

Our Ref: PJH:SEB:1404  
Your Ref: Scott Couper 201110996

15 February 2022

**NOTICE TO MEMBERS OF THE EIF AND THE EPCIF SEPARATE QUESTION APPLICATION  
TO THE MEMBERS OF:**

**EQUITITRUST INCOME FUND ARSN 089 079 854 (“EIF”)  
EUITITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729 (“EPCIF”)**

We act for the Liquidators of Equititrust Limited (Receiver Appointed)(In Liquidation).

We refer to the application for determination of a separate question (**Separate Question Application**) which we have filed in Supreme Court of Queensland Proceedings No. BS 10478/11 and served on you by way of posting on this website.

On 17 December 2021, the Court made orders for the further conduct of that application (**17 December Orders**) including an order that the application be set down for hearing on 28 February 2022. A copy of those orders has also been posted on this website.

Please see **attached** for your reference a copy of the orders we are instructed by our client to seek at the hearing of the Separate Question Application.

Yours faithfully  
**HEGARTY LEGAL**

A handwritten signature in black ink, appearing to read 'Peter Hegarty', is written over a light blue horizontal line.

**PETER HEGARTY**

PRINCIPAL

D 02 9056 1736

E peterh@hegartylegal.com.au

*Duplicate*

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

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

AND

Second Applicant: **BLAIR ALEXANDER PLEASH AND RICHARD ALBARRAN IN THEIR CAPACITY AS LIQUIDATORS OF EQUITITRUST LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ACN 061 383 944**

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 Boddice

Date: 17 December 2021

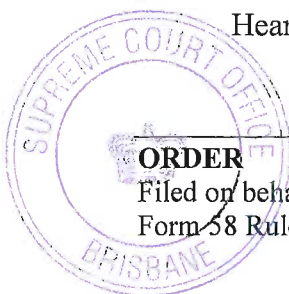
Initiating documents: Application filed 13 August 2021 (Court document 228)  
(the **Winding Up Application**)

Application filed 28 September 2021 (Court document 238) (the  
**Indemnity Application**)

Application filed 16 December 2021 (Court document 257) (the **Separate Question Application**)

BY CONSENT THE COURT ORDERS:

1. The Winding Up Application, Indemnity Application and the Separate Question Application be adjourned to a date to be fixed.
2. The Separate Question Application be listed for hearing in the civil list for hearing of a day on 28 February 2022 (**Hearing**).
3. The applicants file and serve any further material upon which they intend to rely on the Hearing by 14 January 2022.



**ORDER**  
Filed on behalf of the applicants  
Form 58 Rule 661

**HEGARTY LEGAL**  
Suite 2, Level 3, 99 Elizabeth Street  
Sydney NSW 2000  
Tel No.: 02 9056 1736  
PJH:SB:1404

4. The respondents and Mr David Whyte in his role as Court appointed receiver of the Equititrust Income Fund ARSN 089 079 854 (**EIF** and **Receiver**) file and serve any material upon which they intend to rely on the Hearing by 28 January 2022.
5. The applicants file and serve any material in reply and an outline of argument (which identifies all authorities and legislative provisions which the applicants intend to rely on) by 4 February 2022.
6. The respondents and the Receiver file and serve any outline of argument (which identifies all authorities and legislative provisions which the respondents or Receiver intend to rely on) by 16 February 2022.
7. Costs of all applications, and the hearing today, be reserved.
8. Liberty to apply on not less than two business days' notice in writing

Signed:

  
Deputy Registrar



**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE  
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

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

AND

Second Applicant: **BLAIR ALEXANDER PLEASH AND RICHARD ALBARRAN IN THEIR CAPACITY AS LIQUIDATORS OF EQUITITRUST LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ACN 061 383 944**

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 (insert)

Date: (insert) 2022

Initiating documents: Application filed 13 August 2021 (Court document 228)  
(the **Winding Up Application**)

Application filed 28 September 2021 (Court document 238) (the **Indemnity Application**)

Application filed 16 December 2021 (Court document 257) (the **Separate Question Application**)

THE COURT ORDERS THAT:

1. That the remuneration of the second applicants be approved and fixed in the sum of \$85,382.50 plus GST for the work they and their employees performed in carrying out the work they were required to perform under paragraph 1 of the order of Justice Boddice made on 2 April 2019, in the period 2 April 2019 to 20 April 2020.
2. It is declared that the second applicants are entitled to be indemnified out of the assets of the Equititrust Income Fund ARSN 089 079 854 (**EIF**) in respect of:
  - (a) the expenses they incurred as administrators of the first applicant; and

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**ORDER**

Filed on behalf of the applicants  
Form 58 Rule 661

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(b) the remuneration and expenses they incurred as liquidators of the first applicant;  
to extent:

(c) such amounts were reasonably and properly incurred; and

(d) such amounts concern remuneration, are fixed by the court; and

(e) such amounts are attributable to EIF; and

(f) such amounts as are attributable to the winding up of the first applicant and EIF; and

(g) such amounts as are attributable to the winding up of the first applicant and EIF and any other trust, equally between those trusts.

[(In the alternative to order 2)

#. The question of whether the second applicants are entitled to be indemnified out of the assets of the EIF in respect of:

(a) the expenses they incurred as administrators of the first applicant; and

(b) the remuneration and expenses they incurred as liquidators of the first applicant;

to the extent:

(c) such amounts were reasonably and properly incurred; and

(d) such amounts concern remuneration, are fixed by the court; and

(e) such amounts are attributable to EIF; and

(f) such amounts as are attributable to the winding up of the first applicant and EIF; and

(g) such amounts as are attributable to the winding up of the first applicant and EIF and any other trust, equally between those trusts,

be determined separately and prior to trial.

#. (Appropriate directions for the hearing of the separate question)]

3. Subject to further order, the applicants be indemnified from the property of EIF for all proper costs and expenses (including legal costs on a full indemnity basis) incurred by them to date, and in the future, in relation to the Indemnity Application with such amounts to be paid by Mr David Whyte in his role as Court appointed receiver of the EIF (**Receiver**) to the applicants from the property the EIF, within 14 days of demand for payment (accompanied by copies of the tax invoices or other documents evidencing the costs and expenses) being made on the said Receiver, from time to time.

4. Mr David Whyte (and insert any EIF members that oppose application) pay the applicants' costs of the Separate Question Application on the indemnity basis as agreed or assessed.

5. Subject to further order, Mr Whyte is not to be paid or reimbursed, as the case may be, from the assets of EIF any amount in respect of:
  - (a) work he has performed and costs he has incurred in relation to the Separate Question Application; and
  - (b) any amount he is required to pay pursuant to order 4 herein;without first obtaining the approval in writing of a majority by value of the members of the EIF.
6. Otherwise, the costs of the Separate Question Application be reserved.
7. The issue of the costs reserved pursuant to order 5 herein be listed for hearing on the giving of not less than seven days notice in writing by any party.
8. The balance of the Indemnity Application and the Winding Up Application be listed for hearing on (insert date) 2022 for directions.
9. Liberty to apply on not less than two business days' notice in writing

Signed: .....