

**IN THE MATTER OF EQUITITRUST LIMITED A.C.N. 061 383 944**

Applicant: **EQUITITRUST LIMITED A.C.N. 061 383 944**

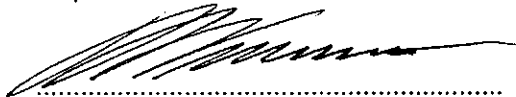
**AFFIDAVIT**

I, **PAUL JAMES VINCENT**, of Santos Place, George Street, Brisbane in the State of Queensland, being a Fellow of the Institute of Chartered Accountants in Australia and a Director of Vincents Chartered Accountants, state on oath:-

1. I am a non-executive Director of Equititrust Limited having been appointed to the Board of that company on 24 October 2011. The Board comprises myself, Mr Jeff McDermid, Mr Troy Bingham and Mr Warwick Powell. I am authorized on behalf of the Board to swear this affidavit.
2. When I was first appointed to the Board, I became aware of disputation between some former members of the Board, namely Mr David Tucker and Mr David Kennedy, on the one hand and Mr Mark McIvor, the sole shareholder of Equititrust Limited on the other hand, which had led to a Court application by Mr Tucker's superannuation fund, Tucker SF Pty Ltd, by Court proceedings 9534/2011, to wind up the Equititrust Income Fund. That application was heard on 27 October 2011 and was adjourned to a date to be fixed. In those Court proceedings, I swore an affidavit, as did Mr McDermid and I seek leave to refer to those affidavits in this application.
3. Equititrust Limited is the responsible entity and trustee of three managed investment schemes each comprising a mortgage fund, being:-
  - (i) the Equititrust Income Fund ("EIF") (being a fund with approximately 1400 members);
  - (ii) the Equititrust Premium Fund ("EPF") (being a fund of approximately 40 members);
  - (iii) the Equititrust Priority Class Income Fund ("EPCIF") (being a fund of approximately 5 members).
4. Two of these funds, being EIF and EPCIF, are registered managed investment schemes ("Funds"). EPF is unregistered and is not required to be registered as a managed investment scheme under the Corporations Act.
5. Since having taken charge of Equititrust Limited in late October 2011, the

Page 1

Deponent: Paul James Vincent



Taken by



Justice of the Peace/Solicitor

**Form 46 —Affidavit**

Filed on behalf of: Applicant

Nyst Lawyers  
 16 Nerang Street  
 SOUTHPORT QLD 4215  
 Phone: (07) 5509 2400  
 Fax: (07) 5571 0949  
 Ref: AJT:SG:762

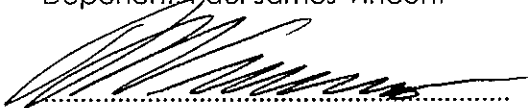
new Board has undertaken a review of the position of the Funds, the position of Equititrust in its own right and is in the process of formalising strategies and policies for the wind down of the three Funds.

6. I say the wind down of the Funds as, by resolutions dated 12 October 2011, pursuant to Section 601NC of the Corporations Act, the prior Board of Equititrust Limited resolved to wind up the Funds. These resolutions triggered a statutory mechanism for the Funds to be wound up which provides for the opportunity for members, if they are so inclined, to seek a general meeting of the Fund of which they are a member called to consider whether or not the Fund should be wound up and other associated matters. Notices have been sent to all members of the EIF and EPCIF. Exhibits "PJV-1" and "PJV-2" are copies of those notices. As part of any meeting resolutions may be passed regarding the winding up of the Fund including who should undertake that role.
7. In circumstances where the assets of the Funds are loans to third parties secured over real property, and where all of those loans aside from approximately three or four are in default (and where Equititrust Limited has taken control of the real property assets), the Board is of the view that the Funds must be wound up and it is in the members' interests for that to occur forthwith. Without going into detail of the strategy to best wind up the Funds, it suffices to say that the new Board has considered a strategy on a case by case, asset by asset, and loan by loan evaluation designed to maximise the return to investors through a sale, joint venture or selective further development of the property assets and legal recovery action against defaulting borrowers and guarantors.
8. The Board's preferred approach would be to follow through the winding-up procedure as notified to members. Intervening events, as set out below, have necessitated the winding-up to be brought forward and crystallized. I can say that the Board has received no objections from any member to the winding up proposed by the Board and indeed it has received widespread support from members for the winding up.
9. As of last Friday evening an issue has arisen regarding insurance for both Equititrust Limited and the Directors and Officers of that company. An extension of the current policies of insurance (with some amendments) was negotiated until 4:00pm (EDST) on Monday, 21 November 2011. The Board is not optimistic that insurance cover will be obtained subsequent to the expiry next Monday afternoon (although efforts are being made to that end). If no insurance cover is obtained then I would resign as a director and I am informed by the other member of the Board and verily believe that each of them would also resign as directors.
10. The maintenance of a valid insurance policy is a condition of the AFSL. Exhibit "PJV-3" to this affidavit is a true copy of the AFSL.
11. It is the view of the Board that if they resign, the Australian Securities & Investments Commission ("ASIC") may make application for the appointment of a provisional liquidator to Equititrust Limited. If that occurs, then the secured creditors of Equititrust Limited and the Funds, which include the National Australia Bank Limited, the Commonwealth Bank, the Bank of Scotland International may also appoint receivers to protect their security


---

Page 2

Deponent: Paul James Vincent



Taken by



Justice of the Peace/Solicitor

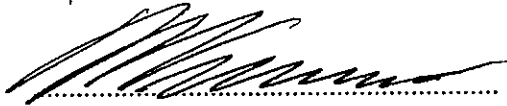
interests. In the Board's view this would not be in the best interests of members of the Funds in light of the:-

- (1) Several further significant layers of fees which would be payable to any provisional liquidator and receivers and managers (as opposed to the current operating costs associated with Equititrust Limited closing down the Funds itself); and
  - (2) more importantly, the likely difference in strategy which would be adopted by any external appointee seeking to realise quickly the real property assets of the Funds, as opposed to the current strategy which the Board of Equititrust would wish to implement which in my experience would be more focused upon deriving full value of the Funds' assets rather than a potential "fire sale" of the assets.
12. The clear view of the Board is that investor interests would be best served and a greater return to investors derived if the strategy currently being implemented by the current Board of Equititrust, namely an orderly realisation of the property assets, were allowed to be pursued.
13. Further, Equititrust in its own right is faced with a number of obstacles moving forward including the lack of insurance and consequential breach of the condition of the AFSL, dealing with its own creditors and defending a mooted class action brought by investors.
14. Against this background, and advice having been taken, the Board has, at meetings held yesterday afternoon and today, considered the following issues:-
- (i) The best interests of members of the Funds;
  - (ii) Issues relating to the obtaining of insurance moving forward;
  - (iii) The future solvency of Equititrust Limited in its own right;
  - (iv) The potential appointment of a voluntary administrator to Equititrust Limited;
  - (v) The potential appointment of a liquidator to Equititrust Limited;
  - (vi) Issues relating to Equititrust Limited maintaining its Australian Financial Services Licence (and the need for such a licence in order to wind down the Funds);
  - (vii) An issue regarding the reconversion of subordinated units in EIF and EPF;
  - (viii) The costs and expenses of the appointment of external party or parties to Equititrust Limited; and
  - (ix) The impact of a forced or fire sale strategy being adopted in relation to the realisation of the real property assets.
15. Having considered the above factors the Board has formed the view that it is in the best interests of members of the Funds to apply to the Court for:-


---

Page 3

Deponent: Paul James Vincent



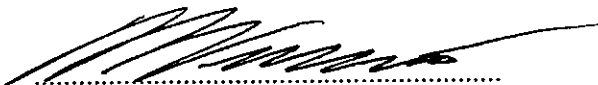
Taken by



Justice of the Peace/Solicitor


- (a) the appointment of a temporary responsible entity to the Funds;
  - (b) that the EIF and EPCIF be wound up pursuant to Section 601ND of the Act; and
  - (c) a committee consisting of Mr Jeff McDermid, Mr Paul Vincent and Mr Nick Combis be appointed pursuant to Section 601NF of the Act to take responsibility for ensuring that the EIF and EPCIF are wound up in accordance with their constitutions and appropriate directions of the Court to give effect to that.
16. The Board is yet to identify the potential temporary responsible entity. It is considering several options and hopes to be in a position shortly to identify one.
17. It is the Board's view that notice of this application should be provided to all members of the Funds. This involves notification being provided to in excess of 1400 people in circumstances of urgency given the expiration of the policies of insurance next Monday, 21 November 2011.
18. As such, Equititrust Limited seeks orders today that notification of the application be provided to members by:-
- (a) a prominent advertisement of the application being published in the Australian Newspaper, the Courier Mail, the Gold Coast Bulletin;
  - (b) notification of the application being made in a prominent location on the Equititrust Limited website; and
  - (c) a mail out being posted by ordinary post to all members at their last known addresses.
19. Such notification would detail the orders being sought as part of the application and that the application would be heard on Monday, 21 November 2011.
20. I ask that this Honourable Court make such directions for notice to members as it is the Board's view that it is in the best interests of investors.

Deponent: Paul James Vincent



.....

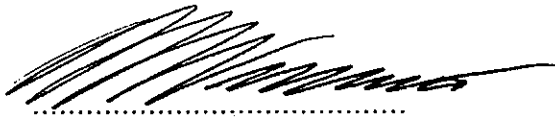
Taken by



.....  
Justice of the Peace/Solicitor

21. All the facts and circumstances herein 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 the abovenamed )  
Deponent at Brisbane )  
this 15 day of November 2011 )  
before me: )



Justice of the Peace/Solicitor  
ASHLEY JOHN TIPUNY

Deponent: Paul James Vincent

Taken by

.....

.....  
Justice of the Peace/Solicitor

SUPREME COURT OF QUEENSLAND

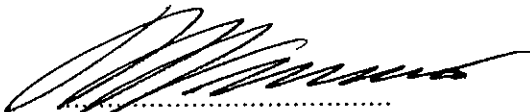
REGISTRY: Brisbane  
NUMBER: BS 2011

IN THE MATTER OF EQUITRUST LIMITED A.C.N. 061 383 944

Applicant: EQUITRUST LIMITED A.C.N. 061 383 944

CERTIFICATE OF EXHIBIT

Exhibit "PJV-1" to the Affidavit of PAUL JAMES VINCENT sworn 15 November 2011.



Deponent



Justice of the Peace/Solicitor

---

Form 47 – Certificate of Exhibit

Nyst Lawyers  
16 Nerang Street  
SOUTHPORT QLD 4215  
Phone: (07) 5509 2400  
Fax: (07) 5571 0949

Filed on behalf of: Applicant

---

21 October 2011

«Address»  
«City» «State» «Postcode»

Dear «Salutation»

**Equititrust Income Fund ASRN 089 079 854 (the Fund)**  
**Wind-up of the Fund**

As you may be aware, Equititrust has undergone some significant changes over the past few weeks, the most notable being the move by the outgoing Board led by Chairman Mr John Goddard to formally move to wind-up the Fund. This decision has been affirmed by the incoming Board of Directors, which has been structured to implement this wind-up process.

As we understand that change can be unsettling, I give my assurance that the new Board have already rolled up our sleeves to get across all the issues in order to provide increased certainty going forward.

Regrettably, the offices were disrupted yesterday with an Australian Securities and Investments Commission (ASIC) led search that is predominantly focused on historical transactions and an ongoing investigation. The new Board welcomes this review and are committed to working with regulators and creditors to ensure a fair and transparent outcome.

The new Board of Directors, led by myself, have an expansive mix of financial and property experience but more importantly, are an independent Board and are completely committed to optimising asset value for unitholders as quickly as possible.

We will do this by putting in place a rapid transition to a lean business structure that is focused on delivering for unitholders within a low fixed cost framework. While aggressively controlling costs we are also taking immediate steps to ensure a progressive and orderly return of unitholder's investment funds.

Having already spoken to a number of unitholders, I know there are a number of issues that are of concern. I will do my utmost to address these concerns as effectively as possible now, and going forward.

**Repayment of the NAB**

As you know, Equititrust has for the best part of the past ten months been heavily focused on asset sales to repay loans owed to the NAB. Every effort is being made to settle the transactions that have been contracted and to contract up sales that are in negotiation. We anticipate that over the next few weeks we will be able to provide a more definitive position. Based on what we know presently, we are working towards a settlement date early in the new year.

### Capital Distributions

Based on the present assessment, we are still working towards recommencing capital distributions early in 2012. As a key objective of the Board, you will be kept informed of this status on a regular basis.

### Shareholder Influence

The third topic that I would like to address is that of the role of Equititrust's founder, Mark McIvor. The Board as stated above are independent professionals with a singular and very focused objective of realising asset value to all unitholders through an orderly and strategic wind-up of the Fund. As the founder, shareholder and largest unitholder, Mark McIvor has passionate views about the manner in which this could be done. The Board respects these views, but reiterates that Mr McIvor's input will be treated the same as any other unitholder who is passionate about being part of the solution for all concerned.

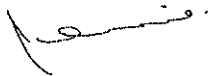
There are a number of regulatory steps that are involved in the wind-up of the Trust pursuant to Section 601NC of the *Corporations Act 2001* (Cth) that need to be included in this advice so they have been attached. I urge you to please read through them and should anything be unclear, or if you have any questions, please do not hesitate to contact our offices.

Before I conclude this correspondence, I would like to reiterate that my professional career of 40 years has revolved around achieving fair and equitable business outcomes through deliberative and customer centric decision making. This applies as much to my chairmanship of Equititrust now as it has to other roles I have held. The Board and I have accepted the responsibilities of this task and are committed to focusing each and every day to making things right and optimising your outcome.

Should you have any queries, please contact Yvette Safier as follows:-

1. Telephone: 1800 635 527
2. Facsimile: (07) 5527 5900
3. Email: [yvette.safier@equititrust.com.au](mailto:yvette.safier@equititrust.com.au)

Yours faithfully



**Jeff McDermid**  
Chairman  
EQUITITRUST LIMITED



**NOTICE TO WIND-UP SCHEME PURSUANT TO  
SECTION 601NC OF THE CORPORATIONS ACT 2001 (CTH)**

**To:** The Unitholder of the Scheme ("the Member")

**From:** Equititrust Limited ("the Responsible Entity")

**Scheme:** Equititrust Income Fund ARSN 089 079 854 ("the Scheme")

**Purpose:** The purpose of the scheme was to provide Members with regular stable income payments over the medium term through mortgage investments undertaken by the Scheme. The purpose of the Scheme cannot be accomplished, and the Scheme should be wound-up.

**TAKE NOTICE THAT**

1. This notice is given to you as a Member of the Scheme to notify you that the Purpose of the Scheme has been accomplished.
2. This is a notice under Section 601NC of the *Corporations Act 2001* (Cth) (Corporations Act) and the Scheme. Section 601NC of the Corporations Act provides that a Scheme may be wound-up when its purposes have been accomplished. Clause 9 of the Constitution also permits the Scheme to be wound-up on this ground.
3. On 7 September 1999, the Scheme was registered as a Managed Investment Scheme.
4. The Scheme has operated as a mortgage trust, raising funds from Investors and lending those funds to Borrowers.
5. In October 2008, the Australian Federal Government provided a capital guarantee for deposits with banks and credit unions. The Government guarantee of banks precipitated a "run" on virtually all mortgage funds, Australia-wide.
6. The Responsible Entity of the Scheme determined on 30 October 2008 it appropriate in the circumstances to defer, and later suspend, the processing and payment of withdrawal requests, and fund has subsequently been "frozen".
7. As a result of the global financial crisis, and the general state of the Australian economy, property prices have reduced and development finance contracted which has resulted in the vast majority, if not all, of the Scheme's loans being in default, a dramatic increase in litigation with recalcitrant borrowers, and the Trust suffering significant losses.
8. The Scheme ceased paying distributions to members in or about April 2011.

**Purpose cannot be accomplished**

9. The Responsible Entity of the Scheme determined on 12 October 2011 that the purpose of the Scheme cannot be accomplished, and that it should be wound-up.
10. The reasonable costs and expenses in undertaking the winding-up process will be payable from the Scheme assets pursuant to the Constitution.
11. The Scheme will be audited as part of the winding-up procedure. Any surplus in the Scheme's bank account will be distributed to Members after payment of any creditors, the Responsible Entity's reasonable fees and expenses, the costs of auditing, winding-up and deregistration of the Scheme by the Responsible Entity.

**If you wish that a Meeting of Members be convened to address the winding-up of the Scheme then please read the following:**

Members have a right under section 601NC(2) of the Corporations Act to take action under Division 1 of Part 2G.4 and call a members' meeting to consider the proposed winding-up of the Scheme and to vote on any extraordinary resolution members propose about the winding-up of the scheme.

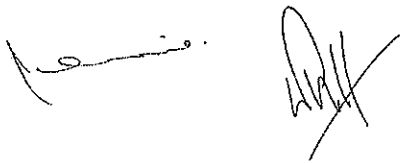
Division 1 of Part 2G.4 of the Corporations Act requires the Responsible Entity to call a meeting of Members on the request of:

- (a) Members with at least 5% of the votes that may be cast on the resolution; or
- (b) At least 100 Members who are entitled to vote on the resolution.

In order to request a meeting Members must write (by mail or fax) to the Responsible Entity within 28 days of the Responsible Entity giving this notice. The 28 days period shall commence on the day following the date of notice. If insufficient Members request a meeting then the Responsible Entity may proceed to wind-up the Scheme.

The estimated cost of calling and conducting a meeting of Members is approximately \$25,000.00.

DATED: 21 October 2011



**Equititrust Limited**

Australian Business Number 74 061 383 944  
Australian Financial Service Licence 230471

3 November 2011

«Address»  
«City» «State» «Postcode»

Dear «Salutation»

**Equititrust Income Fund ASRN 089 079 854 (the Fund)**  
**Wind-up of the Fund**

I refer to my letter of 21 October 2011 enclosing a Notice to Wind Up Scheme pursuant to Section 601NC of the Corporations Act (**Notice to Wind up the Scheme**).

As previously indicated the Constitution of the Fund and the *Corporations Act 2001* (Cth) (Corporations Act) permit the Fund to be wound up if its purpose has been, or cannot be, accomplished.

The Responsible Entity will take all steps necessary under the Corporations Act, or the Fund Constitution or required by ASIC to wind up the Fund.

At the request of Members a meeting may be held to challenge or amend the wind-up process. However this meeting is not a legal requirement and is at the sole discretion of Members.

The Notice to Wind up the Scheme circulated on 21 October 2011, erroneously contained two references at paragraphs numbered 1 and 2 which stated the purpose of the scheme **has been** accomplished when clearly they should have stated the purpose of the scheme **cannot be** accomplished. These typographical errors were not repeated elsewhere in the Notice and do not invalidate the Notice to Wind up the Scheme.

**Recommended Course**

Equititrust recommends the Fund be wound up without a meeting of Members as the purpose of the Fund cannot be accomplished. This would be the most cost effective manner to wind-up the Fund.

If you wish to obtain independent legal advice on the winding-up of the Fund, please do so. Any legal expenses you incur must be paid by you as you are not entitled to have our legal expenses paid by the Fund.

The Notice to Wind-up the Scheme stated that should the Responsible Entity not receive sufficient written requests from Members to call a meeting within 28 days of the Responsible Entity giving the notice, the Fund shall be wound-up. The 28 days period expires on 24 November 2011.

The costs associated with the winding-up remain an expense of the Fund. In the event Members request a meeting, the costs of calling, convening and conducting the meeting will be an expense of the Fund.

There are a number of regulatory steps that are involved in the wind-up of the Fund.

### Winding up of the Scheme

The Responsible Entity will review all assets of the Fund on an asset by asset basis, and loan by loan basis, to consider all recovery options which may include a sale, (re)development, joint ventures, or other strategies designed to maximise the recovery for Members. Similarly the Responsible Entity will consider all rights and recovery actions against borrowers, security providers, guarantors and others, including litigating through to trial, compromises, settlements, or other arrangements which may generate financial returns to maximise the recovery for Members.

The Responsible Entity will consider the likely timing and costs of any action in evaluating its decisions, and such other relevant facts and circumstances that may exist. In order to facilitate the wind-up of the Fund various steps will be completed including:

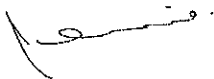
- (a) lodgement of a Form 5138 Notice to Wind-Up with ASIC;
- (b) recover all loans and receive payment of all outstanding debts to the Fund, which may involve litigation and/or exercising power of sale as mortgagee of relevant security properties;
- (c) pay all outstanding creditors of the Fund;
- (d) terminate any agreements with external service providers;
- (e) prepare final Fund financial statements and reports;
- (f) arrange for the final audit of the Fund financials by an external registered auditor;
- (g) complete a statutory compliance audit of the Fund and the wind-up process;
- (h) distribution of a surplus of the Fund to Members;
- (i) provide Members with audited Fund financial report;
- (j) provide ASIC with confirmation of the wind-up of the Trust and make all necessary arrangements for ASIC to de register the Trust; and
- (k) lodgement of a final Form 5138 Notice to Wind-up with ASIC once the wind-up has been completed.

I urge you to please read this letter and the previous Notice to Wind-up the Scheme carefully and should anything be unclear, or if you have any questions, please do not hesitate to contact our offices.

Should you have any queries, please contact Yvette Safier as follows:

1. Telephone: 1800 635 527
2. Facsimile: (07) 5527 5900
3. Email: [yvette.safier@equititrust.com.au](mailto:yvette.safier@equititrust.com.au)

Yours faithfully



**Jeff McDermid**  
Chairman  
EQUITITRUST LIMITED

SUPREME COURT OF QUEENSLAND

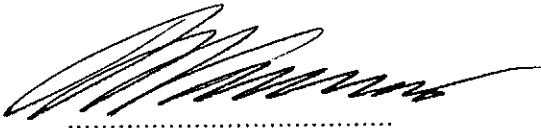
REGISTRY: Brisbane  
NUMBER: BS 2011

IN THE MATTER OF EQUITRUST LIMITED A.C.N. 061 383 944

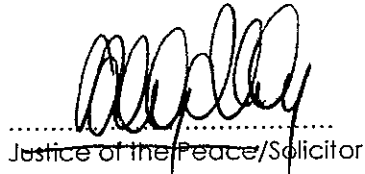
Applicant: EQUITRUST LIMITED A.C.N. 061 383 944

CERTIFICATE OF EXHIBIT

Exhibit "PJV-2" to the Affidavit of PAUL JAMES VINCENT sworn 15 November 2011.



.....  
Deponent



.....  
Justice of the Peace/Solicitor

---

Form 47 – Certificate of Exhibit

Nyst Lawyers  
16 Nerang Street  
SOUTHPORT QLD 4215  
Phone: (07) 5509 2400  
Fax: (07) 5571 0949

Filed on behalf of: Applicant

---



## EQUITRUST CAPITAL

03 November 2011

Mr M McIvor  
ECG Administration  
PO Box 8111  
GOLD COAST MC QLD 9726

Dear Mark,

**RE: Equititrust Priority Class Income Fund ASRN 089 079 729 (the Fund)  
Wind-up of the Fund**

We enclose a Notice to Wind Up Scheme pursuant to Section 601NC of the Corporations Act.

The Constitution of the Fund and the *Corporations Act 2001 (Cth)* (Corporations Act) permit the Fund to be wound up if its purpose has been, or cannot be, accomplished.

The Responsible Entity will take all steps necessary under the Corporations Act, or the Fund Constitution or required by ASIC to wind up the Fund.

On receipt of the Notice the Members may call for a meeting to consider the proposed winding up of the Fund and to vote on any extraordinary resolution members propose about the winding up of the Fund.

However any meeting is not a legal requirement and if a meeting is not called the Responsible Entity will take all necessary steps to wind up the Fund.

**Please read the enclosed Notice – it is important. Unless you wish to request a meeting of Fund Members, you need not do anything.**

### Recommended Course

Equititrust recommend the Fund be wound up without a meeting of Members as the purpose of the Fund cannot be accomplished. This would be the most cost effective manner to wind- up the Fund.

If you wish to obtain independent legal advice on the winding- up of the Fund , please do so. Any legal expenses you incur will be payable by you as an individual and you are not entitled to be compensated from the Fund.

The attached Notice states that should the Responsible Entity not receive sufficient written requests from members to call a meeting within 28 days of the Responsible Entity giving this Notice , the Fund shall be wound up.

Equititrust Limited ABN 74 061 383 944  
67 Thomas Drive Chevron Island Queensland 4217  
Box 8111 GCMC Queensland 9726 Australia  
Telephone 07 5527 5527 Facsimile 07 5527 5900  
info@equititrust.com.au www.equititrust.com.au

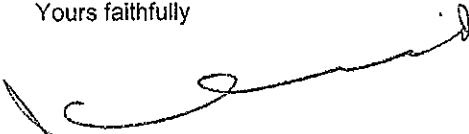
The costs associated with the winding-up remain an expense of the Fund. In the event Members request a meeting, Equititrust reserve its rights to recover costs and expenses from the Fund.

There are a number of regulatory steps that are involved in the wind-up of the Fund pursuant to Section 601NC of the *Corporations Act 2001* (Cth) that need to be included in this advice so they have been attached. I urge you to please read through them and should anything be unclear, or if you have any questions, please do not hesitate to contact our offices.

Should you have any queries, please contact Yvette Safier as follows:-

1. Telephone: 1800 635 527
2. Facsimile: (07) 5527 5900
3. Email: [yvette.safier@equititrust.com.au](mailto:yvette.safier@equititrust.com.au)

Yours faithfully



Jeff McDermid  
Chairman  
EQUITITRUST LIMITED



**NOTICE TO WIND-UP SCHEME PURSUANT TO  
SECTION 601NC OF THE CORPORATIONS ACT 2001 (CTH)**

**To:** The Unitholder of the Scheme ("the Member")

**From:** Equititrust Limited ("the Responsible Entity")

**Scheme:** Equititrust Priority Class Income Fund ARSN 089 079 729 ("the Scheme")

**Purpose:** The purpose of the Scheme was to provide Members with exposure to specialised asset classes, investments in registered and unregistered managed investment schemes, and other investment opportunities. The Responsible Entity considers the purpose of the Scheme cannot be accomplished, and the Scheme should be wound-up.

**TAKE NOTICE THAT**

1. This Notice is given to you as a Member of the Scheme to notify you that the purpose of the Scheme cannot be accomplished.
2. This is a Notice under Section 601NC of the *Corporations Act 2001* (Cth) (Corporations Act) and the Scheme Constitution. Section 601NC of the Corporations Act provides that a scheme may be wound-up when the purpose of the scheme cannot be accomplished. Clause 8 of the Constitution also permits the Scheme to be wound-up on this ground.
3. On 7 September 1999, the Scheme was registered as a Managed Investment Scheme.

**Purpose cannot be accomplished**

4. The Responsible Entity of the Scheme determined on 12 October 2011 that the purpose of the Scheme cannot be accomplished, and that it should be wound-up.

**Winding up of the Scheme**

5. The Responsible Entity will take all steps necessary under the Corporations Act, or the Scheme Constitution or required by ASIC to wind up the Scheme.
6. In order to facilitate the wind up of the Scheme various steps will be completed including:
  - (a) Lodgement of a Form 5138 Notice to Wind Up with ASIC;
  - (b) Pay all outstanding creditors of the Scheme;
  - (c) Terminate any agreements with external service providers;
  - (d) Prepare final Scheme financial statements and reports;
  - (e) Arrange for the final audit of the Scheme financials by an external registered auditor;
  - (f) Complete a statutory compliance audit of the Scheme and the wind up process;



- (g) Lodgement of another Form 5138 Notice to Wind Up with ASIC;
- (h) Distribute any surplus assets of the Scheme to Members on a pro-rata basis;
- (i) Provide Members with audited Scheme financial report; and
- (j) Provide ASIC with confirmation of the wind up of the Scheme and make all necessary arrangements for ASIC to de register the Scheme.

- 7. The reasonable costs and expenses in undertaking the winding-up process will be payable from the Scheme assets pursuant to the Constitution.
- 8. The Scheme will be audited as part of the winding-up procedure. Any surplus in the Scheme's bank account will be distributed to Members after payment of any creditors, the Responsible Entity's reasonable fees and expenses, the costs of auditing, winding-up and deregistration of the Scheme by the Responsible Entity.

**If you wish that a Meeting of Members be convened to consider and vote on the winding-up of the Scheme then please read the following:**

Members have a right under section 601NC(2) of the Corporations Act to take action under Division 1 of Part 2G.4 and call a members' meeting to consider the proposed winding-up of the Scheme and to vote on any extraordinary resolution members propose about the winding-up of the Scheme.

Division 1 of Part 2G.4 of the Corporations Act requires the Responsible Entity to call a meeting of Members on the request of:

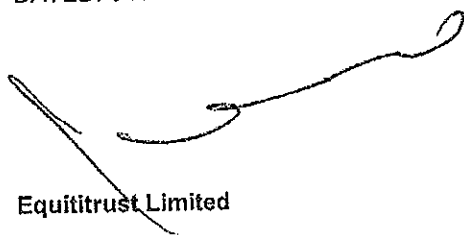
- (a) Members with at least 5% of the votes that may be cast on the resolution; or
- (b) At least 100 Members who are entitled to vote on the resolution.

In order to request a meeting Members must write (by mail or fax) to the Responsible Entity within 28 days of the Responsible Entity giving this notice. The 28 days period shall commence on the day following the date of notice. If insufficient Members request a meeting then the Responsible Entity may proceed to wind-up the Scheme.

If you as a Member want the Scheme wound up then you are not required to take any action.

The estimated cost of calling and conducting a meeting of Members is approximately \$500.00.

DATED: 3 November 2011



Equititrust Limited

Australian Business Number 74 061 383 944  
Australian Financial Service Licence 230471

SUPREME COURT OF QUEENSLAND

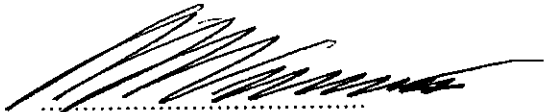
REGISTRY: Brisbane  
NUMBER: BS 2011

IN THE MATTER OF EQUITRUST LIMITED A.C.N. 061 383 944

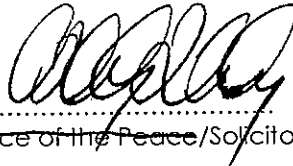
Applicant: EQUITRUST LIMITED A.C.N. 061 383 944

CERTIFICATE OF EXHIBIT

Exhibit "PJV-3" to the Affidavit of PAUL JAMES VINCENT sworn 15 November 2011.



Deponent



Justice of the Peace/Solicitor

---

Form 47 – Certificate of Exhibit

Nyst Lawyers  
16 Nerang Street  
SOUTHPORT QLD 4215  
Phone: (07) 5509 2400  
Fax: (07) 5571 0949

Filed on behalf of: Applicant

---

# Australian Financial Services Licence

EQUITITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

was licensed as an Australian Financial Services Licensee pursuant to section 913B of the Corporations Act 2001. The conditions of the licence are hereby varied from the date hereunder. The licensee shall continue to be licensed as an Australian Financial Services Licensee subject to the conditions and restrictions which are prescribed, and to the conditions contained in this licence and attached schedules.

Effective 27 April 2011

## Authorisation

1. This licence authorises the licensee to carry on a financial services business to:
  - (a) deal in a financial product by:
    - (i) issuing, applying for, acquiring, varying or disposing of a financial product in respect of the following classes of financial products:
      - (A) derivatives; and
      - (B) interests in managed investment schemes excluding investor directed portfolio services; and
    - (ii) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:
      - (A) deposit and payment products limited to:
        - (1) basic deposit products;
      - (B) derivatives;
      - (C) general insurance products; and
      - (D) interests in managed investment schemes excluding investor directed portfolio services;
  - (b) operate the following kinds of registered managed investment schemes (including the holding of any incidental property) in its capacity as responsible entity:
    - (i) "Equititrust Income Fund" scheme (ARSN: 089 079 854),
      - (A) a scheme which only holds the following types of property:
        - (1) direct real property;
        - (2) financial assets; and
        - (3) mortgages; and
- (ii) "Equititrust Priority Class Income Fund" scheme (ARSN: 089 079 729),
  - (A) a scheme which only holds the following types of property:
    - (1) direct real property;
    - (2) financial assets; and
    - (3) mortgages; and
- (c) provide the following custodial or depository services:
  - (i) operate custodial or depository services other than investor directed portfolio services;  
to retail and wholesale clients.



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

### Key Person Requirements

2. If any of the following officer(s) or key person(s) cease to be officers of the licensee or to perform duties on behalf of the licensee with respect to its financial services business:

- (a) Mark MCIVOR;
- (b) Sidney Ivan SUPER; and
- (c) Craig Granville TREASURE;

the licensee must notify ASIC in writing within 5 business days of the following matters:

- (d) the date the officer or key person ceased to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its financial services business; and
- (e) the name, address, date of commencement, educational qualifications and experience of any replacement officer or key person the licensee has appointed to perform duties on behalf of the licensee with respect to its financial services business; and
- (f) if the licensee does not have a replacement officer or key person, detailed reasons as to why the licensee has not nominated a replacement; and
- (g) a detailed description of how the licensee will continue to comply with the Act and the conditions of this licence following the officer or key person(s) identified above, or any replacement of such person, ceasing to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its financial services business.

### Compliance Measures to Ensure Compliance with Law and Licence

3. The licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws.

### Financial Requirements for Market Participants and Clearing Participants

4. Where the licensee is a market participant in a licensed market, or a clearing participant in a licensed CS facility, conditions 5 to 14 (inclusive) do not apply to the licensee.

### Base Level Financial Requirements

5. The licensee must:

- (a) be able to pay all its debts as and when they become due and payable; and
- (b) either:
  - (i) have total assets that exceed total liabilities as shown in the licensee's most recent balance sheet lodged with ASIC and have no reason to suspect that the licensee's total assets would currently not exceed its total liabilities; or
  - (ii) have adjusted assets that exceed adjusted liabilities calculated at the balance date shown in the licensee's most recent balance sheet lodged with ASIC and have no reason to suspect that the licensee's adjusted assets would currently not exceed its adjusted liabilities; and
- (c) meet the cash needs requirement by complying with one of the following five options:



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (i) Option 1 (reasonable estimate projection plus cash buffer)—refer to definition of "Option 1" under this licence; or
- (ii) Option 2 (contingency based projection)—refer to definition of "Option 2" under this licence; or
- (iii) Option 3 (financial commitment by an Australian ADI or comparable foreign institution)—a requirement that an Australian ADI or a foreign deposit-taking institution approved in writing by ASIC as an eligible provider gives the licensee an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee, or the amount for which the licensee is liable to its creditors at the time of the demand to the licensee's creditors or a trustee for the licensee's creditors, that the licensee reasonably expects will apply for at least three months, taking into account all commercial contingencies for which the licensee should reasonably plan; or
- (iv) Option 4 (expectation of support from an Australian ADI or comparable foreign institution)—a requirement that the licensee:
  - (A) is a subsidiary of an Australian ADI or a corporation approved by ASIC in writing for the purpose of this condition; and
  - (B) reasonably expects that (based on access to cash from its related bodies corporate) it will have adequate resources (when needed) to meet its liabilities for at least the next three months (including any additional liabilities that the licensee might incur during that period), taking into account all adverse commercial contingencies for which the licensee should reasonably plan; and
  - (C) ensures that a responsible officer of the licensee has documented that the officer has the reasonable expectation for at least the following three month period together with the reasons for forming the expectation, the contingencies for which the licensee considers it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; or
- (v) Option 5 (parent entity prepares cash flow projections on a consolidated basis)—a requirement that the licensee ensures that:
  - (A) the cash flows of the licensee and each of its related bodies corporate, other than any body regulated by APRA ("licensee group"), are managed on a consolidated basis; and
  - (B) there is a body corporate within the licensee group of which all members of the licensee group are subsidiaries that is not a body regulated by APRA ("parent entity"); and
  - (C) the parent entity complies with Option 1 or Option 2 as if it were the licensee, cash flows of any member of the licensee group were cash flows of the licensee and any cash held by a member of the licensee group, other than as trustee or as trustee of a relevant trust, were so held by the licensee; and
  - (D) a report by the parent entity's auditor that is a registered company auditor is given to ASIC with the licensee's annual audit report under condition 15 of this licence, in relation to each financial year of the licensee and for any other period that ASIC requests, by a date that ASIC requests, with respect to compliance by the parent entity with Option 1 or Option 2 as they would apply in accordance with subparagraph (C), reflecting the report that would be required from the auditor of a licensee, for that period purporting to comply with Option 1 or Option 2; and
  - (E) either of the following applies:



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

Alternative A—the parent entity has provided an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee or to meet the licensee's liabilities which the licensee reasonably expects will apply for at least the next three months taking into account all adverse commercial contingencies for which the licensee should reasonably plan; or

Alternative B—the licensee reasonably expects that (based on access to cash from members of the licensee group), it will have adequate resources to meet its liabilities (including any additional liabilities that the licensee might incur while the commitment applies) for at least the next three months taking into account all adverse commercial contingencies for which the licensee should reasonably plan and a responsible officer of the licensee has documented that the officer has the reasonable expectation in respect of at least the following three months together with the reasons for forming the expectation, the contingencies for which the licensee considers it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; and

- (F) the licensee has no reason to believe that the parent entity has not complied with the requirement at subparagraph (C) or has failed to comply in a material respect with its obligations under Chapter 2M of the Act or, if the parent entity is not a company, under any other laws (whether law in Australia or not) relating to financial reporting that apply to it.

For 5 years after the end of the last financial year that includes a part of the period to which any document prepared for subparagraph (c)(iv)(C) or Alternative B in subparagraph (c)(v)(E) relates, the licensee must keep the document and give it to ASIC if ASIC requests.

### Financial Requirements for Managed Investments, Custody Services and Margin Lending Facilities

6. The licensee must hold at least \$5 million net tangible assets ("NTA"), unless for each registered scheme operated by the licensee at least one of the following is satisfied:
- all the scheme property and other assets of the scheme(s) not held by members are held by a custodian appointed by the licensee, that has \$5 million NTA or is an eligible custodian; or
  - all the scheme property and other assets of the scheme(s) not held by members are special custody assets or the Tier \$500,000 class assets held by the licensee or a custodian appointed by the licensee (or a sub-custodian appointed by that custodian), where the person holding the scheme property or other assets is:
    - the licensee and the licensee has \$500,000 NTA; or
    - the custodian or sub-custodian and the custodian has \$500,000 NTA or is an eligible custodian; or
  - the only scheme property and other assets of the scheme(s) that are not held under paragraph (a) or (b) of this condition are special custody assets, each of which is held by:
    - the licensee; or
    - an eligible custodian; or
    - a custodian that has the same level of NTA as the licensee is required to have under the remainder of this condition; or
  - the members of the scheme;



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

Where paragraph (a), (b) or (c) of this condition is satisfied, the licensee must hold NTA of 0.5% of the value of:

- (d) assets (including mortgages held by members of a mortgage scheme and managed as part of the scheme); plus

- (e) any other scheme property not counted in calculating the value of assets;

of the registered scheme(s) operated by the licensee with a minimum NTA requirement of \$50,000 and a maximum NTA requirement of \$5 million.

7. The custodian need not have the required NTA under paragraph 6(c)(iii) of this licence if the only assets it holds for the scheme are those contained in paragraphs (a), (c) or (g) of the definition of "special custody assets" under this licence, or if the audited trust account is a regulated trust account, described in paragraph (d) of the definition of "special custody assets" under this licence.
8. The licensee must have at least \$5 million NTA where the licensee provides a custodial or depository service that:
  - (a) has custody of client assets other than incidentally to another financial service provided by the licensee or a related body corporate; or
  - (b) holds IDPS property or other assets of an IDPS.

### Financial Requirements for Holding Client Money or Property

9. If at any time the licensee:
  - (a) is required to hold money in a separate account under Division 2 of Part 7.8 of the Act; or
  - (b) holds money or other property on trust for a client or is required to do so under Regulation 7.8.07(2) of the Corporations Regulations or otherwise; or
  - (c) has the power to dispose of a client's property under power of attorney or otherwise;the licensee must ensure that the licensee has at least \$50,000 in surplus liquid funds ("SLF") unless the total value of the money and property for all clients is less than \$100,000 excluding:
  - (d) money that has satisfied a client's liability on an insurance contract where the licensee is acting under a binder or section 985B of the Act applies, or property acquired by investment of that money; or
  - (e) the value of property where the licensee merely holds a document of title, and the client has legal title to the property.

### Financial Requirements for Licensee Transacting with Clients

10. If the licensee incurs actual or contingent liabilities of the relevant kind by entering into a transaction with a client(s) in the course of providing a financial service to the client(s), the licensee must have adjusted surplus liquid funds ("ASLF") of the sum of:
  - (a) \$50,000; plus
  - (b) 5% of adjusted liabilities between \$1 million and \$100 million; plus
  - (c) 0.5% of adjusted liabilities for any amount of adjusted liabilities exceeding \$100 million, up to a maximum ASLF of \$100 million.



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

This condition does not apply to the licensee if:

- (d) the total of:
- (i) the current liabilities that would be included in the calculation of the licensee's adjusted liabilities; and
  - (ii) the contingent liabilities that if crystallised would be a current liability and be included in the calculation of the licensee's adjusted liabilities,
- is less than \$100,000; or
- (e) the licensee has no:
- (i) liabilities to clients that would be included in calculating its adjusted liabilities; or
  - (ii) contingent liabilities to clients which if crystallised would be included in calculating its adjusted liabilities,
- other than under debentures the licensee issued under Chapter 2L of the Act.
- For the purpose of paragraphs (d) and (e), the licensee may disregard a liability or a contingent liability that:
- (f) is a contingent liability that is neither a derivative nor a liability from underwriting securities or managed investment products; or
  - (g) the licensee reasonably estimates has a probability of less than 5% of becoming an actual liability; or
  - (h) is covered by money or property that the licensee holds in a separate account under Part 7.8 of the Act or on trust for clients; or
  - (i) is adequately secured as defined in paragraph (a) or (b) of the definition of "adequately secured" under this licence; or
  - (j) is a liability incurred by entering into a transaction on a licensed market that is to be settled using a clearing and settlement facility, the operation of which is authorised by an Australian CS facility licence; or
  - (k) is under a foreign exchange contract and the licensee is required to have \$10 million of tier one capital under another condition of this licence because the licensee has entered a foreign exchange contract as principal; or
  - (l) is under a derivative where:
    - (i) the licensee does not make a market in derivatives; and
    - (ii) the licensee entered into the dealing for the purposes of managing a financial risk; and
    - (iii) either the licensee's dealings in derivatives are not a significant part of its business or of the business of it and its related bodies corporate taken together; and
    - (iv) the licensee did not enter into the dealing on the instructions of another person; or
  - (m) is under a foreign exchange contract where the licensee:
    - (i) does not make a market in foreign exchange contracts; and
    - (ii) entered into the contract for the purposes of enabling a payment in one of the currencies under the foreign exchange contract; and
    - (iii) did not enter into the foreign exchange contract on the instruction of another person; or
  - (n) occurs in circumstances where a licensee agrees to provide credit to another person under a margin lending facility and the credit remains undrawn or a portion of the credit remains undrawn.



ASIC  
AUSTRALIAN SECURITIES &  
INVESTMENTS COMMISSION



# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

In this condition, a reference to a client includes a person who acquires or disposes of financial products in a transaction that the licensee entered into at a price the licensee stated in the course of making a market.

### Reporting Triggers and Requirements for Financial Requirement Conditions of this Licence

11. The licensee must ensure the reporting requirements under conditions 12 and 13 of this licence are met where either paragraph (a) or paragraph (b) applies:
  - (a) the trigger points described in paragraphs (i) and (ii) below occur:
    - (i) the licensee has adjusted liabilities of more than \$1 million and less than or equal to \$100 million; and
    - (ii) the licensee has an ASLF of less than 5.5% of adjusted liabilities; or
  - (b) the trigger points described in paragraphs (i), (ii) and (iii) below occur:
    - (i) the licensee has adjusted liabilities of more than \$100 million; and
    - (ii) the licensee does not have \$100 million ASLF; and
    - (iii) the licensee has an ASLF that is less than \$500,000 above the minimum ASLF required under condition 10 of this licence.
12. Where the licensee's ASLF is below the trigger points, the licensee must not enter into any transactions with clients that could give rise to further liabilities, contingent liabilities or other financial obligations until the licensee's board or other governing body has certified in writing that, having conducted reasonable enquiry into its financial position, there is no reason to believe that the licensee will fail to comply with its obligations under section 912A of the Act.
13. Where the licensee's board or other governing body has made the certification required under condition 12, the licensee must ensure that the licensee's board or other governing body certifies in writing at least monthly that, having conducted reasonable enquiry into its financial position, there is no reason to believe that the licensee will fail to comply with its obligations under section 912A of the Act until the licensee's ASLF continuously exceeds the trigger point for a period exceeding one month.
14. The licensee must keep each certification issued by the licensee's board or other governing body under conditions 12 and 13 of this licence for at least 5 years from the date of such certification. The licensee must provide ASIC with a copy of each certification within 3 business days of the date of each certification.

### Audit Opinion on Financial Requirements

15. The licensee must lodge with ASIC an opinion by a registered company auditor ("the audit opinion") addressed to the licensee and ASIC for the following periods:
  - (a) for each financial year, at the same time the licensee is required to lodge a balance sheet under Part 7.8 of the Act; and
  - (b) for any period of time that ASIC requests, by the date ASIC requests the audit opinion to be lodged; that states whether during:



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (c) any part of the period for which the licensee:
- (i) relied on being a market participant or a clearing participant, on a positive assurance basis, the licensee was a participant in the market conducted by:
    - (A) ASX; or
    - (B) SFE, that restricted its financial services business to participating in the market and incidental business supervised by SFE; and
  - (ii) relied on being a body regulated by APRA, on a positive assurance basis, the licensee was a body regulated by APRA; and
- (d) any remaining part of the period:
- (i) in the auditor's opinion, the licensee:
    - (A) complied with all the financial requirements under conditions 5 to 14 (inclusive) of this licence other than paragraph 5(c) of this licence, except for paragraph (e) of the definition of "Option 1" under this licence if the licensee purports to comply with "Option 1"; and
    - (B) except for any period stated in the report when the licensee purports to comply with subparagraph 5(c)(iii), (iv) or (v), had at all times a projection (covering at least the following 3 months) that purports to, and appears on its face to comply with, paragraph (a) of the definition of "Option 1" or paragraph (a) of the definition of "Option 2" under this licence (depending on which option the licensee purports to be complying with); and
    - (C) except for any period stated in the report when the licensee purports to comply with subparagraph 5(c)(iii), (iv) or (v), correctly calculated the projections on the basis of the assumptions the licensee adopted for the projections described in subparagraph (d)(i)(B) of this condition; and
    - (D) for any period when the licensee relied on subparagraph 5(c)(iii) of this licence, has obtained from an Australian ADI or a foreign deposit-taking institution approved in writing by ASIC as an eligible provider an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee, or the amount for which the licensee is liable to its creditors at the time of demand to the licensee's creditors or a trustee for the licensee's creditors; and
    - (E) for any period when the licensee relied on subparagraph 5(c)(iv), following an examination of the documents prepared for subparagraph 5(c)(iv)(C), the licensee complied with subparagraph 5(c)(iv)(A) and subparagraph 5(c)(iv)(C) for the period to which the report relates; and
    - (F) for any period when the licensee relied on subparagraph 5(c)(v), the licensee complied with subparagraph 5(c)(v)(A) and (B); and
    - (G) for any period when the licensee relied on Alternative A in subparagraph 5(c)(v)(E), the parent entity has provided an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee or to meet the licensee's liabilities.
  - (ii) except for any period stated in the report when the licensee purports to comply with subparagraph 5(c)(iii), (iv) or (v), following an examination of the documents the licensee relies on in complying with "Option 1" or "Option 2" as defined under this licence, the auditor has no reason to believe that:
    - (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions of this licence; or



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (B) the licensee failed to comply with the cash needs requirement using either "Option 1" or "Option 2" as defined under this licence (as applicable) except for:
  - (1) paragraphs (a), (c) and (e) of the definition of "Option 1" as defined under this licence; or
  - (2) paragraphs (a) and (c) of the definition of "Option 2" as defined under this licence; or
- (C) if the licensee relied on "Option 1" as defined under this licence, the assumptions the licensee adopted for its projection were unreasonable; or
- (D) if the licensee relied on "Option 2" as defined under this licence, the basis for the selection of assumptions to meet the requirements for its projection adopted was unreasonable; and
- (iii) for any period when the licensee relied on subparagraph 5(c)(iv), following an examination of the documents prepared for subparagraph 5(c)(iv)(C), the auditor has no reason to believe that:
  - (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions in this licence; and
  - (B) the basis for the selection of the assumptions adopted was unreasonable; and
- (iv) for any period when the licensee relied on subparagraph 5(c)(v) under Alternative B, following an examination of the documents prepared for Alternative B, the auditor has no reason to believe that:
  - (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions in this licence; or
  - (B) the basis for the selection of the assumptions adopted was unreasonable.

### Professional Indemnity Compensation Requirements

16. The licensee must maintain an insurance policy covering professional indemnity and fraud by officers that:
- (a) is adequate having regard to the nature of the activities carried out by the licensee under the licence; and
  - (b) covers claims amounting in aggregate to whichever is the lesser of:
    - (i) \$5 million; or
    - (ii) the sum of the value of all IDPS property of all IDPS for which it is the operator and all scheme property of all registered schemes for which it is the responsible entity.

### External Disputes Resolution Requirements

17. Where the licensee provides financial services to retail clients, the licensee must be a member of one or more External Disputes Resolution Scheme(s) ("EDRS") which covers, or together cover, complaints made by retail clients in relation to the provision of all of the financial services authorised by this licence.
18. Where the licensee ceases to be a member of any EDRS, the licensee must notify ASIC in writing within 3 business days:
- (a) the date the licensee ceases membership of the EDRS(s); and
  - (b) the reasons the licensee's membership of the EDRS(s) has ceased (including circumstances where the EDRS is no longer operating, failure by the licensee to renew their membership of the EDRS or where the EDRS has terminated the licensee's membership of the EDRS); and



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (c) details of the new EDRS(s) the licensee intends to or has joined (including the date the membership commences and the name of the EDRS); and
- (d) details that provide confirmation that the licensee is covered by EDRS(s) covering complaints made by retail clients in relation to the provision of all of the financial services authorised by this licence.

### Agreement with Holder of Financial Product on Trust

#### 19. If the licensee:

- (a) operates a registered scheme in the capacity of a responsible entity; or
  - (b) operates an IDPS as an IDPS operator; or
  - (c) provides a custodial or depository service;
- and in the course of operating that scheme or providing that service the licensee enters into an arrangement:
- (d) with another person ("holder") to hold scheme property, IDPS property or to hold financial products on trust for or on behalf of the licensee or another person; or
  - (e) between a responsible entity or IDPS operator in that capacity and another person ("master custodian") under which the master custodian is authorised to arrange for a third person ("subcustodian") directly or indirectly to hold scheme property or IDPS property; or
  - (f) with a subcustodian arranged by a master custodian;
- the licensee must ensure that at all times:
- (g) the arrangement is covered by a contract that is in writing; and
  - (h) the contract clearly specifies:
    - (i) the nature of the arrangement and the obligations of each party; and
    - (ii) the rights that the parties will have in relation to ongoing review and monitoring of the holder or any subcustodian or for an agreement made by the licensee with a master custodian ("master agreement"), the master custodian and the standards against which their performance will be assessed; and
    - (iii) how the holder, any subcustodian or for a master agreement, the master custodian will certify that it complies with, and will continue to comply with, the requirements of ASIC Regulatory Guide 133 (formerly referred to as Policy Statement 133) when read in conjunction with ASIC Regulatory Guides 148 and 167 (formerly referred to as Policy Statements 148 and 167) (as each of those Regulatory Guides is in force as at the date of this licence); and
    - (iv) how instructions will be given to the holder, subcustodian or for a master agreement, the master custodian; and
    - (v) how the client of the licensee will be compensated if the client suffers any loss due to a failure by the holder, any subcustodian, or for a master agreement, the master custodian, to comply with its duties or to take reasonable care based on the standards applying in the relevant markets for the assets held and the extent to which the holder, any subcustodian, or for a master agreement, the master custodian, must maintain a minimum level of professional indemnity insurance; and
    - (vi) that the holder, any subcustodian and for a master agreement, the master custodian is prohibited from taking a charge, mortgage, lien or other encumbrance over, or in relation to, the assets held under the



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

arrangement unless it is for expenses and outlays made within the terms of the contract (but not including any unpaid fees of the holder, master custodian or subcustodian) or in accordance with the licensee's instructions; and

- (vii) in the case of a responsible entity or IDPS operator who has a master agreement, what should be in the written contract with any subcustodian used in accordance with these conditions including the liability of the subcustodian to the master custodian and the licensee when acts or omissions of the subcustodian are in breach of the subcustodian's obligations; and
- (viii) how records of the assets held will be kept and maintained by the holder, any subcustodian or for a master agreement, the master custodian; and
- (ix) requirements for reporting by the holder, any subcustodian or for a master agreement, the master custodian, including notifications of any dealing in or transfers of the assets; and
- (x) requirements for the holder to provide all reasonable access and assistance to any registered company auditor engaged to conduct an audit in relation to the licensee.

The contract is not required to contain the matters specified in paragraph (iii), (v) or (vi) or to be in writing to the extent that the licensee establishes by documentary evidence that it is not practicable for the licensee to:

- (a) hold the relevant financial products (being property outside Australia) itself; or
- (b) engage a custodian that is willing to include such matters in the contract to hold that property on reasonable commercial terms;

and provided that the licensee has disclosed to the client that these terms will not be included.

## Property

20. The licensee must ensure that at all times:

- (a) in relation to a registered scheme for which the licensee is the responsible entity, the holder of any scheme property complies with the requirements of ASIC Regulatory Guide 133 (formerly referred to as Policy Statement 133) (as in force as at the date of this licence) relating to the holding of scheme property and maintains proper records identifying the scheme property; and
- (b) in relation to any custodial or depository service that the licensee provides other than as the operator of an IDPS, the holder of any property, complies with the requirements of ASIC Regulatory Guide 133 (formerly referred to as Policy Statement 133) except requirements expressed to apply to duties under s601FC(1)(i), when read with ASIC Regulatory Guides 148 and 167 (formerly referred to as Policy Statements 148 and 167) (as each of those Regulatory Guides is in force as at the date of this licence), and maintains proper records in relation to the financial products held.

## Prohibition to Operate Managed Discretionary Account Service

21. The licensee must not provide an MDA service to a retail client except when operating a registered scheme.



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

### Retention of Financial Services Guides, Statements of Advice and Material Relating to Personal Advice

22. Where the licensee provides financial product advice to retail clients, the licensee must ensure that copies (whether in material, electronic or other form) of the following documents are retained for at least the period specified:
- (a) each Financial Services Guide ("FSG") (including any Supplementary FSG) given by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity - for a period commencing on the date of the FSG and continuing for at least 7 years from when the document was last provided to a person as a retail client; and
  - (b) a record of the following matters relating to the provision of personal advice to a retail client (other than personal advice for which a Statement of Advice ("SOA") is not required or for which a record of the advice is kept in accordance with subsection 946B(3A) ):
    - (i) the client's relevant personal circumstances within the meaning of subparagraph 945A(1)(a)(i); and
    - (ii) the inquiries made in relation to those personal circumstances within the meaning of subparagraph 945A(1)(a)(ii); and
    - (iii) the consideration and investigation conducted in relation to the subject matter of the advice within the meaning of paragraph 945A(1)(b); and
    - (iv) the advice, including reasons why advice was considered to be "appropriate" within the meaning of paragraphs 945A(1)(a) to (c), for a period of at least 7 years from the date that the personal advice was provided;
  - (c) any SOA provided by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity - for a period of at least 7 years from the date the document was provided to the client.
23. The licensee must establish and maintain measures that ensure, as far as is reasonably practicable, that it and its representatives comply with their obligation to give clients an FSG as and when required under the Act. The licensee must keep records about how these measures are implemented and monitored.

### Terms and Definitions

In this licence references to sections, Parts and Divisions are references to provisions of the Corporations Act 2001 ("the Act") unless otherwise specified. Headings contained in this licence are for ease of reference only and do not affect interpretation. Terms used in this licence have the same meaning as is given to them in the Act (including, if relevant, the meaning given in Chapter 7 of the Act) and the following terms have the following meanings:

actual or contingent liabilities of the relevant kind means:

- (a) an actual or contingent monetary liability; or
- (b) an actual or contingent liability under a non-standard margin lending facility, in the circumstances determined under the terms of the facility, to transfer marketable securities to the client.

adequately secured means:



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (a) secured by an enforceable charge over financial products (other than financial products issued by the licensee or its associate) if:
- (i) the financial products are:
    - (A) regularly traded on:
      - (1) a financial market (as defined in subsection 767A(1) of the Act and disregarding subsection 767A(2) of the Act) operated by a market licensee or a licensee other than the licensee or its associate that in the reasonable opinion of the licensee produces sufficiently reliable prices to assess the value of the security provided by the charge;
      - (2) an ASIC-approved foreign market under ASIC Regulatory Guide 72 (formerly referred to as Policy Statement 72) as at the date of this licence; or
      - (3) a foreign market approved in writing for the purpose by ASIC; or
    - (B) interests in a registered scheme for which withdrawal prices are regularly quoted by the responsible entity and the licensee believes on reasonable grounds that withdrawal may be effected within 5 business days; and
  - (ii) the market value of these financial products equals not less than 120% of the amount owing or not less than 109% of the amount owing if the financial products are debt instruments; or
- (b) secured by a registered first mortgage over real estate that has a fair market valuation at least equal to 120% of the amount owing; or
- (c) owing from an eligible provider; or
- (d) secured by an enforceable charge over amounts owing to another licensee which themselves are adequately secured.

adjusted assets means the value of total assets as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M of the Act if the licensee were a reporting entity:

- (a) minus the value of excluded assets that would be included in the calculation; and
- (b) minus the value of any receivable of the licensee that would be included in the calculation, up to the amount that the licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable; and
- (c) minus the value of any assets that would be included in the calculation that are encumbered as a security against liability to a person that provides a security bond to ASIC up to the amount of the bond; and
- (d) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the licensee up to the amount of that liability excluded from adjusted liabilities; and
- (e) plus
  - (i) the amount of any eligible undertaking that is not an asset; or
  - (ii) if the eligible undertaking is for an unlimited amount, an unlimited amount;



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

provided that if the eligible undertaking is given by a person who is an eligible provider only because of paragraph (b) of the definition of "eligible provider" under this licence, the amount added may be no more than one quarter of the eligible provider's net assets (excluding intangible assets) as shown in the most recent audited financial statements lodged with ASIC; and

- (f) for calculating ASLF, plus the value of any current assets of any trust (other than a registered scheme) of which the licensee is trustee as if they would appear on the balance sheet as assets of the licensee except to the extent the value exceeds the sum of:
  - (i) the current liabilities of the trust as if they would appear on the balance sheet as assets of the licensee; and
  - (ii) any adjustments to ASLF that are a result of current assets, liabilities and contingent liabilities of the trust for accounting purposes being included in calculating adjustments; and
- (g) for calculating ASLF, plus the value of the applicable percentage as set out in paragraphs (c)(i) and (iii) of the definition of "standard adjustments" under this licence of the value of any current assets that would be acquired in return for paying a contingent liability as set out in paragraphs (c)(i) and (iii) of the definition of "standard adjustments" under this licence up to the value of the applicable percentage of the relevant contingent liability.

**adjusted liabilities** means the amount of total liabilities as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M of the Act if the licensee were a reporting entity:

- (a) minus the amount of any liability under any subordinated debt approved by ASIC; and
- (b) minus the amount of any liability that is the subject of an enforceable right of set-off, if the corresponding receivable is excluded from adjusted assets; and
- (c) minus the amount of any liability under a credit facility that is made without recourse to the licensee; and
- (d) for calculating ASLF, plus the amount of the total current liabilities of any trust (other than a registered scheme) of which the licensee is trustee as if they would appear on the balance sheet as liabilities of the trustee; and
- (e) plus the value of any assets that are encumbered as a security against another person's liability where the licensee is not also liable, but only up to the amount of that other person's liability secured or the value of the assets encumbered after deducting any adjustments under this licence, whichever is lower.

**adjusted surplus liquid funds or ASLF** means surplus liquid funds minus either:

- (a) the standard adjustments (refer to the definition of "standard adjustments" under this licence); or
- (b) such other adjustments as ASIC may from time to time consent to in writing.

**clearing participant** means a clearing participant in the licensed clearing and settlement facility ("CS Facility") as defined in the operating rules of Australian Clearing House Pty Limited ("ACH"), as at the date of this licence, that complies with those operating rules relating to financial requirements, taking into account any waiver by ACH.

**derivative** means "derivatives" as defined in section 761D of the Act (including regulation 7.1.04 of the Corporations Regulations) and:



ASIC  
Australian Securities &  
Investments Commission



# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (a) includes "managed investment warrants" as defined in this licence; and
- (b) excludes "derivatives" that are "foreign exchange contracts" as defined in this licence.

### eligible custodian means:

- (a) an Australian ADI; or
- (b) a market participant or a clearing participant; or
- (c) a subcustodian appointed by a person of the kind referred to in (a) or (b) of this definition.

### eligible provider means:

- (a) an Australian ADI; or
- (b) an entity (other than a registered scheme of which the licensee or the licensee's associate is the responsible entity):
  - (i) whose ordinary shares are listed on a licensed market or an ASIC-approved foreign exchange under ASIC Regulatory Guide 72 (formerly referred to as Policy Statement 72) as at the date of this licence; and
  - (ii) that had net assets (excluding intangible assets) of more than \$50 million, as shown in the most recently audited financial statements of the provider lodged with ASIC; and
  - (iii) that the licensee has no reason to believe no longer has net assets of at least that amount; or
- (c) an Australian government (i.e. the Commonwealth or a State or Territory government) or a government of a country that is a member of the Organisation for Economic Co-operation and Development ("OECD country government"), or an agency or instrumentality of an Australian or OECD country government; or
- (d) a foreign deposit-taking institution that is regulated by an ASIC - approved regulator; or
- (e) a foreign deposit-taking institution approved in writing by ASIC for this purpose; or
- (f) an Australian CS facility licensee; or
- (g) an entity approved by ASIC in writing for this purpose.

### eligible undertaking means the amount of a financial commitment that is:

- (a) payable on written demand by the licensee (disregarding any part previously paid or any amount that would be repayable as a current liability or, for calculating NTA, as a liability by the licensee if money were paid), provided by an eligible provider in the form of an undertaking to pay the amount of the financial commitment to the licensee, and that:
  - (i) is an enforceable and unqualified obligation; and
  - (ii) remains operative (even if, for example, the licensee ceases to hold an AFS licence) until ASIC consents in writing to the cancellation of the undertaking; or
- (b) approved in writing by ASIC as an eligible undertaking.

### excluded assets means:

- (a) intangible assets (i.e. non-monetary assets without physical substance); and



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (b) except when allowed under paragraphs (e) or (f) of this definition, assets owing or receivables ("receivables") from or assets invested in, any person who:
- (i) is an associate of the licensee; or
  - (ii) was an associate of the licensee at the time the liability was incurred or the investment was made; or
  - (iii) became liable to the licensee because of, or in connection with, the acquisition of interests in a managed investment scheme the licensee operates; and
- (c) except when allowed under paragraph (g) of this definition, assets:
- (i) held as a beneficial interest or an interest in a managed investment scheme; or
  - (ii) invested in any superannuation product, in respect of which the licensee or its associate may exercise any form of power or control; and
- (d) except when allowed under paragraphs (e) or (f) of this definition, receivables from the trustee of any trust in respect of which the licensee or its associate may exercise any form of power or control; and
- (e) despite paragraphs (b) and (d) of this definition, a receivable is not excluded to the extent that:
- (i) it is adequately secured; or
  - (ii) the following apply:
    - (A) it is receivable as a result of a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis; and
    - (B) no part of the consideration in relation to the transaction is, in substance, directly or indirectly invested in the licensee; and
    - (C) the total value of such assets (before any discount is applied) is not more than 20% of the assets less liabilities of the licensee; and
    - (D) for the purposes of calculating ASLF, the amount is further discounted by 10% of the value after any adjustment required by paragraph (a) or (b) of the definition of "adjusted surplus liquid funds" in this licence; or
  - (iii) the following apply:
    - (A) it is receivable from an insurance company that is a body regulated by APRA and results from a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis; and
    - (B) there is no reason to believe that any amount invested in the licensee would not have been invested if the transactions that caused the receivable had not taken place or were not at the time of the investment expected to take place; and
    - (C) there is no reason to believe that the recoverability of the receivable will materially depend on the value of an investment by any person in the licensee; and
    - (D) the total value of the receivables under this subparagraph (iii) before any adjustment required by paragraph (a) or (b) of the definition of "adjusted surplus liquid funds" in this licence is applied is not more than 60% of the adjusted liabilities of the licensee disregarding this subparagraph (iii); or
  - (iv) ASIC consents in writing to the licensee treating the amount owing as not being an excluded asset; and



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (f) despite paragraphs (b) and (d) of this definition, the licensee can include a receivable amount to the extent that it is owing by way of fees from, or under rights of reimbursement for expenditure by the licensee out of property of, a superannuation entity as defined in the Superannuation Industry (Supervision) Act 1993, an IDPS or a registered scheme ("scheme") to the extent that the receivable:
- (i) exceeds amounts invested by the scheme in, or lent (other than by way of a deposit with an Australian ADI in the ordinary course of its banking business) directly or indirectly by the scheme to, the licensee, a body corporate the licensee controls, a body corporate that controls the licensee or a body corporate that the licensee's controller controls; and
  - (ii) if receivable by way of fees, represents no more fees than are owing for the last 3 months; and
  - (iii) if receivable under rights of reimbursement for expenditure by the licensee, has not been receivable for more than 3 months; and
- (g) despite paragraph (c) of this definition, the licensee does not have to exclude a managed investment product unless any part of the amount invested is, in substance, directly or indirectly, invested in the licensee.

**financial asset** means cash, cheques, orders for payment of money, bills of exchange, promissory notes, securities, deposit products and interests in managed investment schemes (including where the managed investment scheme invests in direct real property or mortgages) but does not include a derivative.

**foreign exchange contracts** means "foreign exchange contracts" as defined in section 761A of the Act (including regulation 7.1.04 of the Corporations Regulations) and includes "derivatives", as defined in section 761D of the Act, that are foreign exchange contracts.

**IDPS** means an investor directed portfolio service in relation to which the licensee has relief under Class Order 02/294 as at the date of this licence and as amended by any disallowable legislative instrument, or relief under any disallowable legislative instrument that replaces Class Order 02/294.

**IDPS property** means property acquired or held through an IDPS other than property held by a client.

**incidental property** means:

- (a) assets of any kind which are necessary for, or incidental to the effective operation of the scheme, the total value of which, and the total liability that may arise from the holding of which, does not exceed 10% of the value of the assets net of liabilities other than liabilities to members as members of the scheme; and
- (b) cash, deposits or current accounts with an Australian ADI or units in a cash management trust that are held for no more than 3 months pending investment in assets to which the scheme relates, or expenditure or distribution to members; and
- (c) derivatives, where:
  - (i) the value or amount of the derivative will ultimately be determined, derived or varied by reference to something else for the purposes of section 761D(1)(c) of the Act which is related to or may significantly and directly affect the receipts or costs of the fund; and



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (ii) the derivative is acquired or disposed of by the licensee as a hedge which has the primary purpose of avoiding or limiting the financial consequences of fluctuations in, or in the value of, receipts or costs of the fund.

**managed investment warrant** means a financial product:

- (a) that is a financial product of the kind referred to in subparagraph 764A(1)(b)(ii) or 764A(1)(ba)(ii); and
- (b) would be a derivative to which section 761D applies apart from the effect of paragraph 761D(3)(c); and
- (c) that is transferable.

**market participant** means:

- (a) a participant as defined in the operating rules of ASX Limited ("ASX"), as at the date of this licence (other than a Principal Trader, unless the Principal Trader is registered as a Market Maker), who complies with the ASX's operating rules that relate to financial requirements, taking into account any waiver by ASX; or
- (b) a participant in the licensed market operated by Sydney Futures Exchange Limited ("SFE") that:
  - (i) restricts its financial services business to participating in the licensed market and incidental business supervised by SFE; and
  - (ii) complies with the SFE's operating rules, as at the date of this licence, that relate to financial requirements, taking into account any waiver by SFE.

**MDA service** means a service with the following features:

- (a) a person ("the client") makes client contributions; and
- (b) the client agrees with another person that the client's portfolio assets will:
  - (i) be managed by that other person at their discretion, subject to any limitation that may be agreed, for purposes that include investment; and
  - (ii) not be pooled with property that is not the client's portfolio assets to enable an investment to be made or made on more favourable terms; and
  - (iii) be held by the client unless a beneficial interest but not a legal interest in them will be held by the client; and
- (c) the client and the person intend that the person will use client contributions of the client to generate a financial return or other benefit from the person's investment expertise.

**net tangible assets or NTA** means adjusted assets minus adjusted liabilities.

**old law securities options contracts** means "options contracts" as defined under section 9 of the Act immediately prior to 11 March 2002 which were "securities" as defined under section 92(1) of the Act immediately prior to 11 March 2002.

**Option 1** means the reasonable estimate projection plus cash buffer basis where the licensee is required to:



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (a) prepare a projection of the licensee's cash flows over at least the next 3 months based on the licensee's reasonable estimate of what is likely to happen over this term; and
- (b) document the licensee's calculations and assumptions, and describe in writing why the assumptions relied upon are the appropriate assumptions; and
- (c) update the projection of the licensee's cash flows when those cash flows cease to cover the next 3 months or if the licensee has reason to suspect that an updated projection would show that the licensee was not meeting paragraph (d) of this definition; and
- (d) demonstrate, based on the projection of the licensee's cash flows, that the licensee will have access when needed to enough financial resources to meet its liabilities over the projected term of at least 3 months, including any additional liabilities the licensee projects will be incurred during that term; and
- (e) hold (other than as trustee) or be the trustee of a relevant trust that holds, in cash an amount equal to 20% of the greater of:
  - (i) the cash outflow for the projected period of at least 3 months (if the projection covers a period longer than 3 months, the cash outflow may be adjusted to produce a 3-month average); or
  - (ii) the licensee's actual cash outflow for the most recent financial year for which the licensee has prepared a profit and loss statement, adjusted to produce a 3-month average.

For the purposes of this definition references to the licensee's cash flow include the licensee's own cash flow and any cash flow of a relevant trust but do not include cash flows of any other trust.

For the purposes of paragraph (e) of this definition, "cash" means:

- (A) current assets valued at the amount of cash for which they can be expected to be exchanged within 5 business days; or
- (B) a commitment to provide cash from an eligible provider that can be drawn down within 5 business days and has a maturity of at least a month;

but does not include any cash in a relevant trust if the licensee has reason to believe that the cash will not be available to meet all of the projected cash flows of the licensee.

Option 2 means the cash needs requirement on the contingency-based projection basis where the licensee is required to:

- (a) prepare a projection of the licensee's cash flows over at least the next 3 months based on the licensee's estimate of what would happen if the licensee's ability to meet its liabilities over the projected term (including any liabilities the licensee might incur during the term of the projection) was adversely affected by commercial contingencies taking into account all contingencies that are sufficiently likely for a reasonable licensee to plan how they might manage them; and
- (b) document the licensee's calculations and assumptions, and describe in writing why the assumptions relied upon are the appropriate assumptions; and
- (c) update the projection of the licensee's cash flows when those cash flows cease to cover the next 3 months or if the licensee has reason to suspect that an updated projection would show that the licensee was not meeting paragraph (d) of this definition; and



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (d) demonstrate, based on the projection of the licensee's cash flow, that the licensee will have access when needed to enough financial resources to meet its liabilities over the projected term of at least 3 months, including any additional liabilities the licensee might incur during that term.

For the purposes of this definition references to the licensee's cash flow include any cash flow of a relevant trust.

regulated trust account means:

- (a) a trust account maintained by an authorised trustee corporation under the law of a State or Territory; or
- (b) a solicitor's trust account; or
- (c) a real estate agent's trust account; or
- (d) a trust account maintained by an entity other than the licensee and that provides protections similar to the accounts described in paragraphs (a) to (c) of this definition, and is approved by ASIC for the purpose in writing.

relevant trust means, for the purposes of the definitions of "Option 1" and "Option 2" of this licence, a trust:

- (a) where substantially all of the financial services business carried on by the licensee is carried on as trustee of a trust; and
- (b) that it is not a registered scheme or a superannuation entity as defined in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993.

special custody assets means:

- (a) for serviced strata schemes, cash held in a regulated trust account for the purposes of:
  - (i) refurbishment or improvement of real property associated with the scheme; or
  - (ii) alleviating seasonal fluctuations in payments of income from the scheme in accordance with provisions in the constitution;provided that no more is held than the licensee reasonably considers necessary for the relevant purpose; and
- (b) currency and chattels (other than documents) that it would not be reasonably practicable for a person other than the responsible entity to hold; and
- (c) funds received from members of the scheme within the previous 6 months held in a regulated trust account; and
- (d) cash held for up to 3 months in an account with an Australian ADI styled as a trust account that is audited at least once every 6 months by a registered company auditor where the auditor's report states that in the auditor's opinion the account has been operated in accordance with the trust:
  - (i) pending payment to members; or
  - (ii) to meet expected expenses (not including investments) over a 3 month period; or
  - (iii) pending application in acquiring a mortgage and paying any fees and costs incidental to the acquisition; and
- (e) contractual, lease or licence rights that are not assignable except with the consent of the member or that it would not be reasonably practicable to assign (other than to a new responsible entity) and any documents evidencing those contractual, lease or licence rights; and



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (f) assets of trivial value; and
- (g) levies of a time sharing scheme which are held in an account with an Australian ADI styled as a trust account that is audited at least twice annually by a registered company auditor where the report from the auditor is provided to the responsible entity's board or compliance committee and states that in the auditor's opinion the account has been operated in accordance with the trust; and
- (h) mortgages or documents of title held under a mortgage where:
  - (i) particular members have a specific beneficial or legal interest in the mortgage; and
  - (ii) the mortgage was acquired after disclosure in writing to the relevant members (at the time of the acquisition) of all information that would have been required to be in a Product Disclosure Statement (or in relation to mortgages acquired before Division 2 of Part 7.9 applies to interests in the registered scheme a disclosure document under Chapter 6D of the Act) if an offer of interests in the registered scheme conferring rights in connection with that mortgage had been made immediately prior to the mortgage; and
  - (iii) either of the following applies:
    - (A) the mortgage was acquired on the specific direction of the relevant members (at the time of acquisition of the interest); or
    - (B) members are able to withdraw from that mortgage for a period of 14 days commencing on the date of disclosure under sub-paragraph (h)(ii) of this definition; and
  - (iv) the scheme does not involve the mortgage being sold prior to its discharge; and
- (i) land or other real property relating to a time-sharing scheme.

standard adjustments means:

- (a) discounts as follows:
  - (i) 8% for the values that reflect obligations to pay the licensee a certain sum maturing beyond 12 months unless the interest rate applicable is reset to reflect market interest rates at least annually; and
  - (ii) 16% for the values that reflect any assets other than:
    - (A) an obligation to pay the licensee a certain sum; or
    - (B) a derivative; or
    - (C) an interest in property held in trust by another licensee under Division 3 of Part 7.8 of the Act or the rights to money held by another licensee in an account under section 981B of the Act; and
- (b) 8% of the values that reflect others' obligations to pay the licensee a certain sum except to the extent that the asset is adequately secured or is a right against another licensee in respect of money or property held by that other licensee in an account under section 981B or held in trust under Division 3 of Part 7.8 of the Act; and
- (c) the following amounts for contingent liabilities and contingent liabilities of any trust (other than a registered scheme) of which the licensee is trustee:
  - (i) 5% of any contingent liabilities that can be quantified under an underwriting or sub-underwriting of financial products except:
    - (A) during the 5 business days after the commitment is assumed; and



ASIC  
Australian Securities &  
Investments Commission

# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

- (B) during any period it is unlawful to accept applications for the financial products to which the underwriting relates (such as under subsection 727(3) or section 1016B) and the period ending 5 business days after the first day on which it becomes lawful to accept applications; and
- (C) to the extent that the underwriter holds funds from persons seeking to acquire the financial products subject to the underwriting; and
- (ii) 5% of the potential liability of any contingent liabilities that can be quantified under a derivative other than to the extent there is an offsetting position in any of the following or a combination of the following:
  - (A) the "something else" for the purposes of paragraph 761D(1)(c) of the Act; and
  - (B) another derivative relating to that something else; and
  - (C) a thing that is so similar to the something else as to make the probability of net loss from the liability under the derivative exceeding any increase in the value of the thing less than 5% in the reasonable and documented opinion of the licensee,  
except to the extent that the licensee is of the reasonable opinion that the risk that they will become liabilities (or become liabilities to a greater extent than taken into account for the purposes of applying the adjustment) because of a change in the price or value of the something else is trivial; and
- (iii) 20% of the potential liability of any contingent liabilities that can be quantified under a guarantee or indemnity;

- (d) the relevant percentage as set out in subparagraphs (c)(ii) and (c)(iii) of the amounts that in the licensee's reasonable opinion is the maximum amount that the licensee may be liable for in relation to a contingent liability referred to in paragraph (c) where the maximum liability cannot be quantified; and
- (e) where the licensee has agreed to sell an asset that it does not hold, the amount of the adjustment that would apply if it held that asset is to be applied against adjusted assets.

For the purposes of this definition, the risk that a contingent liability will become a liability may be treated as trivial if the probability that this will occur is reasonably estimated by the licensee as less than 5%.

For the purposes of paragraphs (a) and (b) of this definition, discounts apply against the value of current assets:

- (f) used in calculating "adjusted assets" in this licence; and
- (g) of any trust (other than a registered scheme) of which the licensee is a trustee (see subparagraph (f)(ii) of the definition of "adjusted assets" in this licence); and
- (h) that are deducted under paragraph (c) of the definition of "adjusted assets" in this licence as assets to which recourse may be had for a liability of the licensee where the licensee's liability is limited to those assets but the total discounts applied to those assets shall not exceed any excess of the value of the licensee's assets to which recourse may be taken over the amount of the liability; and
- (i) that is the applicable percentage of the current assets that would be acquired in return for paying a contingent liability referred to in subparagraph (c)(i) or (iii) of this definition including rights against a sub-underwriter (see paragraph (g) of the definition of "adjusted assets" in this licence).

The licensee does not have to apply the discounts to the value of amounts payable from a client in the ordinary course of its financial services business for financial products that the client has agreed to buy, if the money is required to



ASIC  
Australian Securities &  
Investments Commission



# Australian Financial Services Licence

EQUITRUST LIMITED

ABN: 74 061 383 944

Licence No: 230471

Effective 27 April 2011

## Schedule of Conditions

be—and in the reasonable estimation of the licensee probably will be—paid no more than 5 business days after the client became liable.

surplus liquid funds or SLF means adjusted assets minus adjusted liabilities:

- (a) plus any non-current liabilities that were used in calculating adjusted liabilities and the value of any assets that are encumbered (where the licensee is not liable and the assets do not secure another person's current liability) that were deducted when calculating the licensee's adjusted liabilities; and
- (b) minus any non-current assets that were used in calculating adjusted assets; and
- (c) if the licensee is an eligible provider under paragraph (b) of the definition of "eligible provider" under this licence—plus one quarter of the value of the licensee's non-current assets minus any intangible assets and the amount of its non-current liabilities.

Tier \$500,000 class assets means:

- (a) real property (including mortgages or leases over or licences in relation to real property) that is intended to be kept for the whole duration of the scheme or, the relevant mortgage; and
- (b) physical assets including currency which as a matter of reasonable practice can be held by a custodian (such as valuables or precious metals); and
- (c) funds received from members within the previous:
  - (i) 6 months if held for the purposes of the initial investment by the responsible entity as part of the scheme; or
  - (ii) 13 months if held pending payment of expenses of the scheme; held in a regulated trust account; and
- (d) special custody assets.

trigger point means either of the trigger points described in condition 11 of this licence.

value of assets means, for the purpose of condition 6 of this licence, the value of assets and other scheme property and/or IDPS property determined as follows:

- (a) in the case of assets that would be recognised in preparing a balance sheet for members under Chapter 2M of the Act - their value as if at that time such a balance sheet was being prepared; and
- (b) in the case of any other scheme property and/or IDPS property - its market value. For the purpose of this calculation mortgages held by members of a registered scheme and managed as part of the scheme must be treated as assets of the scheme.



ASIC  
Australian Securities &  
Investments Commission