

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

AFFIDAVIT

I, **DAVID WHYTE** of Level 10, 12 Creek Street, Brisbane in the State of Queensland, Official Liquidator, say on oath:

1. I am a Registered Liquidator and a Partner of the firm BDO. I am an affiliate member of the Chartered Accountants Australia and New Zealand and a professional member of the Australian Restructuring Insolvency and Turnaround Association.
2. By Orders of this Honourable Court made on 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 the receiver of the property of the EIF, and as the person responsible for ensuring that the EIF is wound up in accordance with its constitution, for the period 1 November 2016 to 31 October 2017 (**the relevant period**).
5. This is my eighth application for approval of my remuneration for acting as the receiver of the property of the EIF and as the person responsible for ensuring the EIF is wound up in accordance with its constitution.
6. My first application was heard on 25 October 2012, and the Honourable Justice Mullins made an order fixing my remuneration for the period 22 November 2011 to 31 August 2012 in the amount of \$837,103.85 (inclusive of GST) (approximately \$93,000 per month).

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
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SZC:JSO:201204781
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7. My second application was heard on 12 June 2013, and the Honourable Justice Douglas made an order fixing my remuneration for the period 1 September 2012 to 30 April 2013 in the amount of \$842,843.10 (inclusive of GST) (approximately \$105,000 per month).
8. My third application was heard on 28 November 2013, and the Honourable Justice Dalton made an order fixing my remuneration for the period 1 May 2013 to 31 October 2013 in the amount of \$667,795.70 (inclusive of GST) (approximately \$111,000 per month).
9. My fourth application was heard on 3 June 2014, and the Honourable Justice P Lyons made an order fixing my remuneration for the period 1 November 2013 to 30 April 2014 in the amount of \$503,435.35 (inclusive of GST) (approximately \$84,000 per month).
10. My fifth application was heard on 5 March 2015, and the Honourable Justice Martin made an order fixing my remuneration for the period 1 May 2014 to 31 January 2015 in the amount of \$573,226.50 (inclusive of GST) (approximately \$64,000 per month).
11. My sixth application was heard on 20 November 2015, and the Honourable Justice Dalton made an order fixing my remuneration for the period 1 February 2015 to 30 September 2015 in the amount of \$356,952.20 (inclusive of GST) (approximately \$45,000 per month).
12. My seventh application was heard on 20 December 2016, and the Honourable Justice Mullins made an order fixing remuneration for the period 1 October 2015 to 31 October 2016 in the amount of \$329,503.35 (inclusive of GST) (approximately \$28,000 per month).
13. Now produced and shown to me and marked collectively "DW-2" are true and correct copies of the Order of Justice Mullins dated 25 October 2012, the Order of Justice Douglas dated 12 June 2013, the Order of Justice Dalton dated 28 November 2013, the Order of Justice P Lyons dated 3 June 2014, the Order of Justice Martin dated 5 March 2015, the Order of Justice Dalton dated 20 November 2015 and the Order of Justice Mullins dated 20 December 2016.
14. In this my eighth application, I seek orders fixing my remuneration for the period 1 November 2016 to 31 October 2017 in the amount of \$318,561.65 (inclusive of GST) (approximately \$26,500 per month).
15. In support of this application, I have set out in this affidavit the background to my appointment, as well as details of the tasks that I have undertaken (both in the course of the receivership and as the person responsible for ensuring that the EIF is wound up in accordance with its constitution) for the relevant period, and an explanation as to why these said tasks were necessary.
16. 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 the 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

17. Equititrust Limited ACN 061 383 944 (In Liquidation) (Receivers and Managers Appointed) (EL) is the Responsible Entity (RE) of the Funds.
18. EL holds an Australian Financial Services Licence (AFSL) to operate the EIF, the EPCIF and an unregistered scheme named the Equititrust Premium Fund (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 the Funds, or are reasonably necessary for, or incidental to, the orderly winding up of the EPF.

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19. The directors of EL are David Hickie, Mark McIvor and Ross James Honeyman.

The EIF

20. The EIF is a first mortgage fund, meaning that EL as RE of the EIF pooled investors' funds and loaned them to third parties. Usually EL as RE of the EIF took first mortgages over real property as security for these loans.
21. There are approximately 1,600 investors in the EIF. As at the date of my appointment, the written down balance of the 29 loans that remained outstanding was \$127 million (that is, the written down value of the loans after provisions for loss). Upon my appointment I became aware that only one loan, for approximately \$300,000, was being serviced by its borrower. The remainder of the loans had been in default for some time.
22. As at 31 January 2015, after realising all secured properties, I caused all loans that remained outstanding to be written down to a balance of nil, as I had formed the view that the borrowers would not repay these loans.
23. The EIF had provided the majority of these 29 loans in relation to the acquisition and/or development of residential land in Queensland, New South Wales and South Australia, although two of these loans also had trading businesses associated with them.
24. Now produced and shown to me and marked "DW-3" is a true and correct copy of the Consolidated Constitution for the EIF dated 3 June 2011 that I obtained following my appointment.
25. Upon my appointment, I became aware from the books and records of the EIF that:
- (a) the EIF had been a 'frozen fund' since October 2008, in that no redemptions of units by investors had been permitted since then; and
 - (b) the EIF had ceased making distribution payments to investors in February 2011.

The EPCIF

26. The EPCIF has five members. Those investors invested a total amount of \$4.6 million. Its only asset is units that it holds in the EPF. My investigations reveal that the anticipated current value of this asset is nil.
27. Now produced and shown to me and marked "DW-4" is a true and correct 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.
28. Given the EPCIF has only 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 seek approval for remuneration in respect of work performed in relation to the EIF only.

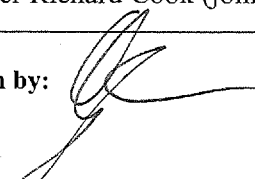
The EPF

29. EL is also the manager of the EPF, which is an unregistered managed investment scheme. The Bank of Scotland International appointed receivers and managers to the EPF on 21 February 2012. On or about July 2012 the securities held by BOSI were assigned to MS Asia Debt Acquisition Ltd 1767181 (a company registered in Hong Kong) (MSA). On 27 August 2012, MSA appointed Michael Richard Peldan and Christopher Richard Cook (jointly and severally) as

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receivers and managers pursuant to the securities.

30. I have not been appointed in any capacity to the EPF or its property.

Appointment of Voluntary Administrators and Receivers to EL

31. On Wednesday, 15 February 2012, Blair Pleash, Richard Albarran and Glen Oldham of the firm Hall Chadwick (the **administrators**) were appointed administrators of EL.
32. On Thursday, 16 February 2012, the National Australia Bank Ltd (**NAB**) appointed William Colwell and Greg Moloney of the firm Ferrier Hodgson (the **receivers**) receivers and managers of EL. This appointment was in respect of EL only, not in respect of the EIF or the EPCIF. The receivers remain appointed as receivers and managers of EL.
33. After the appointment of the administrators and the receivers to EL, I sought and obtained an order from this Honourable Court (with the consent of the then administrators and the receivers) which (without derogating from my appointment or my powers pursuant to the Orders of 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 bank guarantee facilities with the Commonwealth Bank.
34. Now produced and shown to me and marked "**DW-5**" is a true and correct copy of the Order of Justice Dalton dated 29 February 2012.
35. Subsequently, at the second meeting of creditors of EL, 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. Glen Oldham ceased being a liquidator of EL on 17 July 2013. Mr Pleash and Mr Albarran remain appointed as liquidators of EL.
36. Now produced and shown to me and marked "**DW-6**" is a true and correct copy of an historical company search of EL conducted on 30 November 2017, which shows the appointment of the various insolvency practitioners to EL.

Conduct of the winding up of the EIF

37. By way of background, 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 of 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 the EIF.
38. In my role during the relevant period covered by this application my staff and I undertook tasks which broadly fall within the following five categories:

- (a) Assets;

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- (b) Administration;
 - (c) Creditors;
 - (d) Trade On; and
 - (e) Investigation.
39. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories. For example, communicating with investors could have been recorded under either Administration or Creditors. However, my staff and I only record each task once, and we only record the time for carrying out each task once.
40. As noted at paragraphs 6 to 12 above, I have already applied for and obtained orders fixing my remuneration for the periods 22 November 2011 to 31 August 2012, 1 September 2012 to 30 April 2013, 1 May 2013 to 31 October 2013, 1 November 2013 to 30 April 2014, 1 May 2014 to 31 January 2015, 1 February 2015 to 30 September 2015 and 1 October 2015 to 31 October 2016. This affidavit deals with the tasks undertaken for the relevant period 1 November 2016 to 31 October 2017. However, to the extent I have considered it necessary to refer to matters prior to 1 November 2016 in order to give context to the present claim for remuneration, I have done so.

Schedule of work performed during the period 1 November 2016 to 31 October 2017

41. Particulars of the work my staff and I performed during the relevant period 1 November 2016 to 31 October 2017 are summarised in the Schedule, which is now produced and shown to me and marked "DW-7".
42. The Schedule records:
- (a) a description of each task undertaken under each of the above categories;
 - (b) the name and position of the person who performed the task;
 - (c) the date the task was undertaken;
 - (d) the length of time it took; and
 - (e) the amount charged.
43. I have reviewed the Schedule on a line-by-line basis. From my knowledge of the work carried out in relation to the winding up and my supervision of the tasks undertaken, I am satisfied that the time recorded in the Schedule for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.
44. My staff and I record time on a daily basis. We enter our time in six-minute units, and we enter the details of the time spent and the description of the tasks undertaken in an electronic system. My staff and I review these time entries on a periodic basis.

BDO's charge out rates

45. Now produced and shown to me and marked "DW-8" is a true and correct copy of the following hourly charge out rates (which were applicable during the relevant period):
- (a) in respect of work undertaken by BDO Business Restructuring Pty Ltd – hourly charge out rates for the 2016/2017 financial year;

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- (b) in respect of work under by BDO Business Restructuring Pty Ltd – hourly charge out rates for the 2017/2018 financial year. The hourly charge out rates for 2017/2018 have increased by approximately 4%.
46. The Partners of BDO Business Restructuring Pty Ltd are members of the Australian Restructuring Insolvency and Turnaround Association (ARITA), and we follow the ARITA Code of Professional Practice for Insolvency Practitioners. In particular, I have followed the ARITA Code of Professional Practice in this receivership.
47. Now produced and shown to me and marked “DW-9” is a true and correct copy of Parts 14, 15 and 16 of the third edition of the ARITA Code of Professional Practice (which came into effect on 1 January 2014 and was amended on 18 August 2014) with respect to a practitioner’s claim for remuneration.
48. As to the hourly charge out rates for BDO, I can say from my own knowledge and experience that these rates are commensurate with what are charged by other insolvency practitioners and accountants and indeed are less than a number of our competitors’ rates.

Utilisation of staff

49. In order to ensure efficiency of cost, time and resources, where possible during the course of the receivership I have delegated tasks to employees of BDO in order to ensure compliance with statutory obligations and for accounting and reporting purposes.
50. I have supervised all the work carried out under delegation, to the extent required by each task. Due to the complexity of some of the issues involved in the winding up process I have had to be directly involved in a number of the tasks.

Background to the receivership

51. In order to further assist the Court, I set out in this affidavit an explanation as to why the tasks detailed in the Schedule were undertaken and why in my view these tasks were necessary for the proper administration of the receivership of the EIF. Where I have considered it appropriate, I have also deposed by way of background to the complexities that have arisen during the course of the receivership of the EIF, and in my role as appointee under section 601NF(1) of the Act.
52. For example, some of the main factors that have added to the complexity of the receivership during the relevant period include:
- (a) the fact there are 1,600 investors in the EIF, and the need to communicate with such a large number of investors;
 - (b) progressing complex legal proceedings; and
 - (c) considering an equalisation payment to certain investors.
53. The tasks undertaken in respect of each category are discussed in further detail below.

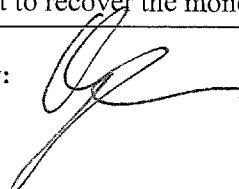
Assets

54. The EIF is a “first mortgage fund”, meaning that EL as RE for the EIF 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.
55. As stated above, all but one of these loans were in default at the time of my appointment. In the course of the receivership, EL as RE for the EIF has sought to recover the moneys owing by

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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 the properties.

56. Prior to 1 November 2016 (being the commencement of the relevant period), all of the properties that were the subject of these loans in default had been sold. During the relevant period, as described in more detail below, my staff and I have continued to undertake tasks primarily in respect of the court proceedings that remain on foot to recover monies owing to the EIF.
57. Further details as to the steps my staff and I undertook during the relevant period, and the reasons we undertook this work, are set out further below.

Current court proceedings

58. During the relevant period:
- (a) I, as receiver of the property of the EIF, am or have been; and/or
 - (b) EL as RE for the EIF, is or has been;
- involved in a number of proceedings in various jurisdictions (both in Queensland and elsewhere), which relate to:
- (c) the recovery of outstanding moneys owed to the EIF; and/or
 - (d) protecting the security held by the EIF; and/or
 - (e) protecting the interests of the EIF.
59. There are currently two proceedings on foot:
- (a) a claim against a valuer in respect of a property located at Earlando Road, Cape Gloucester (Airlie Beach), Queensland; and
 - (b) a claim against certain officers of EL.
60. In addition to these proceedings, a claim has also been brought by the liquidators of EL (in its capacity as RE for the EIF) against certain officers of EL, the former auditors of EL and EL in its own right.
61. Given the nature of these proceedings, while they are likely to take some time to resolve, I expect that realisations of several million dollars will be achieved for the benefit of investors of the EIF. Accordingly, in my view it was necessary for my staff and me to undertake work in relation to these proceedings, in order to recover funds for the benefit of investors of the EIF and to protect its interests. The work my staff and I undertook during the relevant period in relation to these court proceedings is discussed further below.

Claim against valuer

62. During the relevant period my staff and I have continued to progress Supreme Court proceeding number 3906 of 2013, being a claim seeking approximately \$8.5 million in damages for negligence against a valuer in relation to a valuation of a security property located at Earlando Road, Cape Gloucester (Airlie Beach), Queensland.

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63. For the purposes of this proceeding, in the relevant period my staff and I were required to undertake tasks, including:
- (a) liaising with my solicitors and providing ongoing instructions regarding the proceeding;
 - (b) providing instructions to my solicitors regarding an application to admit further expert evidence in the proceeding;
 - (c) reviewing correspondence from the defendant's solicitors regarding the admission of further expert evidence in the proceeding;
 - (d) attendance at the Court hearing in relation to the application to admit further expert evidence;
 - (e) reviewing and considering a further expert report;
 - (f) liaising with my solicitors regarding the further expert report;
 - (g) liaising with my solicitors regarding the timetable for the future conduct of the proceeding, including preparing the matter for trial and the delivery of amended pleadings;
 - (h) reviewing and considering the joint reports of experts;
 - (i) reviewing and considering correspondence from the defendant's solicitors regarding the delivery of amended pleadings and considering court orders timetabling same;
 - (j) liaising with my solicitors regarding the delivery of amended pleadings;
 - (k) meeting with my solicitors and Counsel regarding preparations for trial;
 - (l) liaising with my solicitors in relation to a second mediation;
 - (m) considering and liaising with my solicitors regarding forensic IT expert evidence;
 - (n) considering correspondence between my solicitors and the defendant's solicitors regarding disclosure and forensic IT expert evidence.
64. A second mediation of this proceeding is scheduled to be conducted on Thursday, 7 December 2017.
65. Subject to the proceeding settling at mediation, I am otherwise taking steps to progress the proceeding to trial, which I presently expect will take place mid next year.

Claim against the auditors and certain officers of EL

66. The liquidators of EL (in its capacity as RE for the EIF) filed a claim and statement of claim in the Federal Court on 27 September 2013, being Federal Court Proceeding numbered NSD2028 of 2013, against the former auditors and former directors of EL and against EL in its own right, alleging certain breaches of duty.
67. The liquidators of EL entered into a litigation funding deed with a litigation funder to fund this proceeding. The Federal Court has approved this funding deed. Therefore, the EIF is not presently bearing any costs of this litigation. However, as I understand it, the liquidators intend to pay any funds realised from the proceeding that relate to the EIF to the EIF (after deducting the costs of the litigation).

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68. Because the EIF stands to benefit from a successful outcome of this proceeding, in the relevant period my staff and I have continued to assist the liquidators to pursue this claim.
69. For the purposes of this proceeding, in the relevant period my staff and I were required to undertake tasks, including:
- (a) liaising with the liquidators' solicitors regarding the progress of the proceeding;
 - (b) reviewing orders made regarding the ongoing conduct of the proceeding;
 - (c) reviewing the books and records of the EIF for the purposes of providing documentation to assist in the ongoing conduct of the proceeding;
 - (d) liaising with the liquidators' solicitors regarding the ongoing conduct of the proceeding and responding to a request for further information required to assist in progressing the proceeding; and
 - (e) considering and reviewing the books and records of the EIF (including the loan management database and the financial database) to assist in quantifying the claim for loss in the proceeding; and
 - (f) liaising with the liquidators' solicitors to arrange for access to the books and records of the EIF (subject to appropriate undertakings) to assist in progressing the proceeding.
70. The liquidators of EL made an application for leave to amend the statement of claim, which was heard on 2 and 3 May 2016. Judgment on the application has been reserved and is anticipated to be handed down in December 2017.
71. I am informed by the solicitors for the liquidators and verily believe that:
- (a) the liquidators intend to list the matter for case management directions once judgment on their application for leave to amend the statement of claim is delivered;
 - (b) the liquidators made an application for directions regarding the representation of EL (in its own right) in the proceeding pursuant to section 59 of the *Trusts Act 1973* (Qld) (**Trusts Application**);
 - (c) on 21 September 2017, the liquidators' Trusts Application was heard and the Court made orders to the effect that the interests of EL in its own capacity be represented by its insurer.
72. The matter has not yet been given a trial date.
73. As stated above, work undertaken in relation to the claim against the auditors and certain officers of EL may have been recorded in more than one category, that is, under Assets or Investigation. However, time for carrying out each task is only recorded once.

Other matters

74. During the relevant period my staff and I have also undertaken the following tasks, which have been recorded under the category "Assets":
- (a) in relation to a potential claim in the bankrupt administration of a guarantor of a loan made by the EIF:
 - (i) reviewing the loan file to determine whether a claim can be made in the bankrupt

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administration; and

- (ii) reviewing the report to creditors from the bankrupt trustee;
- (b) in relation to requests by a landlord to consent to a leasehold interest being granted in respect of a property over which EL as RE for the EIF has a caveat:
 - (i) reviewing and considering the request;
 - (ii) reviewing the EIF's books and records to establish the status of the loan provided by the EIF in relation to the subject property;
 - (iii) drafting the necessary consent; and
 - (iv) liaising with my solicitors regarding the form of the consent.

75. All of the tasks set out above, were, in my view, necessary for the proper administration of the receivership, in order to determine whether further recoveries could be made for the benefit of investors of the EIF.

Administration

76. In my role, my staff and I have undertaken various tasks that can be described as falling within the category "Administration," and were recorded within this category.
77. In essence, the remuneration claimed under this category for the relevant period includes work my staff and I undertook that was necessary for the proper and efficient administration of the receivership, and to ensure proper accounts and records were maintained.
78. The main tasks my staff and I undertook in the relevant period are set out further below.

Maintaining and updating records relevant to the receivership

79. In the relevant period my staff have continued to maintain and input data to the MYOB records for the EIF, in order to apply receipts and payments correctly to the respective loan accounts and for ASIC reporting purposes.
80. Further, in the relevant period, my staff and I have also continued to maintain and update the EIF's loan database and associated financial accounts in order to keep those financial records current, with a view to producing final accounts that are required to be audited on completion of the receivership.
81. In the relevant period, my staff and I have also been responsible for:
- (a) reviewing and reconciling invoices;
 - (b) updating cashbook entries; and
 - (c) reconciling the loan/bank accounts.

Applications for approval of remuneration

82. As discussed at paragraph 12 above, on 20 December 2016 my application for approval of my remuneration for the period 1 October 2015 to 31 October 2016 was heard. This was my seventh application for approval of my remuneration.

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83. For the purposes of my seventh application (which was filed in this proceeding on 2 December 2016), my staff and I were required to undertake tasks including collation of time narrations that were exhibited to the affidavit I swore in support of my seventh application. I was also required to liaise with and provide instructions to my solicitors in respect of this application; in particular, in relation to the preparation of my supporting affidavit and in preparation for the hearing of the application.
84. By Order of Justice Mullins dated 20 December 2016, the costs of and incidental to my seventh application were ordered to be part of the winding up and the receivership of the EIF and are to be paid out of the assets of the EIF.

ASIC

85. During the course of the receivership and as appointee pursuant to section 601NF (1), in the relevant period I have been required to consider and ensure adherence to ASIC requirements. This has included undertaking the following tasks:
- (a) preparing the receipts and payment annexures for the statutory forms;
 - (b) preparing and reviewing statutory forms for lodgement with ASIC;
 - (c) lodging all statutory forms with ASIC on an on-going basis; and
 - (d) liaising with ASIC in respect of statutory lodgements.

Payments

86. A further matter to which my staff and I have continued to attend in the course of the administration of the receivership in the relevant period is requests for payments.
87. In my role, during the relevant period, my staff and I have been required to consider, approve and process payments in respect of a multiplicity of matters involved with the receivership, including:
- (a) consultancy fees;
 - (b) legal fees;
 - (c) supplier costs; and
 - (d) sundry costs.
88. These tasks are, in my view, necessary for the proper and orderly conduct of the receivership.

Job management

89. In the relevant period, my staff and I have conducted internal meetings and discussions in order to discuss:
- (a) the progression of the job;
 - (b) efficient job administration and management;
 - (c) the appropriate response to investor communications; and
 - (d) other general day to day management.

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

Investor relations and communications

91. I refer to paragraph 103 below.

92. As stated therein, during the course of the receivership and in the relevant period my staff and I have attended to answering investor enquiries, and issuing communications to investors to keep investors updated as to the status of the receivership, including the status of the ongoing proceedings and the expected return to investors.

93. During the relevant period, my staff and I have also continued to:

- (a) maintain and update investor records with updated details as advised by investors;
- (b) correspond with investors (and/or their solicitors or representatives) regarding the changes to their details, if required;
- (c) scan and save such correspondence to the investor database; and
- (d) maintain and update the investor database as necessary.

94. During the relevant period my staff and I have also liaised with the beneficiaries and/or trustees of deceased members' estates. Where appropriate we have liaised with the beneficiaries, trustees and/or their solicitors/advisors to effect a transfer of the unitholding at the request of the investor's estate. My staff and I were required to undertake tasks including considering the request for a transfer of units, reviewing the documentation provided in support of such request, and processing such transfers.

95. For the purposes of the investor communications, including my reports and letters to the investors, my staff and I have been required to:

- (a) collate all relevant material for these reports, including "work in progress", remuneration reports and a schedule of receipts and payments;
- (b) compile the reports; and
- (c) attend to the issue of these reports to each investor.

96. I consider that these tasks were necessary to keep investors of the EIF properly informed as to the progress of the receivership and the winding up of the EIF.

97. Work undertaken in relation to communications with investors may be recorded in more than one category, that is, under Creditors or Administration. However, time for carrying out each task is only recorded once.

General

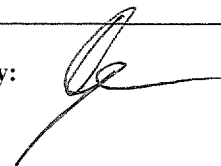
98. In addition to the specific matters listed above, my staff and I also continued to perform the following tasks in the relevant period:

- (a) liaising with the EIF's IT consultant;
- (b) reviewing and attending to correspondence as required;
- (c) maintaining an appropriate filing system and filing correspondence; and

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- (d) corresponding with the NAB regarding the expiry and renewal of term deposit accounts.
99. I consider that each of these tasks was necessary for the proper administration of the receivership.

Creditors

100. In my role, my staff and I have undertaken various tasks that can be described as falling within the category "Creditors". In the relevant period, I have:
- (a) considered, approved and corresponded with my solicitors regarding payment of legal fees;
 - (b) processed payments for legal fees, disbursements and scheme expenses; and
 - (c) considered outstanding claims between EL and the EIF, corresponded with the liquidators of EL regarding the potential for resolution of those outstanding claims, reviewed correspondence regarding the proposed resolution of these claims and provided instructions to my solicitors regarding these claims. This is discussed further below.
101. In addition to the above tasks, in the following paragraphs I depose to specific steps my staff and I undertook in the relevant period with respect to communicating with investors, considering a claim made by the liquidators of EL for an indemnity out of the assets of the EIF and investigating an 'equalisation payment' to investors, and the reasons for carrying out these tasks.

Communications with EIF investors

102. In my opinion, in the relevant period it was appropriate for me to continue to advise investors about what was currently occurring in relation to the winding up of the EIF.
103. As stated above, during the course of the receivership and in the relevant period my staff and I have attended to answering investor enquiries and issuing communications to investors to keep investors updated as to the status of the receivership, including the status of ongoing proceedings and the expected return to investors.
104. Between the date of my appointment and 1 November 2016, I published twenty-seven reports to investors on the EL website and the EIF website, updating investors regarding the ongoing winding up of the EIF.
105. In my twelfth report dated 18 April 2013, I advised investors that I would now issue reports every two to three months in an effort to minimise costs, and on the basis that the majority of the remaining properties were subject to contract.
106. During the relevant period, I have continued to publish reports to investors.
107. On 31 January 2017, I published my twenty-eighth report to investors on the EL website and the EIF website updating them as to the ongoing winding up of the EIF (**Twenty-Eighth Report**). Now produced and shown to me and marked "DW-10" is a true and correct copy of the Twenty-Eighth Report to investors. The matters stated in that report are, to my knowledge, true.
108. On 13 June 2017, I published my twenty-ninth report to investors on the EL website and the EIF website updating them as to the ongoing winding up of the EIF (**Twenty-Ninth Report**). Now produced and shown to me and marked "DW-11" is a true and correct copy of the Twenty-Ninth Report to investors. The matters stated in that report are, to my knowledge, true.
109. On 31 October 2017, I published my thirtieth report to investors on the EL website and the EIF website updating them as to the ongoing winding up of the EIF (**Thirtieth Report**). Now

Signed:



Taken by:



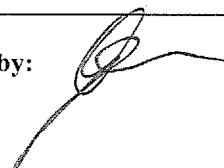
produced and shown to me and marked "DW-12" is a true and correct copy of the Thirtieth Report to investors. The matters stated in that report are, to my knowledge, true.

110. In each report, I also provided investors with a summary of:
- (a) the receipts and payments of the EIF;
 - (b) the realisation of the assets;
 - (c) the status of the legal proceedings;
 - (d) the status of the proposed equalisation payment to investors;
 - (e) an updated estimate of the return to investors; and
 - (f) my remuneration.
111. During the relevant period my staff and I were required to undertake tasks for the purposes of reporting to investors, including for each report:
- (a) drafting and reviewing the report to investors;
 - (b) preparing a schedule of receipts and payments in respect of the loan accounts;
 - (c) reconciling the cash at bank and the EIF account balances;
 - (d) preparing a table summarising my remuneration;
 - (e) updating the asset realisation summary; and
 - (f) considering and calculating updated estimated return to investors.
112. In addition to the reports to investors set out above, my staff and I have also been contacted by telephone, email and post by investors and their advisors. This contact required responses regarding:
- (a) the status of the receivership and the winding up of the EIF;
 - (b) updating contact details;
 - (c) confirming unit balances and distributions paid;
 - (d) the transfer of units and the documentation required to effect same; and
 - (e) queries arising from the reports to investors regarding the receivership.
113. As stated above, during the relevant period my staff and I have also liaised with the beneficiaries and/or trustees of deceased investors' estates in respect of the investor's unitholding in the EIF. Where appropriate we have liaised with the beneficiaries, trustees and/or their solicitors to effect a transfer of the unitholding at the request of the investor's estate. My staff and I were required to undertake tasks including considering the request for a transfer of units, reviewing the documentation provided in support of such requests, seeking further documentation where required and processing such transfers.
114. In the relevant period my staff and I were also required to correspond with investors and scan and save such correspondence to the investor database, as well as maintain and update the investor

Signed:



Taken by:



database as necessary, which included:

- (a) processing updates of investor addresses, emails, phone numbers and bank account details as requested;
- (b) transferring units as requested or as directed by executors of deceased estates; and
- (c) generating unit holding statements to attend to investors' unit balance enquiries.

115. As stated in paragraph 97 above, work undertaken in relation to communications with investors may be recorded in more than one category, that is, under Creditors or Administration. However, time for carrying out each task is only recorded once.

Equalisation Payment

116. The equalisation payment relates to investors who received either monthly or annual interest payments before EL ceased making distribution payments in February 2011, as set out at paragraph 25 above. Those investors who received monthly payments obtained an advantage over those who did not receive annual interest payments for the last year that distributions were made, due to the timing of the distributions made. Investors who received hardship redemptions also received an advantage over other investors. An equalisation payment will ensure that an equitable return of capital is paid to all investors given the different interest rates applicable for each class of unit that were used in calculating the partial return of capital paid at the relevant time and where hardship redemptions were paid. I intend to make an application to Court for directions in relation to this equalisation payment.
117. During the relevant period my staff and I were required to undertake tasks to determine the equalisation payment across 2,774 separate investor accounts, including:
- (a) investigating the books and records of the EIF in relation to the treatment and methodology for the potential equalisation payment for certain investors;
 - (b) liaising with our IT consultant in relation to the equalisation payment methodology;
 - (c) developing and implementing a formula for calculating the equalisation payment and liaising with our IT consultant regarding same;
 - (d) liaising with our IT consultant in relation to testing the equalisation payment methodology and identifying limitations in respect of same;
 - (e) manually reviewing and amending the equalisation calculation in respect of 802 of the 2,774 separate investor accounts where the equalisation calculation did not automatically calculate the correct return of capital. These are instances where:
 - (i) new units were acquired and reinvestments took place during the financial year ended 30 June 2011;
 - (ii) units were transferred pursuant to requests from investors or executors of investors' deceased estates during the financial year ending 30 June 2011 and after;
 - (iii) units were not transferred equally from one investor to multiple recipients and repayments of capital had not been allocated proportionally;
 - (iv) interest was accrued but not paid to investors in the financial year ending 30 June 2010;

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Taken by: 

- (v) hardship redemptions were made during the financial year ending 30 June 2011; and
 - (f) liaising with our solicitors in relation to the proposed equalisation payment.
118. The equalisation calculation takes into consideration any underpayments or overpayments made upon payment of the three interim distributions which I caused to be made in June 2014, June 2015 and September 2015.
119. The total proposed equalisation payment is approximately \$3,000,000 across 2,446 separate investor accounts.
120. As noted in paragraph 136 below, work undertaken in relation to the equalisation payment may have been recorded in more than one category, that is, under Creditors and/or Investigations. However, time for carrying out the task is only recorded once.

Liquidators' claim for indemnity

121. On 31 August 2016 I instructed my solicitors to write to the solicitors for the liquidators regarding the outstanding matters which I considered would need to be finalised in order for the winding up of the EIF to be completed, which included obtaining directions from the Court in relation to the equalisation payment referred to at paragraphs 116 to 118 above and the liquidators' claim to an indemnity from the EIF in respect of their remuneration as administrators and liquidators of EL.
122. In that correspondence, my solicitors foreshadowed that an application would need to be made to resolve these two matters and, for the purposes of that application, sought from the liquidators further information regarding their claim to an indemnity from the assets of the EIF for their remuneration as administrators and liquidators of EL.
123. Now produced and shown to me and marked "DW-13" is a true and correct copy of the letter sent by my solicitors to the liquidators' solicitors dated 31 August 2016.
124. On 23 September 2016 I received from the solicitors for the liquidators a letter which sought an indemnity for:
- (a) their remuneration as liquidators of EL (to 29 February 2016) in the amount of \$1,228,325; and
 - (b) their disbursements in the amount of \$929,640.16.

That letter enclosed spreadsheets detailing the various time entries for which an indemnity is sought.

125. Now produced and shown to me and marked "DW-14" is a true and correct copy of the letter received from the solicitors for the liquidators dated 23 September 2016 (excluding the spreadsheets).
126. During the relevant period, my staff and I were required to undertake tasks in respect of the liquidators' claim for indemnity, including:
- (a) reviewing the liquidators' correspondence and the spreadsheets provided by the liquidators to ascertain what amounts should be accepted or rejected, and the reasons for this;
 - (b) liaising with my solicitors regarding the liquidators' claim for an indemnity;

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- (c) instructing my solicitors in respect of further correspondence to the liquidators' regarding their claim for an indemnity;
 - (d) considering the response from the liquidators in respect of correspondence sent to them regarding their claim for an indemnity.
127. All of the tasks set out above, were, in my view, necessary in order to properly consider the claim for indemnity by the liquidators and were for the benefit of investors of the EIF. It is anticipated that if the liquidators' claim for indemnity cannot be resolved by agreement, that I will need to make an application to the Court to seek directions as to the liquidators' indemnity claim.

Trade On

128. The remuneration claimed in this application includes work my staff and I undertook in respect of the administration of the receivership and in my role overseeing the winding up of the EIF, which I would describe as "trade-on".
129. Generally, this "trade-on" work relates to work for the relevant period which is incidental to the receivership and the specific matters discussed within this affidavit, and includes:
- (a) considering and approving expenses of the EIF;
 - (b) preparing receipts and payments to accompany the lodgement of ASIC statutory forms;
 - (c) reviewing Business Activity Statements;
 - (d) reviewing and considering MYOB entries and cashbook entries;
 - (e) reconciling MYOB accounts;
 - (f) updating and reconciling receipts and payments;
 - (g) updating the EIF records (including records maintained on the loan management and finance databases) with details of loan transactions and receipts and payments;
 - (h) reviewing and considering accounts payable;
 - (i) reviewing and approving payment of legal expenses and consultants' expenses; and
 - (j) reviewing the liquidators' report to creditors.
130. In addition to the above, during the relevant period, I also liaised with ASIC regarding the extension of the suspension of EL's AFSL, and provided instructions to my solicitors regarding responding to ASIC in relation to this issue.
131. Work undertaken in relation to "trade on" may be recorded in more than one category. For example, work undertaken in relation to attending to payments of expenses of the EIF may be recorded in this category, or in Administration and/or Creditors. However, the work undertaken is only recorded once.
132. All of the tasks set out above, were, in my view, necessary for the proper administration of the receivership, to maximise realisations and recover funds for the benefit of investors of the EIF.

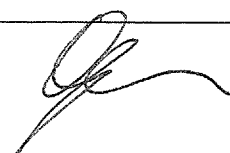
Investigation

133. During the course of the receivership, and in my role, my staff and I have undertaken various

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Taken by:



tasks that can be described as falling within the category "Investigation."

134. The remuneration claimed in this application under this category for the relevant period includes the following work:
- (a) reviewing and collating documentation for the purposes of ongoing proceedings;
 - (b) liaising with the solicitors for the liquidators of EL regarding their claim against the former directors of EL and the auditors of EL, and assisting in their prosecution of the claim. As noted above, any successful resolution to this proceeding is likely to result in a recovery for the benefit of the investors of the EIF;
 - (c) considering and investigating providing access to books and records of the EIF to the liquidators of EL, for the purposes of progressing the abovementioned claim;
 - (d) analysing the spreadsheet prepared in relation to the equalisation payment;
 - (e) reviewing and manually testing the methodology adopted in relation to calculating the equalisation payment and identifying discrepancies with same;
 - (f) investigating discrepancies identified with the equalisation payment methodology and liaising with our IT consultants about altering the methodology to correct discrepancies, and testing this altered methodology;
 - (g) manually adjusting the equalisation calculation for investors where the formula did not automatically calculate their equalisation payment; and
 - (h) preparing explanatory notes for the purposes of the intended court application for directions regarding the equalisation payment.
135. Work undertaken in relation to "investigations" may be recorded in more than one category. For instance, as noted at paragraph 73 above, work undertaken in relation to the liquidators' claim against the former directors of EL and auditors of EL may be recorded in more than one category, that is, under Assets or Investigations. However, time for carrying out the task is only recorded once.
136. In addition, work undertaken in relation to the equalisation payment may be recorded in more than one category, that is, under Creditors or Investigations. However, again, time for carrying out the task is only recorded once.
137. I consider that these tasks were necessary for the proper administration of the receivership of the EIF.

Write-offs

138. As stated at paragraph 44 above, my staff and I review time entries on a periodic basis. As a result of my review, in the relevant period, I have written-off work in the amount of \$8,612.50.
139. This written-off time relates largely to additional administrative work my staff were required to undertake, and also includes work undertaken by my staff which I decided, in my role, was not appropriate to be included in this claim for remuneration.

Receipts and payments

140. Exhibit "DW-15" is a true and correct copy of a receipts and payments schedule for the period of my appointment to 31 October 2017.

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Taken by: 

Remuneration claimed as a percentage of realisations

141. The receipts and payments included at exhibit "DW-15" record that from the date of my appointment on 21 November 2011 to 31 October 2017 there have been receipts totalling \$76,582,803.32.
142. In relation to each of my applications fixing my remuneration and this application, on a percentage of realisations basis, the amount fixed or claimed comprises:
- (a) in respect of my first application for the period 22 November 2011 to 31 August 2012, in which my remuneration was fixed in the amount of \$837,103.85 (inclusive of GST) – 1.1% of the total receipts for the entire receivership;
 - (b) in respect of my second application for the period 1 September 2012 to 30 April 2013, in which my remuneration was fixed in the amount of \$842,843.10 (inclusive of GST) - 1.1% of the total receipts for the entire receivership;
 - (c) in respect of my third application for the period 1 May 2013 to 31 October 2013, in which my remuneration was fixed in the amount of \$667,795.70 (inclusive of GST) – 0.9% of the total receipts for the entire receivership;
 - (d) in respect of my fourth application for the period 1 November 2013 to 30 April 2014 in which my remuneration was fixed in the amount of \$503,435.35 (inclusive of GST) – 0.7% of the total receipts for the entire receivership;
 - (e) in respect of my fifth application for the period 1 May 2014 to 31 January 2015 in which my remuneration was fixed in the amount of \$573,226.50 (inclusive of GST) - 0.7% of the total receipts for the entire receivership;
 - (f) in respect of my sixth application for the period 1 February 2015 to 30 September 2015 in which my remuneration was fixed in the amount of \$356,952.20 (inclusive of GST) - 0.5% of the total receipts for the entire receivership; and
 - (g) in respect of my seventh application, for the period 1 October 2015 to 31 October 2016 in which my remuneration was fixed in the amount of \$329,503.35 (inclusive of GST) - 0.4% of the total receipts for the entire receivership; and
 - (h) in respect of this application, my eighth application, for the period 1 November 2016 to 31 October 2017, in which I seek orders fixing my remuneration in the amount of \$318,561.65 (inclusive of GST) – 0.4% of the total receipts for the entire receivership.
143. Accordingly, to date, including the amount sought in this application, my remuneration comprises 5.8% of the total receipts from the date of my appointment on 21 November 2011 to 31 October 2017.
144. There are also still potential recoveries totalling several million dollars from the ongoing Court proceedings to which I have referred at paragraphs 59 to 73 above.
145. Given the complexities involved with this receivership, I believe that the remuneration claimed in this application for the relevant period is reasonable and proportionate.

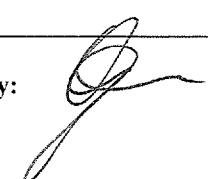
Status of receivership

146. Since my appointment, I have caused 46 properties to be realised, with a total gross realisation of approximately \$59.26 million.

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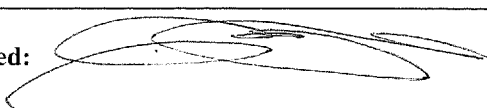


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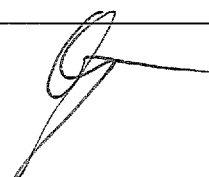


147. There are no more properties remaining to be sold.
148. Since my appointment, I have also progressed legal proceedings in relation to the following matters:
- (a) three claims against valuers seeking damages for negligence. Two of the claims have now settled, which achieved gross recoveries of approximately \$5.5 million. As stated above, I am now taking steps to progress the third claim to trial, which I presently expect will take place early next year (if not settled at mediation in December 2017);
 - (b) a claim against a bankrupt borrower and related parties to recover an interest in surplus proceeds from the sale of a property, which achieved gross recoveries of approximately \$2.08 million;
 - (c) a claim against a guarantor in respect of an interest in a property to recover monies owing to the EIF, which achieved gross recoveries of approximately \$1.75 million;
 - (d) various claims against the EPF, which achieved gross recoveries of approximately \$1.28 million.
149. Cash at bank as at 31 October 2017 is approximately \$6.96 million.
150. To date, I have made three interim distributions to investors totalling approximately \$20.56 million. The total return to investors is estimated at between 12.3 cents and 12.5 cents per unit. This estimate excludes potential legal recoveries against valuers and third parties from the legal proceedings referred to above.
151. Given the complexities involved with this receivership, I believe that the sum of \$318,561.65 inclusive of GST (approximately \$26,500 per month) 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.
152. I respectfully request this Honourable Court to make orders that my remuneration for the period 1 November 2016 to 31 October 2017 be determined in the amount of \$318,561.65 inclusive of GST.
153. As the receivership is ongoing there will be a need for further applications for approval of remuneration. In particular:
- (a) proceedings remain ongoing (see paragraphs 59 to 73 above); and
 - (b) various tasks will need to be undertaken in order for the winding up to be completed as required by the Court orders, including:
 - (i) an application to Court for directions regarding the equalisation payment; and
 - (ii) if necessary, an application to Court to resolve any outstanding matters in order to conclude the receivership, including the liquidators' claim for an indemnity from the EIF in relation to their remuneration as administrators and /or liquidators of EL.
154. I estimate that it will take about 12 months to complete the necessary work to wind up the EIF.

Signed:



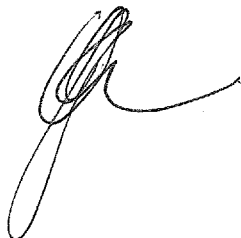
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ALL THE FACTS and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

SWORN by **DAVID WHYTE** on this 30th
day of November 2017 at Brisbane in the
presence of:

Solicitor



Jacqueline Suzanne Ogden
Solicitor

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SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

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

AND

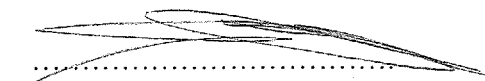
Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729**

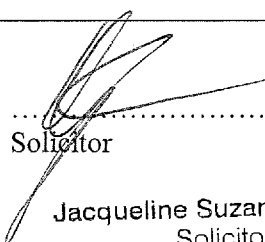
**CERTIFICATE OF EXHIBIT
INDEX TO EXHIBITS**

VOLUME 1 OF 2

Exhibits "DW-1" to "DW-6" to the affidavit of **DAVID WHYTE** sworn at Brisbane on this 30th day of November 2017.

Exhibit	Description	Page No.
DW-1	Orders of Justice Applegarth of 21 November 2011 and 23 November 2011 and Reasons for Judgment	1 – 27
DW-2	Order of Justice Mullins dated 25 October 2012, the Order of Justice Douglas dated 12 June 2013, the Order of Justice Dalton dated 28 November 2013, the Order of Justice P Lyons dated 3 June 2014, the Order of Justice Martin dated 5 March 2015, the Order of Justice Dalton dated 20 November 2015 and the Order of Justice Mullins dated 20 December 2016	28 – 34
DW-3	Consolidated Constitution for EIF dated 3 June 2011	35 – 86
DW-4	Replacement constitution for EPCIF dated 30 November 2010 and Deed Poll dated 13 December 2010	87 – 131
DW-5	Order of Justice Dalton dated 29 February 2012	132 – 133
DW-6	Historical company search of Equititrust Limited dated 30 November 2017	134 – 159


.....
Deponent


.....
Solicitor
Jacqueline Suzanne Ogden
Solicitor

SUPREME COURT OF QUEENSLAND

Draft Order

REGISTRY: Brisbane
NUMBER: 10478/2011

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

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

Before: Justice Applegarth

Date: 21 November 2011

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

THE ORDER OF THE COURT IS THAT:

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

ORDER:

Filed on behalf of the Applicants

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

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

Signed:

A handwritten signature, possibly reading "M. R.", enclosed within a hand-drawn oval.

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS 10478 of 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

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

ORDER

Before: Justice Applegarth

Date: 23 November 2011

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

THE ORDER OF THE COURT IS THAT:

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

ORDER
Filed on behalf of the Intervener

Australian Securities & Investments Commission
Hugh Copley, Litigation Counsel

Form 59 Rule 661

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

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

8. That by 4pm on Thursday 24 November 2011, Equititrust Ltd publish on its website (www.equititrust.com.au), 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.

Registered



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.

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED (RECEIVERS AND MANAGERS
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED (RECEIVERS AND MANAGERS
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

AND

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

ORDER

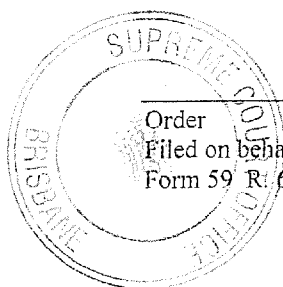
Before: The Honourable Justice Mullins
Date: 25 October 2012
Initiating Document: Application filed 21 September 2012

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 22 November 2011 to 31 August 2012, be fixed in the amount of \$837,103.85 (inclusive of GST); and
2. The costs of and incidental to the application filed on 21 September 2012 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed: 

DEPUTY REGISTRAR



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

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

BNEDOCs Order of Justice Mullins dated 25 October 2012

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED (RECEIVERS AND MANAGERS
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED (RECEIVERS AND MANAGERS
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

AND


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

ORDER

Before: Justice JS Douglas
Date: 12 June 2013
Initiating Document: Application filed 16 May 2013

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 September 2012 to 30 April 2013 be fixed in the amount of \$842,843.10 (inclusive of GST); and
2. The costs of and incidental to the application filed on 16 May 2013 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed: 

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

Duplicate

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SZC:JSK:201204781
BNEDOCS Draft Order dated 12 June 2013 (2) (2)

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

**IN THE MATTER OF EQUITITRUST LIMITED (RECEIVERS AND MANAGERS
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

Applicant: **EQUITITRUST LIMITED (RECEIVERS AND MANAGERS
APPOINTED (IN LIQUIDATION) ACN 061 383 944**

AND

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

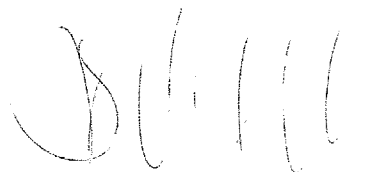
ORDER

Before: Justice Dalton
Date: 28 November 2013
Initiating Document: Application filed 12 November 2013

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 May 2013 to 31 October 2013 be fixed in the amount of \$667,795.70 (inclusive of GST); and
2. The costs of and incidental to the application filed on 12 November 2013 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed:



Deputy Registrar

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

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

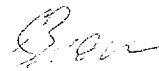
ORDER

Before: Justice P Lyons
Date: 3 June 2014
Initiating Document: Application filed 15 May 2014

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 November 2013 to 30 April 2014 be fixed in the amount of \$503,435.35 (inclusive of GST); and
2. The costs of and incidental to the application filed on 15 May 2014 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed:



Deputy Registrar

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

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

ORDER

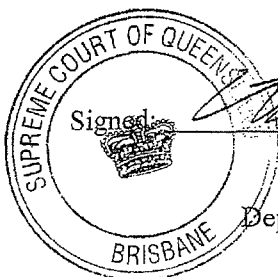
Before: Justice Martin

Date: 5 March 2015

Initiating Document: Application filed 20 February 2015

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 May 2014 to 31 January 2015 be fixed in the amount of \$573,226.50 (inclusive of GST); and
2. The costs of and incidental to the application filed on 20 February 2015 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.



Deputy Registrar

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

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SZC:JSO:201204781
BNEDOCS Order dated 5 March 2015

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

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

AND

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

ORDER

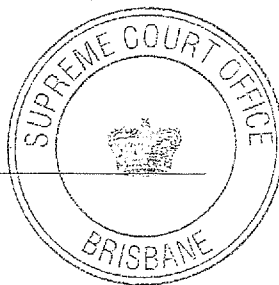
Before: Justice Dalton
Date: 20 November 2015
Initiating Document: Application filed 2 November 2015

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 February 2015 to 30 September 2015 be fixed in the amount of \$356,952.20 (inclusive of GST); and
2. The costs of and incidental to the application filed on 2 November 2015 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed:

Bucano
Deputy Registrar



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

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SZC:JSO:201204781
BNEDOCs Order dated 20 November 2015

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 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

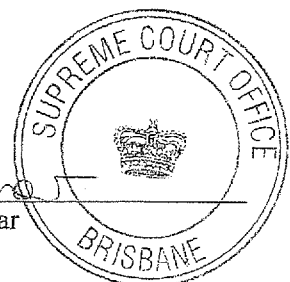
Before: Justice Mullins
Date: 20 December 2016
Initiating Document: Application filed 2 December 2016

THE ORDER OF THE COURT IS THAT:

1. Pursuant to subparagraph 3(d) of the Order of the Honourable Justice Applegarth made on 21 November 2011 and subparagraphs 5(c) and 6(c) of the Order of the Honourable Justice Applegarth made on 23 November 2011, the remuneration of David Whyte, for the period 1 October 2015 to 31 October 2016 be fixed in the amount of \$329,503.35 (inclusive of GST); and
2. The costs of and incidental to the application filed on 2 December 2016 be costs in the winding up and the receivership of the Equititrust Income Fund, to be paid out of the assets of the Equititrust Income Fund.

Signed:

Buravane
Deputy Registrar



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

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SZC:JSO:201204781
BNEDOCs Order dated 20 December 2016

Consolidated constitution

Equititrust Income Fund ARSN 089 079 854

Equititrust Limited ACN 061 383 944

Version: 1

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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 manager 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 11.11.15(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 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.

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 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.

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.

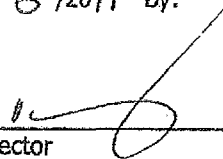
EXECUTED as a Deed Poll


Signed sealed and delivered

by

EQUITITRUST LTD ACN 061 383 944

on 316/2011 by:

A  Director

A  Director/Secretary

A DAVID KENNEDY
Full name of Director

A MARK MCIVOR
Full name of Director/Secretary

"DW-4"

**EQUITITRUST PRIORITY CLASS INCOME
FUND**

ARSN 089 079 729

REPLACEMENT CONSTITUTION

REF: #188593

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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.

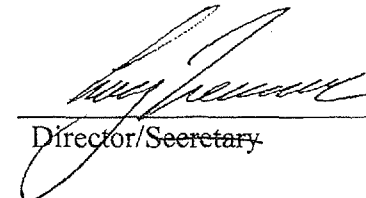
- (g) Subsequent to hearing the Member's complaint the board shall have a maximum of 14 Business Days within which to consider the complaint and either accept, reject or resolve the dispute.
- (h) The board must notify the Member within 21 Business Days of the hearing under paragraph (e), of its decision 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
EQUITITRUST LIMITED ACN 061 383 944
on 30/11/2010 by:

A  _____
Director

A  _____
Director/Secretary

A DAVID JOHN KENNEDY
Full name of Director

A 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 Equitiloon 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

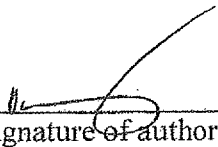
2. The Trustee confirms that, save for the amendments made by this Deed Poll, the provisions of the Constitution shall remain in full force and effect and that by such

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)
EQUITITRUST LIMITED ACN 061 383 944)
in accordance with its constitution in the)
presence of:)

^  _____
Signature of authorised person

^  _____
Signature of authorised person

^ DAVID JOHN KENNEDY
Name of authorised person

^ MARK MAJOR
Name of authorised person

^ DIRECTOR
Office held

^ DIRECTOR
Office held

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

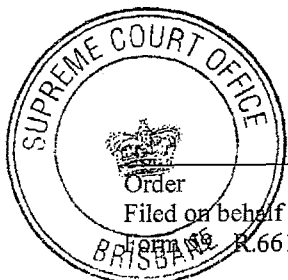
Date: 29 February 2012

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;



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

ASIC & Business Names

ORGANISATIONAL SEARCH ON EQUITITRUST LIMITED

Historical Extract

This information was extracted from ASIC database on 30 November 2017 at 10:43AM

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	EQUITITRUST LIMITED	DOCUMENT NO.
	061 383 944	
ABN	74 061 383 944	
Registered in	QLD	
Date Registered	18-Aug-1993	
Review Date	18-Aug-2018	

Current Organisation Details

Name	EQUITITRUST 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	

Ceased/Former Organisation Details

Details Start	25-Jan-2002	015946604
Details End	14-Feb-2012	
Name	EQUITITRUST LIMITED	
Name Start	25-Jan-2002	
Status	REGISTERED	
Type	AUSTRALIAN PUBLIC COMPANY	
Class	LIMITED BY SHARES	
Subclass	UNLISTED PUBLIC COMPANY	
Disclosing Entity	NO	
Details Start	22-Oct-1996	
Details End	24-Jan-2002	
Name	EQUITILOAN LTD	
Name Start	11-Apr-1994	
Status	REGISTERED	

Type AUSTRALIAN PUBLIC COMPANY
 Class LIMITED BY SHARES
 Subclass UNLISTED PUBLIC COMPANY
 Disclosing Entity NO

Details Start 28-Sep-1996
 Details End 21-Oct-1996
 Name EQUITILOAN LTD
 Name Start 11-Apr-1994
 Status STRIKE-OFF ACTION IN PROGRESS
 Type AUSTRALIAN PUBLIC COMPANY
 Class LIMITED BY SHARES
 Subclass UNLISTED PUBLIC COMPANY
 Disclosing Entity NO

Details Start 11-Apr-1994 005257655
 Details End 27-Sep-1996
 Name EQUITILOAN LTD
 Name Start 11-Apr-1994
 Status REGISTERED
 Type AUSTRALIAN PUBLIC COMPANY
 Class LIMITED BY SHARES
 Subclass UNLISTED PUBLIC COMPANY
 Disclosing Entity NO

Details Start 11-Mar-1994 005261696
 Details End 10-Apr-1994
 Name EQUITILOAN PTY LTD
 Name Start 11-Mar-1994
 Status REGISTERED
 Type AUSTRALIAN PROPRIETARY COMPANY
 Class LIMITED BY SHARES
 Subclass EXEMPT PROPRIETARY COMPANY
 Disclosing Entity NO

Details Start 18-Aug-1993 004329320
 Details End 10-Mar-1994
 Name M C MORTGAGE MANAGEMENT PTY LTD
 Name Start 18-Aug-1993
 Status REGISTERED
 Type AUSTRALIAN PROPRIETARY COMPANY
 Class LIMITED BY SHARES
 Subclass EXEMPT PROPRIETARY COMPANY
 Disclosing Entity NO

Current Registered Office

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

Ceased/Former Registered Office

Address	PKF WORLDWIDE, 'LEVEL 4, WATERSIDE EAST', HOLDEN PLACE, BUNDALL, QLD, 4217	014891088
Start Date	01-Dec-1999	
End Date	11-May-2000	
Address	PANNELL KERR FORSTER, LEVEL 4 TOWER 1 WATERSIDE OFFICE PARK, HOLDEN PLACE, BUNDALL, QLD, 4217	06138394I
Start Date	18-Jun-1997	(AR 1998)
End Date	30-Nov-1999	
Address	LEVEL 1, 65-67 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217	005246398
Start Date	21-Jun-1994	
End Date	17-Jun-1997	
Address	MCIVOR COGHLAN SOLICITORS, 1150 GOLD COAST HIGHWAY, PALM BEACH, QLD, 4221	005947086
Start Date	27-Oct-1993	
End Date	20-Jun-1994	
Address	C/- TOP SHELF COMPANY SERVICES, SUITE 1, 31 CROMBIE AVENUE, BUNDALL, QLD, 4217	004329320
Start Date	18-Aug-1993	
End Date	26-Oct-1993	

Current Principal Place of Business

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

Ceased/Former Principal Place of Business

Address	65-67 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217	011666628
Start Date	10-Oct-1996	(AR 1995)
End Date	10-Jun-1997	
Address	MCIVOR COGHLAN SOLICITORS, 1150 GOLD COAST HIGHWAY, PALM BEACH, QLD, 4221	06138394Z
Start Date	31-Dec-1994	(AR 1994)
End Date	09-Oct-1996	

Ceased/Former Principal Executive Officer

Officer Name	MARK MCIVOR	009156517
ABN	Not available	
Birth Details	27-Mar-1956 DALBY QLD	
Address	67 JEFFERSON LANE, PALM BEACH, QLD, 4221	
Appointment Date	15-May-1995	
Cease Date	08-Dec-1995	

Current Director

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	

Officer Name	ROSS JAMES HONEYMAN	030085152
ABN	Not available	
Birth Details	02-Apr-1957 SYDNEY NSW	
Address	U13, 'INFO RECEIVED ADDRESS MAY BE INVALID 21/07/17', 3508 **MAIN BEACH PARADE, MAIN BEACH, QLD, 4217	
Appointment Date	21-Nov-2011	

Ceased/Former Director

Officer Name	STACEY BLYTHE MCIVOR	7E4106959
ABN	Not available	
Birth Details	02-Mar-1971 SYDNEY NSW	
Address	1 SOUTHERN CROSS DRIVE, CHEVRON ISLAND, QLD, 4217	
Appointment Date	21-Nov-2011	
Cease Date	16-Dec-2011	

Officer Name	JEFFREY IAN MCDERMID	7E4034319
ABN	Not available	
Birth Details	05-Feb-1951 BANGALOW NSW	
Address	UNIT 2604, 159 OLD BURLEIGH ROAD, BROADBEACH, QLD, 4218	
Appointment Date	17-Oct-2011	
Cease Date	21-Nov-2011	

Officer Name	TROY BINGHAM	7E4034319
ABN	Not available	
Birth Details	17-Jan-1969 DURBAN SOUTH AFRICA	
Address	12 PORTOBELLO DRIVE, MERMAID WATERS, QLD, 4218	
Appointment Date	12-Oct-2011	
Cease Date	21-Nov-2011	

Officer Name	WARWICK POWELL	7E4034319
ABN	Not available	
Birth Details	01-Nov-1969 HONG KONG CHINA	
Address	69-77 KILLIGREW ROAD, TAMBORINE, QLD, 4270	
Appointment Date	11-Oct-2011	

Cease Date	21-Nov-2011	
Officer Name	PAUL JAMES VINCENT	7E4044308
ABN	Not available	
Birth Details	06-Apr-1957 BRISBANE QLD	
Address	15 MCGREGOR STREET, CLAYFIELD, QLD, 4011	
Appointment Date	24-Oct-2011	
Cease Date	21-Nov-2011	
Officer Name	JOHN ALEXANDER GODDARD	7E3283588
ABN	Not available	
Birth Details	14-Jun-1950 SYDNEY NSW	
Address	3 ELLWOOD COURT, HIGHVALE, QLD, 4520	
Appointment Date	12-Oct-2010	
Cease Date	17-Oct-2011	
Officer Name	DAVID JOHN SANDFORD JACKSON	7E3844445
ABN	Not available	
Birth Details	02-Feb-1955 BRISBANE QLD	
Address	23 KAMBER STREET, BARDON, QLD, 4065	
Appointment Date	28-Jul-2011	
Cease Date	17-Oct-2011	
Officer Name	CRAIG GRANVILLE TREASURE	7E3283613
ABN	Not available	
Birth Details	21-Dec-1962 BRISBANE QLD	
Address	3018 THE BOULEVARDE, BENOWA, QLD, 4217	
Appointment Date	12-Oct-2010	
Cease Date	16-Oct-2011	
Officer Name	HARVEY PARKER	7E4034319
ABN	Not available	
Birth Details	16-Nov-1943 MACKAY QLD	
Address	76 WOODSIDE AVENUE, FRANKSTON, VIC, 3199	
Appointment Date	11-Oct-2011	
Cease Date	12-Oct-2011	
Officer Name	DAVID ROBERT WALTER TUCKER	7E3191967
ABN	Not available	
Birth Details	23-Oct-1967 MELBOURNE VIC	
Address	29 SASSAFRAS STREET, THE GAP, QLD, 4061	
Appointment Date	03-Sep-2010	
Cease Date	11-Oct-2011	
Officer Name	DAVID JOHN KENNEDY	7E3099509
ABN	Not available	
Birth Details	24-Dec-1968 BRISBANE QLD	
Address	3 SIR BRUCE SMALL BOULEVARD, BENOWA, QLD, 4217	
Appointment Date	14-May-2010	
Cease Date	14-Jun-2011	

Officer Name	MARK MCIVOR	1F0208790
ABN	Not available	
Birth Details	27-Mar-1956 DALBY QLD	
Address	1 SOUTHERN CROSS DRIVE, CHEVRON ISLAND, QLD, 4217	
Appointment Date	01-Jul-1995	
Cease Date	13-Jun-2011	
Officer Name	THOMAS JOHN HANEY	015943136
ABN	Not available	
Birth Details	01-Dec-1956 MOUNT ISA QLD	
Address	25 MIDSHIPMAN COURT, SURFERS PARADISE, QLD, 4217	
Appointment Date	03-Jul-2000	
Cease Date	03-Sep-2010	
Officer Name	WAYNE MCIVOR	7E2388579
ABN	Not available	
Birth Details	07-May-1954 WARWICK QLD	
Address	79 RIVER CRESCENT, BROADBEACH WATERS, QLD, 4218	
Appointment Date	10-Aug-2000	
Cease Date	14-May-2010	
Officer Name	LESLIE WAYNE PETERS	014228497
ABN	Not available	
Birth Details	25-Dec-1959 HUGHENDEN QLD	
Address	UNIT A10-3 RIVAGE ROYALE, 75 BRIGHTON PARADE, SOUTHPORT, QLD, 4215	
Appointment Date	15-Sep-1999	
Cease Date	10-Aug-2000	
Officer Name	MARK THOMAS DIXON	014228497
ABN	Not available	
Birth Details	24-Apr-1956 GYMPIE QLD	
Address	9 HYTHE STREET, MIAMI, QLD, 4220	
Appointment Date	15-Sep-1999	
Cease Date	03-Jul-2000	
Officer Name	JOHN LEONARD BENNETTS	013833932
ABN	Not available	
Birth Details	07-Dec-1962 BRISBANE QLD	
Address	UNIT 23 CARRINGTON CRT, 3576 MAIN BEACH PARADE, MAIN BEACH, QLD, 4217	
Appointment Date	10-Mar-1998	
Cease Date	15-Sep-1999	
Officer Name	WAYNE MCIVOR	06138394H
ABN	Not available	(AR 1997)
Birth Details	07-May-1954 WARWICK QLD	
Address	UNIT 124 GRAND MARINER, 12 COMMODORE DRIVE, SURFERS PARADISE, QLD, 4217	
Appointment Date	18-Aug-1993	

Cease Date	15-Sep-1999	
Officer Name	KERRY ARTHUR O'MEARA	011680137
ABN	Not available	
Birth Details	24-May-1958 ROTORUA NEW ZEALAND	
Address	92 AMALFI DRIVE, SURFERS PARADISE, QLD, 4217	
Appointment Date	28-Nov-1996	
Cease Date	10-Mar-1998	

Officer Name	ROSS DONALD JANETZKI	005257634
ABN	Not available	
Birth Details	25-Jun-1968 PRAHRAN VIC	
Address	UNIT 5, 28 PANORAMA DRIVE, CURRUMBIN, QLD, 4223	
Appointment Date	23-Feb-1994	
Cease Date	28-Nov-1996	

Officer Name	JOHN RICHARD MCIVOR	005947087
ABN	Not available	
Birth Details	07-May-1930 WARWICK QLD	
Address	2 RAZORBACK ROAD, TWEED HEADS, NSW, 2485	
Appointment Date	18-Aug-1993	
Cease Date	01-Jul-1995	

Officer Name	FROLA SHANEENE GILLTRAP	004329337
ABN	Not available	
Birth Details	19-May-1949 BRISBANE QLD	
Address	16 DOUBLEVIEW DRIVE, ELANORA, QLD, 4221	
Appointment Date	18-Aug-1993	
Cease Date	18-Aug-1993	

Officer Name	GEORGE STEPHENSON GILLTRAP	004329337
ABN	Not available	
Birth Details	20-Feb-1949 ROTORUA NEW ZEALAND	
Address	16 DOUBLEVIEW DRIVE, ELANORA, QLD, 4221	
Appointment Date	18-Aug-1993	
Cease Date	18-Aug-1993	

Current Secretary

Officer Name	ROSS JAMES HONEYMAN	030085152
ABN	Not available	
Birth Details	02-Apr-1957 SYDNEY NSW	
Address	U13, 'INFO RECEIVED ADDRESS MAY BE INVALID 21/07/17', 3508 **MAIN BEACH PARADE, MAIN BEACH, QLD, 4217	
Appointment Date	17-Oct-2011	

Ceased/Former Secretary

Officer Name	DAVID JOHN KENNEDY	7E3737048
ABN	Not available	

Birth Details	24-Dec-1969 BRISBANE QLD	
Address	3 SIR BRUCE SMALL BOULEVARD, BENOWA, QLD, 4217	
Appointment Date	14-Jun-2011	
Cease Date	17-Oct-2011	
Officer Name	SIDNEY SUPER	7E2388579
ABN	Not available	
Birth Details	29-Jan-1956 DURBAN SOUTH AFRICA	
Address	'48 DEVILLE APARTMENTS', 3645 MAIN BEACH PARADE, MAIN BEACH, QLD, 4217	
Appointment Date	16-Jan-2004	
Cease Date	01-Jul-2011	
Officer Name	LYNDELL RUTH EASTON	06138394M
ABN	Not available	(AR 2002)
Birth Details	17-Dec-1962 NARRABRI NSW	
Address	UNIT 1, 21 VENICE STREET, MERMAID BEACH, QLD, 4218	
Appointment Date	15-Sep-1999	
Cease Date	15-Jan-2004	
Officer Name	WAYNE MCIVOR	06138394H
ABN	Not available	(AR 1997)
Birth Details	07-May-1954 WARWICK QLD	
Address	UNIT 124 GRAND MARINER, 12 COMMODORE DRIVE, SURFERS PARADISE, QLD, 4217	
Appointment Date	18-Aug-1993	
Cease Date	15-Sep-1999	
Officer Name	GEORGE STEPHENSON GILLTRAP	004329336
ABN	Not available	
Birth Details	20-Feb-1949 ROTORUA NEW ZEALAND	
Address	16 DOUBLEVIEW DRIVE, ELANORA, QLD, 4221	
Appointment Date	18-Aug-1993	
Cease Date	18-Aug-1993	

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	

Ceased/Former Appointed Auditor

Officer Name	PRICEWATERHOUSECOOPERS	015497012
Number	083013423	(FR 1999)
ABN	Not available	
Address	LEVEL 11 WATERFRONT PLACE, 1 EAGLE STREET, BRISBANE, QLD, 4000	

Appointment Date 31-Dec-1994
Cease Date 28-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

Ceased/Former Receiver Manager

Officer Name WILLIAM JAMES HARRIS 028033519
ABN Not available
Address MCGRATHNICOL, LEVEL 14, 145 EAGLE STREET, BRISBANE,
QLD, 4000
Appointment Date 21-Feb-2012
Cease Date 27-Aug-2012

Officer Name JOSEPH DAVID HAYES 028033519
ABN Not available
Address MCGRATHNICOL, LEVEL 14, 145 EAGLE STREET, BRISBANE,
QLD, 4000
Appointment Date 21-Feb-2012
Cease Date 27-Aug-2012

Officer Name JOHN PATRICK CRONIN 028033519
ABN Not available
Address MCGRATHNICOL, LEVEL 14, 145 EAGLE STREET, BRISBANE,
QLD, 4000
Appointment Date 21-Feb-2012
Cease 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	BLAIR ALEXANDER PLEASH	7E5846751
ABN	Not available	
Address	HALL CHADWICK, LEVEL 40, 2-26 PARK STREET, SYDNEY, NSW, 2000	
Appointment Date	20-Apr-2012	

Officer Name	BLAIR ALEXANDER PLEASH	7E5846751
ABN	Not available	
Address	HALL CHADWICK, LEVEL 40, 2-26 PARK STREET, SYDNEY, NSW, 2000	
Appointment Date	20-Apr-2012	

Officer Name	RICHARD ALBARRAN	7E5846853
ABN	Not available	
Address	HALL CHADWICK, LEVEL 40, 2-26 PARK STREET, SYDNEY, NSW, 2000	
Appointment Date	20-Apr-2012	

Officer Name	RICHARD ALBARRAN	7E5846853
ABN	Not available	
Address	HALL CHADWICK, LEVEL 40, 2-26 PARK STREET, SYDNEY, NSW, 2000	
Appointment Date	20-Apr-2012	

Ceased/Former Appointed Liquidator (Creditors Voluntary Winding up)

Officer Name	GLEN PETER OLDHAM	7E4412884
ABN	Not available	
Address	LEVEL 19, 144 EDWARD STREET, BRISBANE, QLD, 4000	
Appointment Date	20-Apr-2012	
Cease Date	17-Jul-2013	

Officer Name	GLEN PETER OLDHAM	7E4412913
ABN	Not available	
Address	LEVEL 19, 144 EDWARD STREET, BRISBANE, QLD, 4000	
Appointment Date	20-Apr-2012	
Cease Date	17-Jul-2013	

Ceased/Former Administrator of a Company Under Administration

Officer Name	RICHARD ALBARRAN	7E4277681
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ABN	Not available	
Address	HALL CHADWICK, 'ST MARTINS TOWER' LEVEL 29, 31 MARKET STREET, SYDNEY, NSW, 2000	
Appointment Date	15-Feb-2012	
Cease Date	20-Apr-2012	
Officer Name	BLAIR ALEXANDER PLEASH	7E4277681
ABN	Not available	
Address	HALL CHADWICK, 'ST MARTINS TOWER' LEVEL 29, 31 MARKET STREET, SYDNEY, NSW, 2000	
Appointment Date	15-Feb-2012	
Cease Date	20-Apr-2012	
Officer Name	GLEN PETER OLDHAM	7E4277681
ABN	Not available	
Address	LEVEL 19, 144 EDWARD STREET, BRISBANE, QLD, 4000	
Appointment Date	15-Feb-2012	
Cease 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	

Ceased/Former Issued Capital

Type	Ceased/Former	1F0077488
Class	C	
	CLASS C SHARES	
Number of Shares/Interests issued	1	
Total amount paid/taken to be paid	\$1.00	
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	
17-Nov-2017	524	17-Nov-2017	6	19-Oct-2017	7E9657230
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				

22-Sep-2017	524	22-Sep-2017	11	26-Aug-2017	7E9475810
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
15-Sep-2017	524	15-Sep-2017	5	15-Aug-2017	7E9449413
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
16-May-2017	1500	16-May-2017	6	19-Apr-2017	7E9058213
1500	ANNUAL REPORT TO CREDITORS				
16-May-2017	524	16-May-2017	11	19-Apr-2017	7E9058182
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
07-Mar-2017	524	07-Mar-2017	11	26-Feb-2017	7E8836412
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
28-Feb-2017	524	28-Feb-2017	5	15-Feb-2017	7E8813815
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
21-Nov-2016	5011	21-Nov-2016	78	21-Oct-2016	7E8545366
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
21-Nov-2016	524	21-Nov-2016	11	19-Oct-2016	7E8545089
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP Altered by 030 018 041				
22-Sep-2016	524	22-Sep-2016	11	26-Aug-2016	7E8370433
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
19-Aug-2016	524	19-Aug-2016	5	15-Aug-2016	7E8267058
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
19-Jul-2016	1500	19-Jul-2016	3	19-Apr-2016	7E8170620
1500	ANNUAL REPORT TO CREDITORS				
19-May-2016	524	19-May-2016	11	19-Apr-2016	7E7974897
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
11-Mar-2016	524	11-Mar-2016	6	15-Feb-2016	7E7781311

524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
02-Mar-2016	524	02-Mar-2016	7	26-Feb-2016	7E7750909
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
25-Feb-2016	1500	25-Feb-2016	4	19-Apr-2014	7E7733520
1500	ANNUAL REPORT TO CREDITORS				
25-Feb-2016	1500	25-Feb-2016	4	19-Apr-2015	7E7733519
1500	ANNUAL REPORT TO CREDITORS				
18-Nov-2015	524	18-Nov-2015	11	19-Oct-2015	7E7478077
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP Altered by 029 659 012				
14-Sep-2015	524	14-Sep-2015	5	15-Aug-2015	7E7300645
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
28-Aug-2015	524	28-Aug-2015	12	26-Aug-2015	7E7254326
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
19-May-2015	524	19-May-2015	10	19-Apr-2015	7E6965131
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP Altered by 029 659 013				
11-Mar-2015	524	11-Mar-2015	12	26-Feb-2015	7E6786737
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
04-Mar-2015	524	04-Mar-2015	11	15-Feb-2015	7E6768288
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
13-Nov-2014	524	13-Nov-2014	10	19-Oct-2014	7E6519562
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP Altered by 029 659 004				
12-Sep-2014	524	12-Sep-2014	11	15-Aug-2014	7E6363601
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
27-Aug-2014	524	27-Aug-2014	11	26-Aug-2014	7E6320910

524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
19-May-2014	524	19-May-2014	11	19-Apr-2014	7E6058531
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP Altered by 029 659 005				
25-Mar-2014	524	25-Mar-2014	12	26-Feb-2014	7E5935182
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
07-Mar-2014	524	07-Mar-2014	11	15-Feb-2014	7E5891185
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
18-Feb-2014	506	18-Feb-2014	7	18-Feb-2014	7E5846853
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
18-Feb-2014	506	18-Feb-2014	7	18-Feb-2014	7E5846853
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
18-Feb-2014	506	18-Feb-2014	7	18-Feb-2014	7E5846751
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
18-Feb-2014	506	18-Feb-2014	7	18-Feb-2014	7E5846751
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
29-Nov-2013	5011	29-Nov-2013	3	21-Nov-2013	7E5683783
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
18-Nov-2013	524	18-Nov-2013	11	19-Oct-2013	7E5654848
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
10-Sep-2013	524	10-Sep-2013	11	15-Aug-2013	7E5501261
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
04-Sep-2013	524	04-Sep-2013	22	26-Aug-2013	7E5486813
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
26-Aug-2013	1500	07-Mar-2016	18	20-Apr-2013	028646601

1500 ANNUAL REPORT TO CREDITORS

Altered by 029 535 808

30-Jul-2013	5011	30-Jul-2013	6	19-Jul-2013	7E5405281
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
30-Jul-2013	5011	30-Jul-2013	4	26-Jul-2013	7E5405273
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
17-Jul-2013	505	17-Jul-2013	2	17-Jul-2013	7E5377606
505R	NOTIFICATION OF RESIGNATION OR REMOVAL OF LIQUIDATOR/PROVISIONAL LIQUIDATOR				
20-May-2013	524	20-May-2013	11	19-Apr-2013	7E5229723
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
16-May-2013	5011	16-May-2013	8	18-Apr-2013	7E5221441
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
16-May-2013	5011	16-May-2013	3	16-Apr-2013	7E5221439
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
12-Mar-2013	524	12-Mar-2013	11	26-Feb-2013	7E5081061
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
11-Mar-2013	524	11-Mar-2013	8	15-Feb-2013	7E5076287
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
21-Jan-2013	5011	21-Jan-2013	7	21-Dec-2012	7E4970710
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
19-Nov-2012	524	19-Nov-2012	8	19-Oct-2012	7E4857222
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
16-Oct-2012	507	16-Oct-2012	11	16-Feb-2012	7E4785713
507G	REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER				

21-Sep-2012	507	21-Sep-2012	11	27-Aug-2012	7E4733772
507G	REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER				
17-Sep-2012	524	28-Sep-2012	9	20-Aug-2012	028211192
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
17-Sep-2012	524	28-Sep-2012	6	27-Aug-2012	028211191
524P	PRESENTATION OF ACCOUNTS & STATEMENT FINAL ACCOUNTS OF RECEIVER & MANAGER Altered by 028 749 955				
03-Sep-2012	524	03-Sep-2012	11	15-Aug-2012	7E4693473
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
30-Aug-2012	504	30-Aug-2012	4	27-Aug-2012	028216061
504B	NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER				
30-Aug-2012	505	30-Aug-2012	2	27-Aug-2012	7E4686885
505B	NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER				
28-Aug-2012	505	28-Aug-2012	2	27-Aug-2012	7E4681504
505L	NOTIFICATION OF RECEIVER MANAGER CEASING TO ACT				
25-May-2012	5011	25-May-2012	19	20-Apr-2012	7E4478241
5011B	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A Altered by 028 468 193				
08-May-2012	5011	08-May-2012	5	16-Apr-2012	7E4441212
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
02-May-2012	524	02-May-2012	8	20-Apr-2012	7E4428908
524Z	PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF FINAL ACCOUNTS OF ADMINISTRATOR				
24-Apr-2012	505	24-Apr-2012	2	20-Apr-2012	7E4412932
505Y	NOTIFICATION OF RESIGNATION OR REMOVAL OF ADMINISTRATOR OF COMPANY UNDER ADMINISTRATION UNDER S.436E(4), 449B OR 449C				
24-Apr-2012	505	24-Apr-2012	2	20-Apr-2012	7E4412913
505J	NOTIFICATION OF APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)				
24-Apr-2012	509D	24-Apr-2012	2	20-Apr-2012	7E4412884
509DA	NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY 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				

Charges

ASIC Charge Number	470140	Charge status	Satisfied
Date registered	13-Dec-1994	Time registered	10:15:00
Charge type	Both Fixed & Floating		
Date Created	08-Dec-1994		

Chargee **NATIONAL AUSTRALIA BANK LIMITED**
004 044 937

Lodged	Form Type	Processed	No. Pages	
11-Dec-2002	312	11-Dec-2002	1	018191480
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	909111	Charge status	Satisfied
Date registered	11-Dec-2002	Time registered	10:42:00
Charge type	Both Fixed & Floating		
Date Created	05-Dec-2002		

Chargee **CAPITAL FINANCE AUSTRALIA LIMITED**
069 663 136

Lodged	Form Type	Processed	No. Pages	
04-Jun-2007	312	08-Jun-2007	1	023773940
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	1066324	Charge status	Satisfied
Date registered	28-Jul-2004	Time registered	15:30:00
Charge type	Both Fixed & Floating		
Date Created	28-Jul-2004		

Chargee **COMMONWEALTH BANK OF AUSTRALIA**
123 123 124

Lodged	Form Type	Processed	No. Pages	
03-Sep-2004	312	03-Sep-2004	1	020494250
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	2105255	Charge status	Satisfied
Date registered	20-Dec-2010	Time registered	14:59:00
Charge type	Both Fixed & Floating		
Date Created	13-Dec-2010		

Chargee **ECG FUNDS MANAGEMENT LTD AS CUSTODIAN AND**
AGENT FOR EQUITITRUST LTD AS RESPONSIBLE ENTITY
FOR THE EQUITITRUST PRIORITY CLASS INCOME FUND
147 968 741

Lodged	Form Type	Processed	No. Pages	
26-Aug-2011	312	04-Oct-2011	2	027621512
312	NOTIFICATION OF			
312A	DISCHARGE			

Document Details

Received	Form Type	Processed	No. Pages	Effective	
16-May-2017	902	29-May-2017	5	19-Oct-2016	030018041
902	Supplementary Document				
	Alters 7E8 545 089				
01-Dec-2016	FS67	01-Dec-2016	2	01-Dec-2016	027730811
FS67	Order Suspending Afs Licence				
24-Jun-2016	902	25-Jul-2016	23	19-Apr-2015	029659013
902	Supplementary Document				
	Alters 7E6 965 131				
24-Jun-2016	902	25-Jul-2016	24	19-Oct-2015	029659012
902	Supplementary Document				
	Alters 7E7 478 077				
24-Jun-2016	902	25-Jul-2016	24	19-Apr-2014	029659005
902	Supplementary Document				
	Alters 7E6 058 531				

24-Jun-2016 902	902 SUPPLEMENTARY DOCUMENT Alters 7E6 519 562	25-Jul-2016	23	19-Oct-2014	029659004
23-Feb-2016 902	902 SUPPLEMENTARY DOCUMENT Alters 028 646 601	07-Mar-2016	19	20-Apr-2013	029535808
01-Dec-2015 FS67	FS67 ORDER SUSPENDING AFS LICENCE	01-Dec-2015	0	01-Dec-2015	027730371
11-Nov-2014 FS67	FS67 ORDER SUSPENDING AFS LICENCE	01-Dec-2014	1	11-Nov-2014	027719889
15-Jan-2014 902	902 SUPPLEMENTARY DOCUMENT Alters 028 211 191	16-Jan-2014	3	27-Aug-2012	028749955
04-Apr-2013 902	902 SUPPLEMENTARY DOCUMENT Alters 7E4 478 241	27-May-2013	28	20-Apr-2012	028468193
05-Dec-2012 FS67	FS67 ORDER SUSPENDING AFS LICENCE	07-Dec-2012	2	05-Dec-2012	027719067
31-Jan-2012 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	31-Jan-2012	2	31-Jan-2012	7E4245817
20-Dec-2011 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	20-Dec-2011	2	20-Dec-2011	7E4173170
14-Dec-2011 FS67	FS67 ORDER SUSPENDING AFS LICENCE	14-Dec-2011	8	14-Dec-2011	026082473
22-Nov-2011 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	22-Nov-2011	3	22-Nov-2011	7E4107256
22-Nov-2011 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	22-Nov-2011	3	22-Nov-2011	7E4106959
26-Oct-2011 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	26-Oct-2011	2	26-Oct-2011	7E4044308
21-Oct-2011 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	21-Oct-2011	2	21-Oct-2011	7E4034358
21-Oct-2011 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	21-Oct-2011	4	21-Oct-2011	7E4034319

28-Jul-2011	484	28-Jul-2011	2	28-Jul-2011	7E3844445
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
15-Jun-2011	484	15-Jun-2011	2	15-Jun-2011	7E3737048
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
03-May-2011	519	03-May-2011	3	03-May-2011	027211980
519G	NOTIFICATION OF APPLICATION TO WIND UP COMPANY UNDER S. 459P, 462 OR 464				
27-Apr-2011	FS02	27-Apr-2011	23	27-Apr-2011	0L0309086
FS02	COPY OF AFS LICENCE				
07-Feb-2011	FS90	07-Feb-2011	1	07-Feb-2011	7E3456767
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
07-Feb-2011	FS90	07-Feb-2011	1	07-Feb-2011	7E3456753
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
20-Dec-2010	309	21-Dec-2010	51	13-Dec-2010	027412174
309A	NOTIFICATION OF DETAILS OF A CHARGE				
15-Dec-2010	FS88	15-Dec-2010	3	15-Dec-2010	7E3366502
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
09-Nov-2010	484	09-Nov-2010	2	09-Nov-2010	7E3283613
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
09-Nov-2010	484	09-Nov-2010	2	09-Nov-2010	7E3283588
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
30-Sep-2010	388	08-Nov-2010	58	30-Jun-2010	027362052
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2010)
24-Sep-2010	484	24-Sep-2010	2	24-Sep-2010	7E3191967
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
13-Sep-2010	FS02	13-Sep-2010	23	13-Sep-2010	0L0308402
FS02	COPY OF AFS LICENCE				
11-Aug-2010	484	11-Aug-2010	2	11-Aug-2010	7E3099509
484A1	CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS				
21-May-2010	484	21-May-2010	2	21-May-2010	7E2908272
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				

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 5122	5122 NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	26-Nov-2008 5	14-Nov-2008	024668944
25-Nov-2008 5120	5120 NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME	26-Nov-2008 6	14-Nov-2008	024668943
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 388A	388 FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	23-Oct-2007 41	30-Jun-2007	024300137 (FR 2007)
01-Aug-2007 FS53A	FS53 NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	07-Sep-2007 11	31-Jul-2007	024030038
05-Jul-2007 350	350 CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 023 956 177	09-Jul-2007 1	05-Jul-2007	023936368

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				
26-Jun-2007	311	26-Jun-2007	2	04-Jun-2007	023084888
311A	NOTIFICATION OF ASSIGNMENT OF CHARGE				
15-Jun-2007	309	18-Jun-2007	38	13-Jun-2007	023956176
309A	NOTIFICATION OF DETAILS OF A CHARGE				
	Altered by 023 936 367				
15-Jun-2007	309	18-Jun-2007	38	13-Jun-2007	023956177
309A	NOTIFICATION OF DETAILS OF A CHARGE				
	Altered by 023 936 368				
15-Jun-2007	312	18-Jun-2007	3	15-Jun-2007	023956178
312C	NOTIFICATION OF RELEASE OF PROPERTY				
15-Jun-2007	312	18-Jun-2007	3	15-Jun-2007	023956179
312C	NOTIFICATION OF RELEASE OF PROPERTY				
04-Jun-2007	312	08-Jun-2007	2	04-Jun-2007	023773941
312C	NOTIFICATION OF RELEASE OF PROPERTY				
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				(FR 2006)
	DISCLOSING ENTITY				
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	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 022 351 727	27-Jan-2006 1	27-Jan-2006	019271258	
24-Jan-2006 312C	NOTIFICATION OF RELEASE OF PROPERTY	07-Feb-2006 2	24-Jan-2006	022691023	
24-Jan-2006 312C	NOTIFICATION OF RELEASE OF PROPERTY	07-Feb-2006 2	24-Jan-2006	022691002	
23-Dec-2005 484	CHANGE TO COMPANY DETAILS	24-Jan-2006 3	23-Dec-2005	1F0077488	
484G	NOTIFICATION OF SHARE ISSUE				
484O	CHANGES TO SHARE STRUCTURE				
22-Dec-2005 309A	NOTIFICATION OF DETAILS OF A CHARGE Altered by 019 271 258	22-Dec-2005 42	14-Dec-2005	022351727	
08-Dec-2005 FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	10-Jan-2006 11	01-Dec-2005	022353958	
03-Oct-2005 388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	26-Oct-2005 25	30-Jun-2005	022285929 (FR 2005)	
03-Oct-2005 484	CHANGE TO COMPANY DETAILS	09-Nov-2005 4	06-Oct-2005	022285487	
484G	NOTIFICATION OF SHARE ISSUE				
484O	CHANGES TO SHARE STRUCTURE				
484N	CHANGES TO (MEMBERS) SHARE HOLDINGS				
07-Feb-2005 FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	09-Feb-2005 6	09-Nov-2004	020981780	
25-Oct-2004 484	CHANGE TO COMPANY DETAILS	25-Oct-2004 3	25-Oct-2004	020745645	
484A1	CHANGE OFFICEHOLDER NAME OR ADDRESS				
484A2	CHANGE MEMBER NAME OR ADDRESS				
30-Sep-2004 388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	26-Nov-2004 24	30-Jun-2004	020866482 (FR 2004)	
19-Aug-2004 350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 020 503 332	19-Aug-2004 1	19-Aug-2004	020496816	
19-Aug-2004		19-Aug-2004 1	19-Aug-2004	020496815	

350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 019 654 728				
12-Aug-2004 312C	312 NOTIFICATION OF RELEASE OF PROPERTY	12-Aug-2004 1	12-Aug-2004	020501228	
12-Aug-2004 312C	312 NOTIFICATION OF RELEASE OF PROPERTY	12-Aug-2004 1	12-Aug-2004	020501229	
06-Aug-2004 350	350 CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 020 496 010	06-Aug-2004 1	06-Aug-2004	020501044	
03-Aug-2004 309A	309 NOTIFICATION OF DETAILS OF A CHARGE Altered by 020 496 816	03-Aug-2004 26	02-Aug-2004	020503332	
28-Jul-2004 309A	309 NOTIFICATION OF DETAILS OF A CHARGE Altered by 020 496 815	28-Jul-2004 26	28-Jul-2004	019654728	
27-Jul-2004 309A	309 NOTIFICATION OF DETAILS OF A CHARGE Altered by 020 501 044	27-Jul-2004 33	21-Jul-2004	020496010	
26-Feb-2004 484J	484 CHANGE TO COMPANY DETAILS NOTIFICATION OF SHARE CANCELLATION - COMPANY BUY-BACK	02-Mar-2004 4	25-Feb-2004	020058392	
06-Feb-2004 280	280 NOTICE OF MEETING AND DOCUMENTS RE BUY-BACK	10-Feb-2004 2	06-Feb-2004	020053042	
23-Jan-2004 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	06-Feb-2004 7	15-Jan-2004	020045260	
15-Dec-2003 309A	309 NOTIFICATION OF DETAILS OF A CHARGE	15-Dec-2003 49	28-Nov-2003	019674836	
12-Nov-2003 5120	5120 NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME	14-Nov-2003 1	12-Nov-2003	017914658	
14-Oct-2003 FS02	FS02 COPY OF AFS LICENCE	14-Oct-2003 19	14-Oct-2003	0L0200526	
26-Sep-2003 388A	388 FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	13-Oct-2003 29	30-Jun-2003	019777182 (FR 2003)	
02-Apr-2003 FS50	FS50 PDS OPT-IN NOTICE	08-Apr-2003 3	02-Apr-2003	018172296	
23-Jan-2003 766C	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				
11-Dec-2002	309	11-Dec-2002	36	05-Dec-2002	017885826
309A	NOTIFICATION OF DETAILS OF A CHARGE				
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)

**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.**

Annual Returns

Year	Return Due Date	Extended Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
1994	Unknown				31-Dec-1994	N
1995	31-Dec-1995		30-Nov-1995		15-Dec-1995	N
1996	31-Dec-1996		30-Nov-1996		31-Dec-1996	N
1997	31-Dec-1997		30-Nov-1997		25-Mar-1998	N
1998	31-Jan-1999					N
1999	31-Jan-2000					N
2000	31-Jan-2001					N
2001	31-Jan-2002					N
2002	31-Jan-2003					N

Financial Reports

Balance Date	Report Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
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 ***