



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

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

TO INVESTORS AS ADDRESSED

21 June 2018

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

1. INTRODUCTION

I refer to my previous reports and provide my 32nd update to Investors since my appointment as Court appointed Receiver and person responsible for winding up the EIF on 21 November 2011. This report should be read in conjunction with my previous reports to Investors.

In summary:

- There have been three distributions to Investors to date totalling 11 cents in the dollar and based on the reducing number of units held. This equates to 10.6 cents in the dollar of the units held at the date of my appointment on 21 November 2011
- The current total estimated return to Investors is between 12.6 and 12.8 cents in the dollar as detailed at Section 5 of this report, with the further estimated distributions of between 2 and 2.2 cents in the dollar.

The remaining matters to be completed in order to finalise the winding up, are as follows:

- Resolve the claims by the Liquidators (refer Section 3.2)
- The Liquidators of Equititrust Ltd (In Liquidation) (Receivers and Managers Appointed) (EL) to resolve the proceedings against the directors of EL and the auditors of the fund. If successful, any balance of funds will be paid to the Fund after deducting the costs of the proceedings and a payment to the litigation funder (refer Section 2.2)
- Apply to Court for authority to pay an equalisation payment to Investors who did not receive a return of capital in the 2011 financial year (refer Section 5.2) and pay a final distribution (including the equalisation payment) to Investors to finalise the receivership.

As I am required to seek orders from the Court in relation to the equalisation payment and for the finalisation of the winding up of the Fund (including the payment of a final distribution), I have determined, in conjunction with my solicitors, that they will be combined in one application.

This means that there will be one final distribution instead of two small distributions, which will save on both professional and external costs in applying for and distributing separate amounts to investors.

The timing of the final distribution to Investors is uncertain primarily as it is unknown when the proceedings against the directors of EL and the auditors of the Fund will be resolved. I will continue to



hold all funds in an interest bearing account until these directions are sought and the final distribution is ready to be made.

2. LEGAL PROCEEDINGS

2.1. Valuer Legal Proceedings

I refer to my previous update and milestones in relation to the claim filed against a valuer for negligence and damages.

Following the mediation on 19 February 2018, there were several offers and counter offers to settle the proceedings prior to an agreement being reached. Settlement funds in the amount of \$1.575M were received on 4 June 2018.

These settlement funds have been incorporated into the increased estimated return to Investors (refer to Section 5).

2.2. Liquidators' claim against the Auditors and Directors and Officers

As previously advised, a Claim and Statement of Claim was filed in the Federal Court on 27 September 2013 by the Liquidators of EL against the Auditors, Directors and EL in its own capacity for breach of duties. The claim includes the claims that were originally contemplated as being made on behalf of the Investors of the Fund as a class action.

I have received an update from the Liquidators' solicitors and note the following in relation to the proceedings:

- On 26 April 2018, Foster J set the proceedings down for final hearing commencing on 18 March 2019, for five weeks.
- The Court made timetabling orders leading up to the hearing, that the:
 - parties are to give discovery by 20 July 2018
 - Applicants to file and serve its evidence by 3 August 2018
 - Respondents to file and serve evidence by 2 November 2018
 - Applicants' evidence in reply is to be filed and served by 8 February 2019.
- The Court also listed the proceeding for further case management conferences on 17 August 2018 and 20 November 2018.

It is positive that the Court has set a timetable to progress the matter, albeit the hearing is not scheduled to be held until March 2019.

As previously advised, the Liquidators entered into a litigation funding deed with a litigation funder, which has been approved by the Court, to fund the action against the Auditors, Directors and EL in its own capacity.

Therefore, the Fund is not bearing any costs of the litigation, however, any funds realised from this claim that relate to the EIF will be paid to the Fund (after deducting the costs of the litigation).

Please note that I will not be in a position to make a final distribution and finalise the winding up of the Fund until this litigation has been resolved. I will provide a further update to Investors in my next report.

3. CREDITOR CLAIMS

3.1. Other Creditors

As previously advised, there are a number of creditors that are required to be paid before further distributions can be made to Investors, which include:

- Trade creditors, which relate to liabilities necessarily incurred in the winding up of the Fund
- Potential claims against the Fund made by the Liquidators of EL (refer Section 3.2 below)
- Any other creditors outstanding at the date of my appointment
- Receiver's remuneration and outlays.

3.2. Claims by the Liquidators of EL

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

As previously advised, the Liquidators' total claims are for approximately \$2.1M (remuneration of \$1.2M and expenses of \$0.9M), which seems unreasonable as I have been in control of the Fund since before their appointment and Receivers have been appointed to the second mortgage fund, Equititrust Premium Fund. Therefore, in my opinion, there has been little for them to do other than pursue the proceedings against the Auditors and Directors, which is subject to litigation funding.

A detailed review of their claim has been undertaken however has been hampered by no timesheets being provided for the Voluntary Administration period. However, my review of the Liquidators' timesheet entries totalling \$1.2M has only been able to identify approximately \$8,000 as directly relating to the Fund.

The Liquidators have not separated the narrations to differentiate the work done on the following distinct matters:

- general Liquidators' work for the corporate entity, EL
- the EIF
- the EPF
- the EPCIF
- the Sophisticated Fund.

The invoices provided in relation to the Liquidators' expenses have also been redacted to the point that there is insufficient information for me to make a proper assessment as to the extent they are justifiable expenses against the Fund.

I have instructed my solicitors and counsel in relation to making an application to Court for directions in order to resolve this matter and any other claims the Liquidators may have against the Fund. This and the finalisation of the Liquidators' proceedings (see Section 2.2) are now the only matters delaying a final distribution to Investors.



Material for the application will be finalised shortly and I anticipate that the application will be filed and heard before my next update to investors. Investors will be provided with further information in relation to the impending application to Court in my next update to Investors.

4. RECEIPTS AND PAYMENTS

I provide below a summary of the Receipts and Payments of the Fund for the period from 1 February 2018 to 31 May 2018.

Summary of Receipts and Payments for the period 1 February 2018 to 31 May 2018	
	(\$)
Opening Cashbook Balance	6,461,628.29
Receipts	
Interest Income	48,612.53
Loan Recoveries - Wirrina Cove	140.00
Total Receipts	<u>48,752.53</u>
Payments	
Bank Charges	(40.00)
IT Expenses	(6,432.80)
Legal Fees	(195,897.67)
Printing & Stationery Expenses	(2,839.00)
Total Payments	<u>(205,209.47)</u>
Closing Cashbook Balance	<u>6,305,171.35</u>

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

- The loan recovery relates to minor debtor collections for an outstanding water bill on Wirrina Cove
- IT expenses include the cost of hosting and maintaining the Equititrust server and licence fees for the Investor management database
- Legal fees primarily relate to:
 - the costs in pursuing and settling the valuer claim (see Section 2.1)
 - dealing with the claims by the Liquidators of EL (see Section 2.2)
 - dealing with the claims of a former employee of a borrowing entity (see Section 3.3 of my 31st update to Investors).



- **Printing and stationery expenses relate to the external cost of copying and issuing correspondence to investors.**

The incurring of these costs is considered essential in terms of successfully recovering assets for the benefit of Investors and for administering the receivership.

5. ESTIMATED RETURN TO INVESTORS

To date the following distributions have been paid to Investors:

- First interim distribution of 5 cents per unit paid in June 2014 totalling \$9.696 million
- Second interim distribution of 3 cents per unit paid in June 2015 totalling \$5.526 million
- Third interim distribution of 3 cents per unit paid in September 2015 totalling \$5.36 million.

As previously advised, the Fund recorded an accounting and tax loss for the year ended 30 June 2011. Accordingly, the Fund had no surplus income available to distribute to Investors in the 2011 financial year. All payments to Investors other than payments of interest accrued as at 30 June 2010 were deemed by the Fund as a partial repayment of capital.

Prior to my appointment, the Fund accounted for this partial repayment of capital as a corresponding reduction in the unit balance of the Fund. The accounting treatment for the first, second and third interim distributions paid by me in June 2014, June 2015 and September 2015, respectively, has remained the same (i.e. as distributions are made, the number of units in the Fund continue to decrease in accordance with the amount distributed to Investors). Therefore, the cents per unit return for each distribution is calculated based on the units in the Fund at that point in time.

In light of the above, I provide below the overall estimated return to Investors of between 12.6 cents and 12.8 cents per unit as at 31 May 2018 as follows:

Estimated Return to Investors	Low	High
	\$000's	\$000's
Cash at Bank as at 31 May 2018	6,305	6,305
<i>Add:</i>		
Outstanding GST Refunds	75	75
Valuer Claim Settlement	1,575	1,575
Estimated Value of Fund Assets as at 31 May 2018	7,955	7,955
<i>Less:</i>		
Estimated Creditors and Other Payables	(540)	(290)



Estimated Receiver's Remuneration - 1 November 2017 to 31 May 2018	(171)	(171)
Estimated Receiver's Disbursements - 1 November 2017 to 31 May 2018	(7)	(7)
Estimated Receiver's Remuneration - 1 June 2018 to 31 May 2019	(290)	(205)
Estimated Receiver's Disbursements - 1 June 2018 to 31 May 2019	(15)	(10)
Estimated Receiver's Costs (e.g. legal fees, IT costs etc.) - 1 June 2018 to 31 May 2019	(215)	(135)
Estimated Equalisation Payment	(2,924)	(2,924)
Estimated Net Amount Available to Investors as at 31 May 2018	3,793	4,213
<i>Add:</i>		
3 cent Interim Distribution paid September 2015	5,360	5,360
3 cent Interim Distribution paid June 2015	5,526	5,526
5 cent Interim Distribution paid June 2014	9,696	9,696
Total Funds Available for Distribution to Investors	24,375	24,795
Total Investor Units as at 21 November 2011	193,912	193,912
Overall Estimated Return to Investors per Unit	12.6	12.8

The above estimate is prepared on the following basis:

- It includes all estimated future recoveries, Receiver's fees and costs, excluding any recoveries from the Liquidators' proceedings as the matter is before the Court and any recovery for the Fund is uncertain (see Section 2.2)
- that the winding up of the Fund will be finalised within 12 months.

5.1. Future Updates and Distributions to Investors

As previously advised, I will not be in a position to make further distributions to Investors until the Liquidators of EL finalise their proceedings (see Section 2.2) and the claims by the Liquidators of EL have been resolved (see Section 3.2).

I anticipate that the winding up of the Fund may take a further twelve months or more to finalise unless out of Court settlements can be reached in relation to the above Liquidators' claims against the directors of EL and the auditors of the Fund. The timing of the final distribution to Investors is

$$= \frac{3793}{193912} = 0.01956 \text{ per unit}$$

$$\text{Fund owns } 21848.87 \times 0.01956 \\ = \$ 427.37$$



therefore uncertain. I will continue to hold all funds in an interest bearing account until the final distribution is ready to be made.

I will continue to provide updates to investors on the winding up progress and the timing of future distributions. I will issue my next update to investors by 30 November 2018 unless the Liquidators' settle their claim against the directors and auditors of EL in the interim. Should this occur, I will update investors upon confirmation of settlement of the proceedings and advise of any further monies to be received by the Fund.

5.2. Equalisation Payment to Investors

As previously advised, an equalisation payment is proposed to investors who did not receive a partial repayment of capital during the period from 1 July 2010 up until the cessation of distribution payments in March 2011. These investors include investors that elected to receive distribution payments annually and where their investments did not mature during this period.

The equalisation payment is also proposed to ensure an equitable return of capital is paid to all investors given the different interest rates applicable for each class of unit which was used in calculating the partial return of capital paid at the relevant time.

In this regard, I have calculated the total equalisation payment to investors to be \$2.924M across 2,447 separate investor accounts. An adjustment for the equalisation payment is reflected in the estimated return to investors at Section 5 and is in line with the estimate in my previous reports to investors.

My solicitors have commenced preparing the relevant material for the Court application to approve the equalisation payment. However, as I am also required to seek orders from the Court in relation to the finalisation of the winding up of the Fund (including payment of a final distribution), I have determined, in conjunction with my solicitors, that it would be more appropriate to join the applications and seek orders to distribute both the equalisation payment and a final distribution at the same time.

This means that there will be one final distribution instead of two small distributions, which will save on both professional and external costs in applying for and distributing separate amounts to investors.

Investors will be advised of the application in due course and a copy of the relevant documentation will be uploaded to the websites www.equitytrustincomefund.com.au and www.equitytrust.com.au.



6. RECEIVER'S REMUNERATION AND EXPENSES

I attach a summary of my current remuneration and outlays incurred since my last report to investors, which covers the period from 1 February 2018 to 31 May 2018 totalling \$81,662.50 plus outlays of \$2,638.71 (both excluding GST).

The last Court approval of my remuneration covering the 12 months ended 31 October 2017 was heard on 20 December 2017 and approved in the amount of \$289,601.50 (excluding GST), equating to \$24,133 (excluding GST) per month. My unbilled remuneration since then, covering the period from 1 November 2017 to 31 May 2018 (including the period detailed above), totals \$171,379.50 (excluding GST), equating to \$24,483 (excluding GST) per month.

The main tasks undertaken during the period were:

- Correspondence with Investors, including:
 - Confirmation of unit holding balance
 - Change of details
 - Transfer of units.
- Ongoing maintenance and updating of the Investor database
- Correspondence with Investors' financial advisors seeking updates in relation to the Fund
- Reviewing expert reports and documentation in relation to the valuer claim. Meetings and correspondence with my solicitors and counsel in relation to the claim. Attending mediation and subsequent negotiations to settle the claim
- Reviewing correspondence from the Liquidators and their solicitors in relation to the claim against the auditors and directors and EL
- Preparing and lodging statutory returns
- Preparing my remuneration application to Court and supporting material for the period 1 November 2016 to 31 October 2017
- Liaising with my solicitors in relation to the remuneration application to Court for the period 1 November 2016 to 31 October 2017
- Reviewing claim and Court application made by former employee in respect of the realisation of assets subject to the Fund's security over a borrower. Liaise with my solicitors in relation to responding to the claim
- Finalisation of equalisation payment calculations
- Preparation of explanatory notes to the equalisation payment to assist in the preparation of the Court application, including reference to issues where manual review and adjustments were required. These included where:
 - New units were acquired and reinvestments took place during FY2011
 - Units were transferred to different/new unit holdings during FY2011 and at a later date
 - Hardship and redemption payments were made during FY2011.
- Correspondence with the Liquidators regarding insufficient documentation provided to support their claim for remuneration and expenses from the Fund



- Liaising with my solicitors in relation to making an application to Court to determine the Liquidators' indemnity claims for payment of fees and expenses from the Fund.

I anticipate that my next application for approval of my remuneration will be heard in November or December 2018 and will cover the period from 1 November 2017 to 31 October 2018.

7. UPDATING YOUR CONTACT DETAILS

If investors wish to update their postal address or bank details, a request should be submitted in writing to the following address.

Equititrust Income Fund (Receiver Appointed)
C/- BDO
GPO Box 457
Brisbane QLD 4001

8. QUERIES

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

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

All updates to investors are posted to the websites: www.equitrustincomefund.com.au and www.equititrust.com.au.

Yours faithfully

David Whyte
Receiver

SCHEDULE A - Summary of Professional Fees by Category of Work for the Period 1 February 2018 to 31 May 2018

Equitrust Income Fund (Receiver Appointed)

Employee	Position	Rate	Totals		Task Area										
			hrs	\$	Assets	Creditors	Trade On	Investigations	Dividends	Administration					
David Whyte	Partner	500	28.6	14,280.00	17.4	7,192.00	11.9	7,482.00	2.9	1,422.00	1.4	817.00	0.7	379.00	
Charles James	Senior Manager	470	3.3	1,551.00	0.4	187.00	7.7	3,605.00					5.9	2,837.00	
Shyden Coulson	Assistant	430	6.7	2,881.00	0.9	387.00	34.7	14,921.00							
Andrew Watt	Senior Accountant I	300	1.7	470.00			1.2	450.00							
Arcomete Holding	Assistant II	215	16.0	7,740.00	4.5	967.50	26.7	11,333.00	0.5	64.50			1.2	259.00	
Andrew Whitaker	Accountant II	215	41.7	8,965.50			41.5	8,922.50					9.2	43.00	
Robert Whyte	Manager/Accountant	175	60.0	10,500.00	0.4	70.00	50.7	8,972.50					8.8	1,540.00	
George Lambdin	Senior Accountant	175	32.6	5,705.00			29.7	5,197.50					7.4	420.00	
Mona Hastings	Senior Accountant	95	8.0	760.00									8.0	760.00	
TOTALS			279.5	81,662.50	18.6	8,804.50	210.1	61,082.50	3.2	1,746.50	7.0	3,220.00	1.8	303.00	6,446.00
			GST	8,166.25											
			TOTAL INC GST	89,828.75											
			AVERAGE HOURLY RATE	392		473		279		546		460		202	216

Note: All amounts exclude GST unless otherwise noted

Equititrust Income Fund (Receiver Appointed)

Expense Type	Amount (\$ ex GST)
Taxi fares	6.30
Postage	2,615.82
Search Fee	16.59
TOTAL	2,638.71
GST	263.87
TOTAL INC GST	2,902.58