Whyte dated 21 September 2012 and any supporting affidavits on each of the members of the Equititrust Income Fund pursuant to rule 112 of the *Uniform Civil Procedure Rules 1999 (Qld)* be dispensed with.
4. That ~~pursuant to rule 116 of the Uniform Civil Procedure Rules 1999 (Qld)~~ substituted service of the application and supporting affidavit of David Whyte dated 19 September 2012 be deemed effected on each of the members of the Equititrust Income Fund five (5) days after those documents are made available in PDF on the websites of "www.equititrust.com.au" and "www.equititrustincomefund.com.au".

Application
Filed on behalf of the court appointed receiver
Form 9 R. 31
Form 3 v2 R. 2.2

GADENS LAWYERS
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5. That pursuant to rule 116 of the *Uniform Civil Procedure Rules 1999 (Qld)* substituted service of any further documents to be relied upon by the court appointed receiver in respect of the application and any Order made in respect of the application be deemed effected on each of the members of the Equititrust Income Fund five (5) days after those documents are made available in PDF on the websites of "www.equititrust.com.au" and "www.equititrustincomefund.com.au".
6. Costs reserved.

This application will be heard by the Supreme Court at Brisbane.
on:

Filed in the Brisbane Registry on _____ :

Registrar:

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the determination of this application the applicant intends to rely on the following affidavits:

1. Affidavit of David Whyte sworn 19 September 2012.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED 20 Minutes

Signed: *Cadens Lawyers*
Description: Solicitors for the court appointed receiver
Dated: *11/10/2012*

It is not intended to serve a copy of this application on any person.

ANNEXURE A

TO THE MEMBERS OF:

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

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

This application is set down to be heard by the Supreme Court at Brisbane on **[date]** at **[time]**.

Copies of the court documents in respect of this application will be available on the Equititrust Limited website of "www.equititrust.com.au" and the Equititrust Income Fund website of "www.equitrustincomefund.com.au".

Dated: 2012