

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS 10478 of 2011

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

Applicant: EQUITRUST 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 refer to my affidavit sworn 15 November 2011 and make this affidavit as a supplement to that affidavit. I am authorized on behalf of the Board to swear this affidavit.

The Current Position of ETL

- 2. ETL is currently the responsible entity for the EIF and the EPCIF.
- 3. ETL currently has creditors in its own right and also creditors in its capacity as responsible entity for the EIF and the EPCIF. Some of those creditors are secured, as set out further below. The major creditors of ETL in its own right (including contingent creditors) as at 31 October 2011 are as follows:
 - a. Westpac Banking Corporation, currently in the approximate sum of \$13 million;
 - b. Bank of Queensland ("**BOQ**"), currently in the approximate sum of \$7 million;
 - c. Trade creditors, in the sum of approximately \$934,000.
 - d. Loans from MM Holdings Pty Ltd in the sum of approximately \$4,966,000.
 - e. Income Tax in the sum of approximately \$438,000.
 - f. Other liabilities in the sum of approximately \$131,729.
 - g. As a guarantor, the sum of approximately \$8 million in respect of BOSI's loan facility to ETL in its capacity as trustee of the EPF (the unregulated fund).

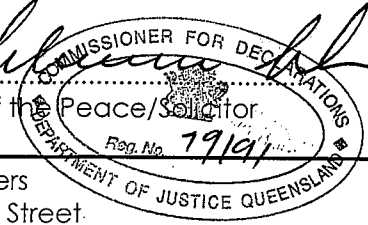
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Deponent: PAUL JAMES VINCENT



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Justice of the Peace/Solicitor



Form 46 —Affidavit

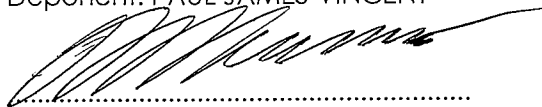
Filed on behalf of: APPLICANT

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Ref: AJT:SG:784


- h. As a guarantor, the sum of approximately \$9 million in respect of Westpac's loan facilities to MM Group entities.
4. ETL also has creditors in its capacity as responsible entity for the EIF, as follows:
- a. the National Australia Bank Limited, currently in the approximate sum of \$8 million;
- b. the Commonwealth Bank of Australia, currently in the approximate sum of \$1 million.
5. ETL in its capacity as trustee of the EPF has:
- a. Creditors of approximately \$12.5 million being BOSI (approximately \$8 million) and MM Holdings Pty Ltd (approximately \$4.5 million);
- b. Assets that it holds for EIF of approximately \$13 million.
6. ETL has no creditors or assets in its capacity as responsible entity for the EPCIF.
7. ETL currently owns no real property in its own name.
8. ETL in its own right is owed several million dollars that it had advanced to three third party borrows, the current impaired value of which is approximately \$585,000 as at 31 October 2011.
9. ETL in its own right also has other assets as at 31 October 2011 as follows:
- a. Cash in the sum of approximately \$509,000.00;
- b. Loans to MM Holdings Pty Ltd in the sum of approximately \$2,667,000.00;
- c. Loans to a wholly owned subsidiary company in the sum of approximately \$1,995,000;
- d. Shares in wholly owned subsidiaries in the sum of approximately \$344,000.00;
- e. A settlement amount of approximately \$2.5 million payable in June 2013 in respect of a defaulting borrower, in respect of which interest in the amount of \$20,000 per month is payable;
- f. Other Receivables in the sum of approximately \$398,000.00;
- g. Receivables from the company that is the co-borrower with ETL from Westpac and BOQ in the sum of approximately \$20 million;
- h. Right of indemnity from the EIF and EPF funds for the borrowings and guarantees provided to NAB and BOSI in the sum of approximately \$16 million.
10. ETL has granted securities over its assets, being the loans due to it, as detailed in the table that is exhibit "PJV-1" to this affidavit. This table was prepared by ETL's in-house legal department.
11. Accordingly, the approximate financial position of ETL as at 31 October 2011, is as follows:
- a. ETL has assets in its own right worth approximately \$26,498,000;
- b. ETL has liabilities in its own right in the approximate sum of \$26,470,000;

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DEPARTMENT OF JUSTICE QUEENSLAND

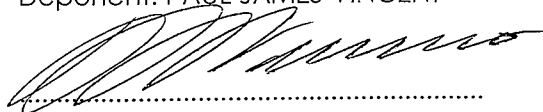
- c. ETL has assets that it holds for the EIF in the approximate sum of \$120 million;
 - d. ETL has liabilities in its capacity as responsible entity for the EIF in the approximate sum of \$9 million;
 - e. ETL has therefore net assets in the EIF in the approximate sum of \$111 million;
 - f. ETL has liabilities in its capacity as Responsible Entity for EPF in the approximate sum of \$12.5 million;
 - g. ETL has assets that it holds for the EPF of approximately \$13 million;
 - h. ETL has therefore net assets in the EPF in the approximate sum of \$0.5 million.
12. ETL and a number of its former directors, including Mr McIvor, Mr Tucker and Mr Kennedy, is also the subject of a potential class action which has been mooted by a Sydney firm of solicitors, being Piper Alderman. No court proceedings have yet been commenced in respect of that mooted class action and accordingly I am unable to provide any real indication of the potential liability of ETL under such proposed class action. A letter dated 11 November 2011 has been received by ETL from Piper Alderman. Exhibit "PJV-2" is a copy of that letter.

The Insurance Position

13. There are two relevant policies of insurance.
14. It is a condition of the Australian Financial Services Licence No. 230471 ("AFSL") that ETL must maintain an insurance policy covering professional indemnity and fraud by officers, as set out in clause 16 of the AFSL ("Policy"). When I became a director of ETL, I became aware that the Policy was due to expire on 11 November 2011. An extension was granted until 21 November 2011. I was aware that ETL was in the process of seeking a further renewal of that Policy and, until Friday 11 November 2011 whilst there were negotiations underway with brokers about renewal of that Policy, I held a belief that the Policy was likely to be able to be renewed. On Friday, 11 November 2011, I became aware, through discussions with other staff members of ETL and the brokers which had been engaged by ETL to seek such renewal of the Policy, that renewal would be unlikely beyond Monday, 21 November 2011. The Policy expires on Monday, 21 November 2011 at 4.00 pm Sydney time, being 3.00 pm Brisbane time.
15. I have continued since 11 November 2011 to seek a renewal of the Policy, but my current belief is that the Policy will not be renewed nor new insurance coverage sourced. As an independent director of ETL, I am not prepared to remain on the board of ETL in the event that the Policy is not available to ETL. Accordingly, unless the Policy is renewed by 3.00 pm on 21 November 2011, Brisbane time, then I propose to resign from the board at that time.
16. There is a concurrent directors and officers liability policy, with the same insurer, that is also due for renewal at the same time. As for the first policy, it is unlikely to be renewed or alternate insurance sourced.

Deponent: PAUL JAMES VINCENT

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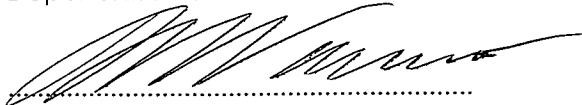

Commissioner for Oaths
Department of Justice Queensland

Winding up the Funds

17. As indicated in paragraphs 9, 10 and 11 of my earlier affidavit sworn 15 November 2011, if I and the other directors of ETL resign, then it is likely that a provisional liquidator may be appointed to ETL and the secured creditors of ETL may proceed to appoint receivers to protect their respective security interests.
18. As also indicated at paragraphs 12 through 15 of my earlier affidavit, the Board has considered the various options open to ETL both in its own right and in its capacity as responsible entity for the two Funds. Of the issues identified in paragraph 14 of my earlier affidavit, the major issue facing ETL is the orderly winding up of the EIF and EPCIF, in the best interests of the members of those Funds.
19. Whilst the resolutions for the winding up of the Funds were passed by the Board of ETL prior to my appointment, based on my work as director since my appointment, I am also clearly of the view that the Funds should be wound up, not least for the following reasons:
- a. the Funds have been frozen since October 2008, in that no redemptions of units have been permitted since then;
 - b. since April 2011, the Funds have ceased paying interest on the units to members of the Funds;
 - c. the disharmony between Mr Tucker and Mr Kennedy on the one hand and Mr McIvor on the other hand over the past 12 months or so, as more fully described in the affidavits of Mr Tucker, Mr Kennedy and Mr McIvor filed in BS9534/2011, has destabilised the Funds to such a degree that it is extremely unlikely that the Funds could regain the possibility of resuming trading;
 - d. the vast majority of the loans owed to ETL as responsible entity for the EIF are in default and require intensive management so as to maximise the value realisable from those loans;
 - e. as indicated in paragraph 8 of my earlier affidavit, I have received widespread support from members for the winding up and no objections. I am aware of an indication, by correspondence from Piper Alderman as solicitors for a number of members who have mooted a potential class action against ETL and its former directors, that there may be some opposition to the winding up, but I have not yet seen the details of any such opposition and am accordingly unable to comment on the reasons for such opposition; and
 - f. against this background, it is clear to me that the purpose for which each of the EIF and EPCIF were established can not be accomplished.
20. Accordingly, I am of the clear view that the Funds should be wound up. Given that the winding up process under s 601NC has been triggered, subject to a meeting being called by some members to consider that proposed winding up, under the Constitution of the EIF ("**Constitution**") (a copy of which is exhibited as "**PJV-3**"), the winding up of the Funds will

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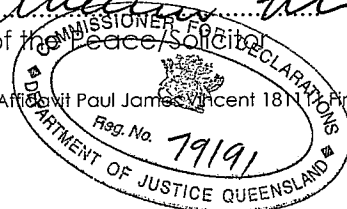
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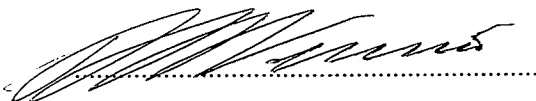


proceed on and from 25 November 2011, being 28 days after the first notices were sent to members under s 601NC(2) of the Act.

21. Since my appointment, the Board has been considering carefully the potential asset realisations of the Funds and has developed a strategy for an appropriate sell down of assets. That strategy includes a loan by loan analysis of each loan owed to ETL in the Funds. There is a document that records the loan by loan analysis however I do not intend to exhibit it to this affidavit as it contains commercial in confidence consideration of each loan and the Board's assessment of the recoverability and value adding potential. I am prepared to make it available to the Court and such other parties who may have a legitimate interest in seeing it, on appropriate confidentiality undertakings.
22. The Board's current assessment of the time that it will take to wind up the Funds in an orderly manner (including recovering outstanding loan monies and undertaking selective property development to maximize the return to investors) is between three to five years, with potential interim distributions to members during that period.
23. Under the Constitution, and specifically clauses 9.2 and 9.3 of the Constitution, the responsible entity, being ETL currently, is responsible for winding up the Funds. Whilst ETL is currently in a position to be able to do that, if the directors all resign next Monday and ETL is placed into provisional liquidation or has receivers appointed to it, then the task of realising the assets of the Funds and undertaking the winding up of the Funds will potentially fall to progressive receivers and managers and provisional liquidators of ETL. Given that each of the secured creditors of ETL is owed a relatively small sum in comparison to the overall assets of ETL as responsible entity for the Funds, I am very concerned that the involvement of multiple insolvency practitioners over time will lead to a more complicated and expensive realisation than if the Funds were wound up by an entity that is not itself under any insolvency administration.
24. I am concerned about the potential layers of fees to be paid to the various insolvency practitioners who may be appointed. More importantly however, given that each of the potential receivers and managers would have varying attitudes towards the realisation of different assets, bearing in mind that the assets are loans due to ETL and secured by real property in most cases, I am concerned that there will not be an orderly realisation of loans and real properties such as to maximise the amount ultimately available to the Funds' members once the secured debts are repaid and the costs of those realisations are accounted for.
25. Whilst it is a matter of my general experience of 30 years as a Chartered Accountant, my best and current estimate of the potential downside to the Funds of the appointment of multiple insolvency practitioners over ETL is that the net assets of the Funds might be diminished by anything up to \$30 million to \$40 million. I have arrived at this figure based upon my experience being that asset realisation values diminish by 25% to 30% following the appointment of an insolvency practitioner. It is very difficult to be more precise about this figure, as it will depend upon which insolvency

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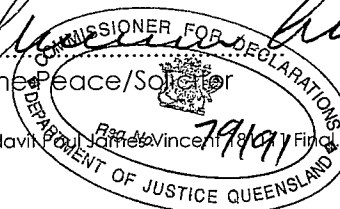
Deponent: PAUL JAMES VINCENT



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practitioners are engaged and what assets are first realised and for what amounts.

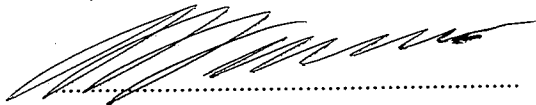
26. In all of these circumstances, including the risk of significant diminution to the assets of the Funds and the extended time for achieving the best return, I consider that this option is not in the best interests of the members of the Funds.

Replacement of responsible entity

27. Given that the Constitution and the Act both refer to the winding up being carried out by the responsible entity, and in the circumstances where ETL as current responsible entity may be in provisional liquidation and the subject of receivership next week, I have made enquiries about the appointment of a temporary responsible entity under s 601FN of the Act. In my view, the appointment of a replacement responsible entity to wind up the Funds would lead to a better return to investors than ETL doing so either itself or under the control of insolvency practitioners.
28. The Board has engaged in discussions with a number of potential responsible entities that might be able to assume the role of responsible entity of the Funds.
29. The current position is that the Board has over the past 36 hours been negotiating with the only remaining potential replacement responsible entity, being Stacks Managed Investments Limited ("**Stacks**"). The Board considers that Stacks was potentially an appropriate replacement responsible entity because it has the necessary expertise and experience of mortgage funds that are similar to the Funds. It also has recently, in September 2011, taken over as responsible entity of another mortgage fund, being the Kingsway Premium Income Fund. The proposal which the Board of ETL has considered is as follows:
- Stacks has an Australian Financial Services Licence (number 227673) and is capable of acting as responsible entity of the EIF and EPCIF in accordance with the provisions of the Act;
 - Stacks currently has some operational resources that are capable of conducting the winding up, however would re-employ current staff of ETL to carry through the winding up;
 - As Stacks is the responsible entity for two other managed investment schemes, it is proposed that a discrete management company would be incorporated to conduct the day to day management of the winding up of the EIF and EPCIF and be contracted to undertake that task by Stacks. The directors of the management company would be Mr Paul Stack and Mr Ray Stack who would employ current ETL staff including the current executive directors. This would allow the property management skills of the current board of ETL to be retained and utilised moving forward. The shareholders in this company would be Nundroo Pty Ltd (a private company associated with Mr Paul Stack); and

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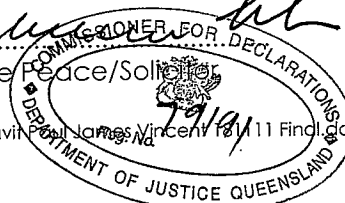
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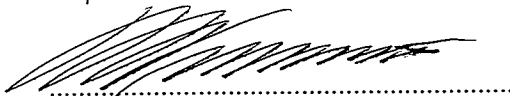
- d. Stacks had been, until this afternoon, prepared to take an appointment on the basis that it charges a management fee in the amount of \$150,000 per month with that fee to be approved by the Court as part of this application. However the current position, as at the time of swearing this affidavit at approximately 17:30, is that Stacks is not prepared to take the appointment. If that changes by Monday 21 November 2011, then it is still the best option, in the Board's view.
30. During the course of considering the Stacks' proposal to take on the role of responsible entity, I was provided with a copy of a Company Profile for Stacks Finance outlining the key personnel and experience of Stacks Managed Investments Limited. Exhibit "PJV-4" to this affidavit is a true copy of the Stacks Finance Company Profile that I received.
31. One consequence of the change of responsible entity will be that 40,000,000 sub-ordinated units in EIF held by ETL in its own right may potentially reconvert to ordinary units in the EIF. There is also this potential with respect to 10,000,000 in the EPF. I say potentially, because I have sought advice about whether or not such reconversion will occur if there is a change in responsible entity, however the unavailability of some source documents within ETL has prevented me from providing full instructions to lawyers about the documents that would govern such reconversion. Nevertheless, based on one document that is available to me, being the Deed Poll dated 9 February 2009 (a true copy of which is Exhibit "PJV-5" to this affidavit), I consider that there is a potential for the change of responsible entity to cause the reconversion of ETL's units in the EIF. The effect of such reconversion may dilute the value of units held by current ordinary unit holders by between 16% and 20%.
32. The circumstances of this potential reconversion have been known to members in light of its disclosure in Product Disclosure Statements published by ETL. Exhibit "PJV-6" to this affidavit is a true copy of a Product Disclosure Statement for the EIF dated 6 February 2009. Paragraph 12.11 of that document deals with the conversion of the subordinated units.
33. Accordingly, as can be seen from the above, both an overall insolvency of ETL and a change of responsible entity will have significant diminution effects upon the EIF and EPCIF. It would be preferable if neither occurred.

Position of ASIC

34. On Wednesday 9 November 2011, I attended a meeting with representatives of the ASIC with a view to ascertaining whether the ASIC would grant an exemption to ETL to continue to operate as responsible entity without an AFSL, which is open to the ASIC to grant under s 601QA of the Act. Without going into all of the detail of the meeting, the upshot was that the ASIC indicated that it would not provide any special treatment for ETL over and above any other responsible entity. Given the existence of the insurance

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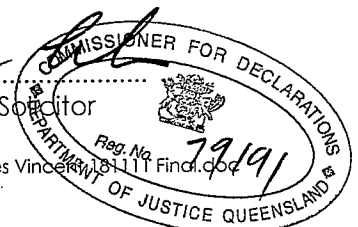
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issues outlined above, the Board has decided to not make a formal application to the ASIC for exemptions.

Recommendation of the Board

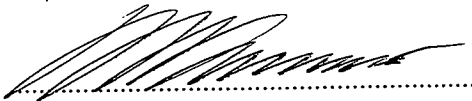
35. In all of the above circumstances, it is my view and that of the Board that:
- a. it is in the best interests of members of the EIF and the EPCIF that the EIF and EPCIF be wound up forthwith;
 - b. given the complexity of the realisation of the Fund's assets and the potential lengthy period of the winding up process, it would be best if a replacement responsible entity, without the issues associated with ETL, be appointed by the Court on a temporary basis under s 601FP to enable the winding up to proceed outside of any insolvency of ETL;
 - c. if a replacement responsible entity is not available by Monday 21 November 2011, then it is the recommendation of the Board that an independent insolvency practitioner be appointed to wind up the Funds in accordance with the provisions of the Constitution. The consent of Mr Brad Hellen of Pilot Partners has been sought and is expected to be obtained for Monday 21 November 2011 in that event.
 - d. Once either the replacement responsible entity is appointed or a person is appointed to oversee the winding up of the Funds, such that interests of the members of the Funds are safeguarded, then the directors intend to resign.

Overseeing of the winding up

36. Based on my review of the affidavits of Mr Tucker, Mr Kennedy and Mr McIvor in proceedings BS9534/2011, being winding up proceedings brought by Tucker SF Pty Ltd against the Fund in late October 2011, there has been considerable disharmony between the Board members over the past 12 months. It has not been part of my consideration, nor that of the current Board so far as I am aware, to investigate or adjudicate upon any of the matters that are alleged by each of those individuals against each other in those affidavits. The focus of the current Board's activities since late October 2011 has been to ascertaining the best method of implementing an orderly wind down of the Funds. Nevertheless, in light of the allegations and counter allegations made between the former directors, I consider that it is

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Deponent: PAUL JAMES VINCENT



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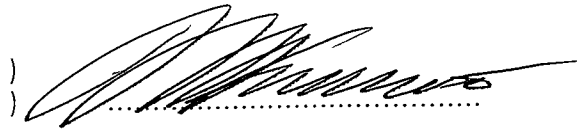


appropriate and in the interests of the members of the Funds that the winding up process be overseen by a person independent of, and not proposed by, the former Board members.

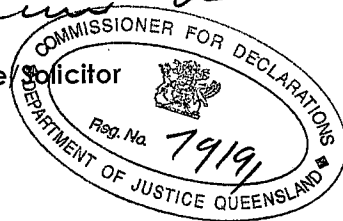
37. I expect that in due course investigations will take place regarding the past conduct of former directors and officers of ETL and where appropriate legal action taken in respect of any wrongs to ETL and the Funds.

38. 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 18th day of November 2011)
before me:



Justice of the Peace/Solicitor



SUPREME COURT OF QUEENSLAND

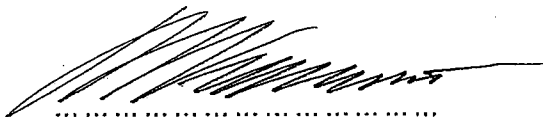
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IN THE MATTER OF EQUITITRUST LIMITED A.C.N. 061 383 944


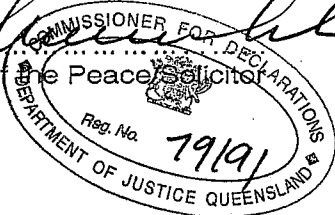
Applicant: EQUITITRUST LIMITED A.C.N. 061 383 944

CERTIFICATE OF EXHIBIT

Exhibit "PJV-1" to the Affidavit of PAUL JAMES VINCENT sworn 18th 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

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Date	Charge No.	Chargee	Comments
		Capital Finance Corporation	
		(Australia) No. 1	This related to security property on a project which no longer exists. Equititrust maintains there is no money owing on this charge. The chargee has since been deregistered. ETL is in the process of having this removed through Tucker & Cowen.
24.12.99	730120	Pty Ltd	
15.12.03	1003938	NAB	This charge was for ETL in its own right limited to \$20m securing a guarantee which no longer exists.
24.07.04	1065646	BOSI	Original ETL has a facility with Capital Finance for \$25m. When this was replaced with the CBA facility the charge was kept in place (in anticipation of funding for EPF with Capital Finance) to secure the stamp duty on \$25m. The EPF facility was subsequently done by BOSI and the Capital Finance charge was assigned to them as ETL as Trustee of EPF - this to secure the stamping credits.
03.08.04	1067810	CBA	Charge over ETL as RE of EIF. \$90m loan repaid to CBA. Charge secures a contingent liability of some \$500k to \$1m+ relating to bank guarantees issued by EIF for Borrowers as part of loan facilities
22.12.05	1246989	NAB	Charge over ETL as RE of EIF.
15.06.07	1467553	BOSI	Charge over ETL as Trustee of EPF.
15.06.07	1467554	BOSI	This is for a guarantee signed by ETL limited to \$10m.
20.12.10	2105255	ECG	Charge being released. No longer required. Was security over EIF in anticipation of Priority Class raising to pay out NAB which did not proceed.

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SUPREME COURT OF QUEENSLAND

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

CERTIFICATE OF EXHIBIT

Exhibit "PJV-2" to the Affidavit of PAUL JAMES VINCENT sworn 18th November 2011.



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Deponent


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Justice of the Peace/Solicitor


Form 47 – Certificate of Exhibit

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Filed on behalf of: Applicant

Our Ref: AKB.CMM.375373
Your Ref:



11 November 2011

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MARK MCIVOR
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CHEVRON ISLAND QLD 4217

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SURFERS PARADISE QLD 4217

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Email: chris.martin@piperalderman.com.au

Dear Sirs

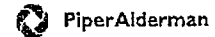
Equititrust Income Fund ("Income Fund") & Equititrust Premium Fund ("the Premium Fund")

We refer to the above funds.

1. **Continuous disclosure statement dated 4 November 2011**
 - 1.1 On 4 November 2011, Equititrust Limited ("Equititrust") released a continuous disclosure statement including reference to insurance policies held by Equititrust ("4 November Disclosure").
 - 1.2 The 4 November Disclosure included reference to Equititrust's insurance policies expiring shortly and stated that:

"The current term of the various policies of insurance held by Equititrust Limited expire on 12 November 2011."

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2. Claims against Equitrust

- 2.1 As you are aware, Piper Alderman represents a number of scheme members regarding their claims against Equitrust and its directors in relation to its conduct as responsible entity and manager of the Income and Premium Funds.
- 2.2 For the avoidance of doubt, the directors and officers against whom the claims are made include:
- (a) David Robert Walter Tucker;
 - (b) John Alexander Goddard;
 - (c) Craig Granville Treasure;
 - (d) David John Kennedy;
 - (e) Mark McIvor;
 - (f) Thomas John Haney;
 - (g) Wayne McIvor; and
 - (h) Sidney Super (Previous Company Secretary)
- 2.3 Schedule A to this letter is a list of the scheme members in the Income Fund for whom we act, the dates of their investments and the amount of their holdings in the Income Fund.
- 2.4 Schedule B to this letter is a list of the scheme members in the Premium Fund for whom we act, the date of their investments and the amount of their holdings in the Premium Fund.
- 2.5 In light of the short notice given of the expiry of the insurance policies, there are scheme members in both the Income and the Premium Fund who are yet to make a claim but intend to make claims against Equitrust and its directors on the same basis as set out below.
- 2.6 Further, a litigation funder, International Litigation Partners No.1 Ltd, has agreed to fund a class class action against Equitrust and its directors ("Class Action").
- 2.7 The basis for the legal claims of our clients and potential class members to the Class Action are set out below.

3. Basis of Claim

- 3.1 Our clients' and the scheme members claims as against Equitrust and its directors are based on the following causes of action:
- (a) breach of fiduciary duties;

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- (b) breaches of trust;
- (c) breaches of the Corporations Act;
- (d) negligence; and
- (e) misleading and deceptive conduct.

3.2 The causes of action are detailed below.

4. Breach of fiduciary duties and the corresponding Corporations Act provisions

- 4.1 Pursuant to equitable principles and under section 601FC of the Corporations Act, Equititrust, as responsible entity for the Income and Premium Funds must act in the best interests of the members, and if there is a conflict between the members' interests and its own interests, give priority to the members' interests.
- 4.2 Equititrust has preferred its own interests over those of the scheme members by allowing borrowings of the Income Fund to be excessive, to generate and pay to itself the excessive interest warranty fee payments for 2005 to 2008 and the excessive returns on subordinated interests paid in 2009 and 2010. The interest warranty fees paid to Equititrust for 2005 to 2008 amounted to \$51,635,858 and the returns on the subordinated interests held by Equititrust in 2009 and 2010 amounted to \$20,445,141.
- 4.3 The payments made, however they may have been defined under the constitution, were paid by Equititrust to itself in manifestly excessive amounts and were paid out of scheme property on terms that were not reasonable in the circumstances of a responsible entity dealing with itself at arm's length.

Failure to act in best interests of scheme members

Interest Warranty Fee

- 4.4 The Manager paid itself the interest warranty fee for providing to scheme members a warranty that each of them would be paid a minimum rate of interest for the period they invested their capital in the Scheme. This warranty was to be satisfied out of the personal assets of the Manager and not that of the Scheme.
- 4.5 The initial fee in 2000 was \$319,934.00 which was 0.57% of the gross assets of the Scheme at the time. This fee increased to \$21,072,761.00 in 2008 which was 5.16% of the gross assets of the Scheme. In particular, the interest warranty fees increased to \$10,967,532.00 in 2005 (4.06% of gross assets), \$15,580,683.00 for 2006 (4.15% of gross assets), \$19,595,565.00 for 2007 (5.35% of gross assets) and \$21,072,761.00 for 2008 (5.16% of gross assets). These increases in the amount of fees over these periods were unjustified. The amounts paid to the Manager as the interest warranty fees for 2005 to 2008 were manifestly excessive.
- 4.6 The amount of the interest warranty fees paid to the Manager was grossly disproportionate to the benefit the Scheme and its members received from the provision by the Manager of the interest warranty.

- 4.7 The Manager made these payments to itself out of Scheme property on terms that were not reasonable in the circumstances if the Manager were dealing with itself at arm's length.
- 4.8 Accordingly:
- (a) the Manager has contravened s.208 (as modified by s.601LC) by making the interest warrant fee payments to itself from 2005 to 2008 without the Scheme members' approval; and
 - (b) the conduct of the Manager in determining the interest warranty fees paid to itself constituted a breach of its statutory and fiduciary obligations to act in the best interests of the Scheme's members.

Return on subordinated investment

- 4.9 Upon redeeming its 42,136,143 ordinary units, the Manager applied the redemption proceeds to have issued to itself 40,032,277 subordinated interests pursuant to clauses 2.6 and 2.12 of the Amended Constitution.
- 4.10 Pursuant to clause 8.5 of the Amended Constitution the Manager was to be paid as a return on its subordinated interests *"any remaining surplus income of the Scheme after payment of the Scheme's expenses, the investors' benchmark returns and the Manager's management fees"*.
- 4.11 The amount of return for this investment was also grossly disproportionate to the benefit the Scheme and its members received from the Manager maintaining its subordinated investment in the Scheme.
- 4.12 Whatever risk may have been associated with this investment, the return paid to the Manager in accordance with clause 8.5 was manifestly excessive. This was principally because the payments made to the Manager came from the *"remaining surplus income of the Scheme"* after specified payments had been made.
- 4.13 Significantly, the definition of *'Income'* had been amended by the Amended Constitution. Prior to the amendment clause 1.1 of the Constitution defined *'Income'* to mean *"all amounts which are, or would be recognised as income by the application of generally accepted accounting principles"*. After the amendment *'Income'* was defined to mean *"all receipts from Authorised Investments which are paid into the Scheme Account"*.
- 4.14 The term *"all receipts"* included not only all income receipts resulting from interest payments made by mortgagors but also all capital receipts resulting from the repayment of part or whole of the principal of the mortgage loans.
- 4.15 The amounts which could be paid to the Manager pursuant to clause 8.5 bear no relationship to the risk associated with its subordinated interests. This is because the amounts were calculated by reference to the *"remaining surplus"* of all income and capital received by the Scheme for that year after specified payments had been made.

- 4.16 The manifest excessiveness of the amounts paid to the Manager as a return on its subordinated interests is illustrated by the fact that the ordinary Scheme members obtained a rate of return on their investment of 8.58% pa for 2009 and 7.79% pa for 2010 while the Manager achieved a rate of return of 27.6% pa and 39.4% pa for the same periods.
- 4.17 The Manager made these payments to itself out of Scheme property on terms that were not reasonable in the circumstances if the Manager were dealing with itself at arm's length.
- 4.18 Accordingly:
- (a) the Manager has contravened s.208 (as modified by s.601LC) of the *Corporations Act 2001 (Cth)* by making these payments to itself without the scheme members' approval; and
 - (b) the conduct of the Manager in determining the returns paid to itself constituted a breach of its statutory and fiduciary obligations to act in the best interests of the scheme members.

Income

- 4.19 During the financial years 2000 to 2010, the predominant, if not only source of income received by the Manager was the payment to itself of the Interest Warranty Fee and the Subordinated Notes Fee.
- 4.20 The Subordinated Notes Fee was "any remaining surplus Income of the Scheme after payment of the Scheme's expenses, the investors' benchmark returns and the Manager's management fees" (cl 8.5 of the Amended Constitution). In practice, the Interest Warranty Fee was also determined in this manner. Accordingly, the Manager stood to benefit by increasing the "remaining surplus".
- 4.21 In the same period, the unit holders received monthly interest payments on their respective investments at an average fixed interest rate of between 7.5% - 8.82% (2005 (8.31%), 2006 (8.45%), 2007 (8.37%), 2008 (8.82%), 2009 (8.58%), 2010 (7.79%), see annual reports for 2005 to 2010).
- 4.22 Further, depending on the profitability of the Income Fund, each unit holder's investment could, in theory, be redeemed at the end of the 12 month term for a price above the purchase amount. The prospectus dated 5 December 2000 states that:

"Investors in EIF are entitled to capital and income of EIF in a proportion represented by the number of interests they hold bearing to the total number of issued interests in EIF" (page 23),

and further:

"The capital of an Investor's investment in EIF is represented by the number of interests held by an Investor in proportion to the total number

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of issued interests in EIF. This entitlement is both to capital and income" (page 26).

The constitution tempers these representations with the definitions "Distribution Amount" and "Redemption Price". "Redemption Price, subject to clause 11, means:

"the Gross Asset Value of the Scheme less liabilities and Fees owing to the Manager and adjusted to reflect such provisions as the Manager in consultation with the Auditor considers appropriate, divided by the total number of Interests in the Scheme currently on issue."

(see also definitions for "Current Value" and "Current Interest Value" at cl 1.1 of the Constitution).

- 4.23 In theory, therefore, unit holders' stood to gain from the profitability of the Income Fund.
- 4.24 Notwithstanding the above, the price of units in the Income Fund has historically remained at \$1.00 per Unit (see page 13 of Equitrust Product Disclosure Statement dated 6 February 2009, "PDS"). Indeed, in each financial year from 2000 to 2010, the total assets are cancelled out exactly by the total liabilities. Therefore, the "Current Interest Value" at any given time for that eleven year period was zero (which, in practical terms means that investors during that period only ever redeemed their investments at the exact price they bought them for, which was \$1 per interest (see also the investment register which records all sales at \$1).
- 4.25 Accordingly, unit holders (beyond a minimum cash flow positive threshold) do not benefit from the increased profitability or financial success of the Income Fund, as the "remaining surplus" is absorbed by Equitrust. Indeed, even if the Income Fund had an indifferent year, the unit holders have the benefit of the Interest Warranty and the Capital Warranty and as such would receive their interest payments regardless.

Borrowing

- 4.26 In these circumstances, the question is whether unit holders' benefited by increased borrowing during the period 2000 to 2010.
- 4.27 Although clause 4.1(b) of the constitution permitted the Manager to borrow money for the purposes of the Scheme and on security of the relevant Assets, that discretionary power could only be exercised by the Manager in a manner consistent with its statutory and fiduciary duties: that is, to act in the best interest of scheme members.
- 4.28 The Manager represented in its PDS that
- "the constitution of the Fund allows Equitrust to borrow funds on behalf of the Fund. The credit line facilities allow Equitrust to approve and settle loans in a timely manner where the temporary available cash of the Fund may otherwise be insufficient. Likewise, when the Fund cash*

is surplus, Equititrust retires credit lines ensuring the Fund efficiently utilises these facilities. Lines of credit will generally be used for: financing direct mortgages by the Fund; providing secured finance to other licensed mortgage fund operators; loan partnering, which involves the Fund jointly investing in a direct mortgage with another party; and, paying distributions and withdrawals which assist in managing the cash liquidity of the Fund."

4.29 Further, the prospectus dated 5 December 2000 at page 23 states that:

"The Manager has all the powers of a natural person and a body corporate to invest and borrow on security of EIF property. ... The Constitution permits borrowings arranged by the Manager to facilitate redemptions by investors and for the purposes of EIF."

4.30 Certainly, in utilising external financing there is significant risk:

- (a) that Equititrust may not be able to renew existing credit facilities on similar or no less favourable terms to those it currently receives; and,
- (b) that if Equititrust defaults on the credit facilities then the banks will have first right of access to the assets of the Income Fund in priority to the investors.

This will impact on the capacity of Equititrust to meet current withdrawal requests. If the Income Fund is unable to meet the liabilities to the banks then the investors will likely suffer a capital loss.

4.31 In light of the preceding section on *Income* and the significant risks detailed immediately above, borrowing for the purpose of increasing the Income Fund's overall performance is not in the interests of the unit holders and cannot be consistent with the Manager's fiduciary obligations.

4.32 Similarly, the Manager had a duty to ensure that credit lines are retired and paid down efficiently. Indeed, the Manager represented in its PDS that:

"when the Fund cash is surplus, Equititrust retires credit lines ensuring the Fund efficiently utilises these facilities."

4.33 Accordingly, it can reasonably be supposed that Equititrust had:

- (a) a duty to borrow only when necessary and then only for the purposes of satisfying liquidity objectives (for example, facilitating redemptions by investors in circumstances where cash flow requirements had been underestimated); and
- (b) a duty to retire credit lines efficiently and out of the remaining surplus.

4.34 In relation to (a), there are two circumstances which support our opinion that these credit lines were not taken out for the purpose of providing liquidity.

4.35 Firstly, during financial years 2000 to 2003 investors funds increase from \$55,752,958 at 30 June.2000 to \$144,225,100 as at 30 June 2003, whereas external financing remained at nil. Accordingly, notwithstanding the fact that investors' funds almost tripled, Equititrust did not require external financing to manage the Income Fund's liquidity objectives. The obvious conclusion is that the Income Fund deployed a lower proportion of investors' funds into income producing loans and therefore retained significant liquid cash flow to meet funds liquidity objectives. As it happens, this is in keeping with ASIC regulatory guideline 45 benchmark 1 on liquidity, which calls for Equititrust to have estimates of, and provisions for meeting, cash flow requirements three months in advance.

4.36 Secondly, in relation to the risk of credit lines not being renewed, the Manager represented in its PDS that:

In such and event, the Fund may have lower available cash resources and its ability to meet short-term liquidity objectives will be detrimentally affected. This may require the Fund to deploy a lower proportion of investors' funds in income producing loans and therefore detrimentally affect overall Fund performance."

4.37 Accordingly, from 2004 onwards, instead of holding back provisions for meeting cash flow requirements, Equititrust invested all of the investors' funds in income producing loans and relied on external financing to meet liquidity objectives. Equititrust did not borrow for liquidity; in their own words they borrowed to increase "overall Fund performance". Indeed, the Manager had the following to say regarding credit lines in its continuous disclosure statement dated 18 February 2011:

"Historically, this has enabled the Fund to profitably grow its asset base, as the cost of bank funding was lower than the Benchmark Rate offered to investors".

4.38 In relation to (b), there are two circumstances which support that these credit lines were not retired efficiently using the remaining surplus.

4.39 Firstly, during the financial years 2004 to 2008 borrowing increased steadily to \$122m. Interest payments were made to the banks, however, no principle repayments were made to reduce the Income Fund's exposure.

4.40 Secondly, the payments to the Manager increased significantly from the onset of using external financing. The Manager paid to itself surplus funds of \$10,967,532 in 2005 (4.06% of gross assets), \$15,580,683 for 2006 (4.15% of gross assets), \$19,595,565 for 2007 (5.35% of gross assets) and \$21,072,761 for 2008 (5.16% of gross assets).

4.41 The Manager may argue that the benefit of the credit facilities were as follows:

(a) Equititrust represents in a update to investors dated 18 February 2011 that the facilities were taken out and drawn down prior to the onset of the GFC when the cost of capital provided by the banks was

considerably cheaper (by some 2% to 3%) than the investment return paid to investors; and

- (b) that *"the differential allowed us to lend that money at an increased margin. In turn, this allowed to build a greater buffer against impairments, should they occur, as well as pay superior returns to investors"* (page 2).

- 4.42 In relation to paragraph 4.41(a), we note that as outlined above, drawdown's on the facilities continued steadily right up to 30 June 2008 and from at least 2004 to 2008 the difference in interest payments was negligible (with average difference of approximately 0.8%), particularly in light of the significant risks identified at paragraph 36 above. Further, this information contradicts the grandiose representations of 2% to 3% above.
- 4.43 In relation to paragraph 4.41(b), investors returns in terms of their fixed interest payments have remained fairly constant over the 11 year period from 2000 to 2010 and for the first 4 years no external credit facilities were necessary to achieve this. Further, prior to financial years 2009 and 2010, Equititrust never recorded a single impairment of a loan, despite having some \$260m invested in mortgage loans.
- 4.44 Accordingly, Equititrust failed to act in the best interests of the Income Fund for the following reasons:
- (a) It borrowed money against the assets of the Income Fund for its own purposes; and
- (b) It failed to retire credit lines efficiently and out of the remaining surplus arm's length.
- 4.45 Equititrust has contravened section 601LC of the Corporations Act by making payments to itself without the scheme members' approval. Further, the conduct of Equititrust in determining the amounts paid to itself constitutes a breach of its statutory and fiduciary obligations to act in the best interest of the scheme members.
- 4.46 These facts and circumstances also reveal breaches by its directors of section 601FD of the Corporations Act.
- 4.47 By reason of the breach of fiduciary duties the scheme members, including our clients, are entitled to claim damages.

5. Breaches of trust and the corresponding Corporations Act provisions

- 5.1 Pursuant to section 601FC(2) of the Corporations Act, Equititrust, as responsible entity of the Income Fund and the Premium Fund holds the scheme property on trust for scheme members.

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Breaches of the constitution

- 5.2 In fulfilling its duty as trustee for the Income and Premium Funds, Equititrust must perform its duties as responsible entity of the Funds in accordance with the constitution.
- 5.3 Clause 7.1 of the constitution provides that Equititrust is to seek and invest the funds of the Income Fund in Mortgage Investments.
- 5.4 "*Mortgage Investment*" is defined by clause 1.1 of the constitution to mean:
- "A loan secured by a registered mortgage over Land and other property subject to the following provisions:*
- (a) *the mortgage will rank as a registered First Mortgage and/or Second Mortgage over the mortgaged Land;*
- (b) *the total of all money advanced and secured over such Land and any other property, shall not exceed 80% of the value of the Land and other property that is being valued by an Approved Valuer as shown in the valuation furnished by an Approved Valuer."*
- 5.5 "*Land*" is defined by clause 1.1 of the constitution to mean:
- "a freehold estate or interest in real property in any part of the Commonwealth of Australia or any State or Territory thereof and including buildings, fixtures and fittings (including furnishings) and other improvements erected or installed thereon."*
- 5.6 To date \$150m of the Income Fund's mortgage loans have been impaired: see paragraph 101 of the Affidavit of David Tucker sworn 20 October 2011.
- 5.7 The constitution provides for certain loan to value ratios (LVR) for any Mortgage Investments. It further provides that in calculating the LVR, the value of the land could include buildings etc and improvements actually on the land. The constitution does not, on its face permit an estimated value of the completed project to be taken into account by Equititrust when considering the amount of the Fund's money that could be lent on a project (i.e. "*as if complete*" valuations were not approved). The constitution requires "*as is*" valuations for the purposes of calculating the LVRs and setting lending limits for projects.
- 5.8 The dramatic drop in the value of the assets of the Income and Premium Funds is attributable to money being lent originally against construction, development and other projects on the basis that the money initially advanced and secured exceeded 80% of the Land value, in contradiction with the terms of the constitution. This may have occurred because money was lent on the basis of "*as if complete*" valuations and that the estimated value of the projects has dramatically fallen and this has caused the impairment referred to above. In this regard, we note that according to the Equititrust benchmark disclosure update as at 31 December 2010, the Mortgage Investment types of the Income Fund included:

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- (a) Commercial / Industrial (37.4%);
 - (b) Commercial Site (1.5%);
 - (c) Residential (16.3%);
 - (d) Residential Site (34.3%);
 - (e) Residential Development (1.7%); and
 - (f) Rural / Rural Residential (8.8%).
- 5.9 We understand that the Mortgage Investment types at paragraphs (b), (d) and (e) relate to 'future developments'.
- 5.10 Equititrust and its directors and officers have invested the Income and Premium Fund's assets in projects outside the investment criteria in the constitution, and as a result there has been a breach of the constitution and the compliance plan by Equititrust.

Imprudent Investments

- 5.11 Equititrust is also the trustee of the Income and Premium Fund property: cl 2.2 – Constitution, s601FC(2) – Corporations Act.
- 5.12 Even if a loan were a "Mortgage Investment" in terms of the Constitution, it can be reasonably supposed that Equititrust would be in breach of trust by making an imprudent investment and advancing money which exceeded 80% of the "as is" valuation of the property, whether or not made on the basis of certified progress payments from a quantity surveyor or architect.
- 5.13 The duty of Equititrust is to take care, as an ordinary prudent man might take it if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide. A professional corporate trustee, like Equititrust is subject to an even higher standard of care than the ordinary prudent business person.
- 5.14 The inherent imprudence of Equititrust in advancing money on the basis of 'as if complete' valuations was further compounded because many of the underlying property development projects appear to have been commercially unsound or carried high credit risk; e.g. Equititrust advanced substantial amounts (\$80 million) to companies associated with embattled Gold Coast businessman, Mr Dudley Quinlivan (aka 'King Con'): see *Quinlivan v ASIC* [2010] AATA 113 at [86].
- 5.15 In breaches of trust, Equititrust and its directors have made further imprudent loans from the scheme assets including by way of example the loans listed in Annexure A (the continuous disclosure statement issued by Equititrust on 18 February 2011).

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Defaulting mortgage re-negotiations

- 5.16 It is a breach of trust to re-negotiate mortgages which are already in default because the trustee is extending credit on a speculative or hazardous basis to borrowers who are already in default and therefore represent a poor credit risk.
- 5.17 The Income Fund's annual financial reports show that:
- (a) the Fund's assets as at 30 June 2010 were approximately \$281 Million
 - (b) as at 30 June 2010 approximately \$178,346,660 of the above were in the form of mortgage loans;
 - (c) during the year ended 30 June 2010 Equitrust extended the terms of 72% of the mortgage loans totalling \$183,023,971 (see note 10 on page 24). Without extensions, all these loans would have been overdue (by more than 1 year in some cases);
 - (d) during the year ended 30 June 2009 Equitrust extended the terms of 24% of the mortgage loans totalling \$73,235,423 (see note 10 on page 23 of 30 June 2009 report). Without extensions, all these loans would have been overdue (by more than 1 year in some cases); and
 - (e) during the year ended 30 June 2008 Equitrust extended the terms of 17% of the mortgage loans totalling \$69,049,941 (see note 10 on page 23 of the 30 June 2008 report). Without extensions, all these loans would have been overdue (by more than 1 year in some cases).
- 5.18 In a continuous disclosure statement dated 18 February 2011, Equitrust issued a loan portfolio update including that:
- (a) In the 3 months prior to the disclosure, Equitrust had, with a few exceptions, stopped the capitalisation of interest so as to allow the loan to go into default and thus enable Equitrust to take enforcement action for the control of it.
 - (b) Equitrust has taken control over all loans over \$2.5 million which represent over \$90 of the Income Fund's loan book.
 - (c) Equitrust has also absorbed over \$30 million in impairments across the loan book in the past 3 financial years.
- 5.19 A copy of the continuous disclosure statement from Equitrust dated 18 February 2011 is included as Annexure A to this letter.
- 5.20 In light of the continuous disclosure statement and the information from the financial reports, it is reasonable to consider that any mortgages in default that were re-negotiated by Equitrust would otherwise have been required to be brought to account in the Income and Premium Fund's financial statements as impairments. The re-negotiation of terms effectively disguised the credit risk and comprises a breach of trust. Accordingly, Equitrust is in breach of trust for re-negotiating mortgage loans.

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5.21 By reason of the breaches of trust set out above, the scheme members, including our clients, have suffered loss and damage.

6. Breaches of the Corporations Act

Continuous disclosure

6.1 Pursuant to s 675 of the Corporations Act disclosing entities such as Equititrust, to which this section applies must lodge a document (Form 1003) with ASIC, as soon as practicable, if the entity becomes aware of information:

- (a) that is not generally available, and
- (b) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of the entity.

6.2 Equititrust failed to disclose to the members of the Income and Premium Fund or to the market information not generally available to the market that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the units. This information included the Income and Premium Funds' worsening bad and doubtful debts position and the serious delays it was experiencing in collecting accounts owed by its creditors, and in relation to impairment of loans and overvaluations etc.

6.3 Since 2000, Equititrust has brought to account in the Income and Premium Funds' financial statements a remarkably low level of impairments on its loans. For example, the financial reports for the Income Fund for the years ending 30 June 2009 and 30 June 2010, disclose total impairment losses in respect of mortgage loans of \$2,978,378. The financial report for the year ending 30 June 2008 disclosed nil impairment losses.

6.4 It appears that Equititrust has not brought to account the true level of impairments to the Income and Premium Funds' mortgage loans to date or at all material times in the past. Indeed, it was only as recently as 18 February 2011 that Equititrust disclosed to investors that \$30 million in impairments across the loan book had occurred over preceding 3 financial years, which information contradicts representations made in their financial statements for the same period. Annexure A to this letter is a copy of the disclosure made by Equititrust on 18 February 2011.

6.5 Further, the Income Fund currently has exposure of approximately \$63 million to Dudley Quinlivan, and entities associated with him and was aware of a serious risk to the recovery of that money by at least late 2008 early 2009: see *Quinlivan v ASIC* [2010] AATA 113 at [25] to [35]. While David Tucker in his affidavit sworn 20 October 2011 has indicated that Equititrust made impairments of \$150 million to the Income Fund as at 30 June 2011, it does not appear that Equititrust has officially brought to account in the Income Fund's financial statements any impairment in respect of the exposure to the Quinlivan entities or the \$150 million at large (which may well be mutually exclusive debts).

- 6.6 Failing to report significant impairments has effectively disguised the credit risk, and itself may comprise a breach of trust.
- 6.7 Equititrust's conduct as exemplified above, shows that it is in breach of section 675 of the Corporations Act regarding continuous disclosure.
- 6.8 By reason of the breaches of the Corporations Act outlined above the scheme members, including our clients, have suffered loss and damage.

7. Negligence

- 7.1 The directors owe a duty to exercise reasonable skill and diligence in the exercise of their powers and in the discharge of their duties.
- 7.2 The directors negligent conduct in the management of the Income and Premium Funds includes, but is not limited to involvement in decision making that provided for:
 - (a) ongoing amendments to the constitution with the effect that Equititrust has been able to obtain excessive payments from the Income Fund and Premium Fund through excessive interest warranty and subordinated interest payments;
 - (b) loans from the assets of the Income and Premium Funds that have been improperly given without the requisite level of due diligence and on terms that are improper; and
 - (c) issuing misleading statements to the market and to unitholders in circumstances where unitholders may have been able to redeem their units or indeed not acquire more units in the Income and/or Premium Funds which have resulted in significant losses.
- 7.3 By reason of the breaches of duty the scheme members have suffered loss and damage.

8. Misleading and deceptive conduct

- 8.1 The claims for misleading and deceptive conduct are based upon:
 - (a) section 12DA of the Australian Securities and Investments Commission Act; and/or
 - (b) section 1041E and 1041H of the Corporations Act.
- 8.2 The claims arise from the disclosures made and disclosures that should have been made as early as 2005 but were not made by Equititrust. Those disclosures were:
 - (a) made in trade or commerce (within the meaning of section 12BAB of the ASIC Act);

- (b) made in relation to financial products (within the meaning of section 1041E of the Corporations Act) and made in relation to financial services (within the meaning of section 1041H of the Corporations Act);
 - (c) made in relation to future matters (within the meaning of section 12BB of the ASIC Act and section 769C of the Corporations Act); and
 - (d) made with the knowledge and intent that they would be relied on by the unitholders/members in entering into any agreement with Equititrust for the purchase of units in the Income and the Premium Fund.
- 8.3 The misleading statements were made in the prospectus, the product disclosure statements and in the financial reports. By way of example (this list is not exhaustive) Equititrust made the following statements which were misleading and deceptive:

Misleading statements in the Prospectus registered 10 December 1999 and subsequent prospectuses

- 8.4 In Section 8 of the December 1999 Prospectus – in relation to "Risk minimisation and portfolio" Equititrust detailed its *"guidelines for prudent lending"* as follows:
- (a) *Each valuation is to be checked by our skilled credit committee through a network of real estate and property industry professional.*
 - (b) *Loan amounts are to be no greater than 80% of the value of the Security Property.*
 - (c) *The purpose of the loan and the Borrower's equity are closely addressed before approval is granted by our credit committee."*
- 8.5 Contrary to that statement:
- (a) It appears loan valuations were not checked by the credit committee or through a network of real estate and property professions, in fact the valuers of various properties are being sued and basic checks on the valuations (and their relevant assumptions) would have revealed that they were grossly overstated.
 - (b) It appears that loan amounts were greater than 80% of the value of the security property which should have been valued "as is" rather than "as if". Because the loans were valued on an "as if" basis the loans were greater than 80% of the value of the property.

Misleading statements in the product disclosure statement

- 8.6 In section 5 of the PDS Equititrust represented that *"When income of the Fund is higher than the amount necessary to pay all investors Benchmark Rates, Equititrust will after payment of the Benchmark Rates, receive its management fee and any remaining surplus will be paid to Equititrust as the holder of the subordinated Capital Warranty Investment."*

- 8.7 Contrary to that statement, in 2008, when payments to unitholders were frozen, Equititrust paid itself the Interest Warranty Fee which can only be categorised as either a management fee or a related party transaction under the Corporations Act which was not approved by the members of the scheme.

Misleading statements in the financial reports

- 8.8 In the Income Fund financial report for year ended 30 June 2005 and later (Note 12), Equititrust represents that *"the scheme minimises concentrations of credit risk by:*

- (a) *Undertaking credit assessment procedures on prospective borrowers;*
- (b) *Dealing with Australian regulated banks for cash balances;*
- (c) *Obtaining independent valuations for all loans; and*
- (d) *Maintaining loan to value ratios not exceeding 80%."*

- 8.9 Contrary to these representations Equititrust did not:

- (a) Undertake sufficient credit assessment procedures on prospective borrowers;
- (b) Obtain independent valuations for all loans; and
- (c) Maintain loan to value ratios not exceeding 80%.

- 8.10 Further, in respect of the financial reports:

- (a) in the statement of cash flows in each of the financial reports, (Note 1(d) to the statements) Equititrust represented that *"Income from mortgages and other investments is brought to account on an accrual basis. Interest received in advance is deferred and brought to account equally over the relevant period. Interest income, which in the opinion of the Responsible Entity is non-recoverable, is written off."* Contrary to what is represented by Equititrust, it did not write down income, in the opinion of Equititrust, which was not recoverable and accordingly the income receipts of the Income Fund were overstated and misleading.
- (b) in the balance sheet to each financial report (at Note 6) Equititrust provides a maturity analysis of the Mortgage loans such that Equititrust represented that almost all loans to borrowers have a maturity of not longer than 12 months. Contrary to what is represented by Equititrust, most loans were not expected to be repaid within that time and accordingly, the maturity date and the risk profile of the loans was misleading.
- (c) Further in Note 6 to the financial statements Equititrust represented that the only borrowers of loans in default at various dates were those listed in the note. Contrary to what is represented there were numerous loans in default not reported by Equititrust and this was misleading.

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- (d) In the Notes to and forming part of the financial statements Equititrust represented that at each balance date the collectability of mortgage loans is assessed and a provision made for any debts which are considered doubtful, and for which insufficient security is held to ensure the full amount of the loan is recoverable. Contrary to what is represented Equititrust did not make any provision for doubtful debts and for which insufficient security is held and accordingly the financial statement was misleading. Notably, the reduction in asset value and corresponding unit value was not announced until June 2011, in circumstances where assets had been impaired and borrowers defaulting on a significant scale since at least 2005 to 2007.
- (e) In various of the statements of financial position from as early as 2005, Equititrust represented that its liabilities were as stated in the statement of financial position. Contrary to what was represented by Equititrust, it did not disclose the full extent of its liabilities and therefore the financial statement was misleading.

8.11 Each of our clients and the scheme members relied on the various representations in the prospectus and financial reports to invest in the Income and Premium Funds and/or to continue holding their investment, to their financial detriment, and are entitled to damages for the losses suffered.

9. Demand to Equititrust

9.1 By this letter our clients demand from Equititrust the loss suffered:

- (a) as the difference between the amount that they paid for their units and the current value of the units as caused by the breaches by Equititrust and its directors of their legal duties and obligations;
- (b) by diminution in the value of the assets of the Funds as a result of the payments made out of the scheme property to the responsible entity in contravention of s.208 (as modified by s.601LC). These payments consisted of the interest warranty fees for 2005 to 2008 amounting to \$51,635,858.00 and the returns on subordinated interests in 2009 and 2010 amounting to \$20,445,141.00; and
- (c) as a result of the diminution in the assets of the Funds by the making of mortgage investments and imprudent investments in breach of the constitution and/or under the general law.

9.2 Please confirm you have notified the insurer of the claims referred to in this letter and that such notification was made prior to the expiry of each policy on 12 November 2011.

10. Further Information

10.1 Additionally, we request that you ask the insurer/s to provide us with the following information as a matter of importance:

- (a) the identity of the insurer/s;

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- (b) the type of applicable insurance policies, whether they be for professional indemnity insurance and/or directors and officers insurance;
- (c) the limit of the insurance policies in each respective claim year relevant to our clients' claims, that is for each claim years from 2000 to 2011 inclusive;
- (d) the jurisdiction of the governing law that applies to the insurance policies;
- (e) the relevant terms of the insurance policies and whether the insurance policies are claims made or claims notified policies;
- (f) whether claims other than our clients' claims have been made on the insurance policies for the years 2000 to 2011; and
- (g) whether any proceedings have been brought against Equitrust in relation to which the insurance policies may respond and whether those claims would exhaust the policies.

Yours faithfully
Piper Alderman

Per

A handwritten signature in black ink, appearing to read 'Amanda Banton'.

for Amanda Banton
Partner

Cc: Ms Jenny Gentles,
ASIC
jenny.gentles@asic.gov.au

Mr Paul Eastment
ASIC
paul.eastment@asic.gov.au

SCHEDULE A – INCOME FUND

No.	Claimant	Dates Acquired	Current Holdings
1.	Gleeson (Estate of), Brian Timothy	10 March 2008	\$60,000.00
		10 March 2008	\$20,000.00
		20 March 2009	\$36,398.90
2.	Glen-Feltis, Barbara & Allan	9 December 2008	\$65,000.00
3.	Lennon, Rosalind	25 January 2004	\$374,010.81
		1 June 2005	\$70,433.21
		28 April 2006	\$118,505.51
		23 June 2008	\$70,000.00
		24 September 2008	\$10,000.00
		14 October 2010	\$253,000.00
4.	Meadows, Kenneth David & Mary ATF KDM Super Fund	10 July 2002	\$10,000.00
		20 March 2009	\$8,720.65
5.	Parslow, Geoff	14 December 2005	\$250,000.00
		21 July 2006	\$204,800.00
		18 April 2009	\$479,073.08
6.	Peck, Anne	23 April 2002	\$200,000.00
		15 February 2006	\$20,000.00
		27 July 2009	\$80,000.00
		25 June 2010	\$100,000.00
		27 July 2010	\$75,000.00
7.	Floribunda Pty Ltd as trustee for Raphael Investment Trust	20 March 2009	\$323,379.79
		26 March 2009	\$87,871.07
8.	Renton, RJ & Kirkwood, JE ATF The Renton Super	22 March 2004	\$63,277.58
		1 May 2007	\$21,650.00
9.	Renton, Ronald John	17 June 2009	\$21,650.00
10.	Reuman, B & Cowper, B ATF Phalange	7 January 2009	\$271,250.00

No.	Claimant	Dates Acquired	Current Holdings
	Super Fund	17 June 2009	\$38,000.00
		28 July 2009	\$18,117.62
		20 January 2010	\$54,125.00
		20 December 2010	\$9,000.00
11.	Schrama, Louise Maria	21 July 2010	\$150,469.41
12.	Spargo, William and Irene	1 November 2011	\$60,000.00
13.	Spiller, Geoffrey Peter	20 March 2009	\$193,259.45
14.	Williamson, Barry and Elizabeth	18 July 2007	\$170,000.00
		12 October 2007	\$80,000.00
15.	Whiteaker, Edward Evan & Jane Marie ATF Bungardi SF	20 March 2009	\$1,194,976.52
16.	Whiteaker, Edward Evan	16 December 2009	\$9,665.82
17.	Clifton, Ann Catheryn	4 July 2011	\$137,786.24
18.	Honey, Sandra Yvonne	8 April 2005	\$270,000.00
19.	Badino, Anthony David	8 October 2009	\$23,131.19
		2 October 2010	\$400,000.00
20.	Bach, Patricia E	20 January 2010	\$10,000.00
		9 January 2006	\$10,000.00
21.	Bach, Patricia Eileen (No. 2 A/C)	23 February 2010	\$60,000.00
22.	Barrett, Belinda Jane	20 May 2004	\$52,791.90
23.	Leo Retirement Pty Ltd ATF Leo Retirement Fund	28 January 2010	\$64,595.39
24.	Jefferson Lane P/L ATF The PBH Investment Trust	4 February 2011	\$236,943.30
25.	M Mac Qld Pty Ltd	22 January 2010	\$183,627.20
26.	Colquhoun, Gae Michele	30 June 2000	\$90,000.00
		2 August 2007	\$5,000.00
27.	Costin, Shelley Lisa	30 March 2009	\$7,662.93
28.	Costin, Daryl Peter	2 November 2010	\$28,208.75

No.	Claimant	Dates Acquired	Current Holdings
29.	Costin, DP & SL ATF DP & SL Costin Super Fund	14 December 2010	\$100,000.00
30.	Harm, Kevin Percy	8 January 2006	\$70,000.00
31.	Hewitt Property Management Pty Ltd	5 January 2006	\$16,749.97
32.	Hewitt, Kevin B & Gillian M ATF Hewitt Super Fund	20 June 2010	\$100,000.00
33.	Laws, Deane and Alma (Estate of)	20 March 2009	\$87,399.66
34.	Bancroft, Dianne and Harold	23 December 2010	\$153,258.54
35.	Watson, David and Webb, Keri	20 December 2004	\$10,000.00
36.	Cocker, Struen Marie	8 January 2007	\$149,500.00
37.	Champion, Bruce & Elaine ATF B& E Champion SF No. 2	16 March 2007	\$25,000.00
		31 July 2007	\$85,000.00
38.	Champion, Bruce ATF The Champion Super Fund	14 December 2010	\$105,000.00
39.	Coach, Pamela and Judge, Trevor	7 February 2004	\$250,000.00
40.	Flanagan, Patricia Joan	14 July 2010	\$30,000.00
41.	Buckley, Aileen Veronica	7 March 2000	\$45,000.00
		5 January 2007	\$20,000.00
		4 February 2008	\$10,000.00
		19 June 2009	\$15,818.63
42.	Fischer, Janice I	6 September 2000	\$185,000.00
		11 October 2000	\$65,000.00
43.	Michel, Wilhelm and Zwanntje	7 January 2000	\$50,000.00
		11 January 2000	\$90,000.00
		21 January 2000	\$200,000.00
44.	Manning, Jennifer Anne	23 July 2010	\$100,000.00
45.	Byrne, Robyn Louise	18 August 2010	\$100,000.00
46.	Wallsal Pty Ltd	8 January 2001	\$120,000.00
		29 April 2005	\$10,000.00

No.	Claimant	Dates Acquired	Current Holdings
		6 January 2006	\$20,000.00
		7 May 2006	\$50,000.00
		26 January 2007	\$40,000.00
47.	Smith, Alma Helen	29 April 2005	\$10,000.00
		31 March 2009	\$25,000.00
	Total		\$9,189,108.12

SCHEDULE B – PREMIUM FUND

No.	Claimant	Dates Acquired	Current Holdings
1.	Buckley, Laurence D & Aileen V	Unknown	\$1,215,000.00
2.	Leo Retirement Pty Ltd ATF Leo Retirement Fund	Unknown	\$539,070.00
3.	Jeanes, Bea	Unknown	\$12,500,000.00
4.	Norton, Stuart	Unknown	\$260,000.00
5.	Smith, Ian	Unknown	\$5,100,000.00
6.	King, Ryan	Unknown	\$740,000.00
7.	Kelly, Graeme & Betty	Unknown	\$1,105,000.00
8.	Walsall Pty Ltd	Unknown	\$530,000.00
	Total		\$21,989,070.00

Annexure 'A'

Continuous Disclosure Statement

Equititrust Income Fund ARSN 089 079 854
Equititrust Limited ACN 061 383 944, AFLS 230471
This Continuous Disclosure Statement is dated 18 February 2011

The following report provides investors with updated information on the Equititrust Income Fund (EIF) with particular regard to:

- The EIF Loan Portfolio
- Default Management
- Security Valuations and Impairments
- Capital Warranty Investment Units



EQUITRUST CAPITAL

Equititrust Limited, ABN 74 061 383 944
67 Thomas Drive, Chevron Island, Queensland 4214
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Telephone: 07 5527 8527, Facsimile: 07 5527 5900
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This information has been prepared by Equititrust Limited ABN 74 061 383 944, AFLS No. 230471, a general information only and is not intended to provide you with financial advice or take into account your objectives, financial situation or needs. An investment in the fund is not a bank deposit and carries the risk of loss. Do not regard the level of interest paid on your investment, past performance or the analysis of future performance and actual distributions as a guarantee of future performance. Past performance may be lower than the benchmark. Please refer to the prospectus for more information. If you are considering investing in the Equititrust Income Fund ARSN 089 079 854, you should consider the current prospectus disclosure materials, copies of which are available here: www.equitrust.com.au or by contacting us on 1800 435 5773. Terms defined in this information have the same meaning as where used in the AIF, unless otherwise defined. We welcome your feedback at any time. You've earned the equity, we've earned the trust. Equititrust.



EQUITITRUST CAPITAL™

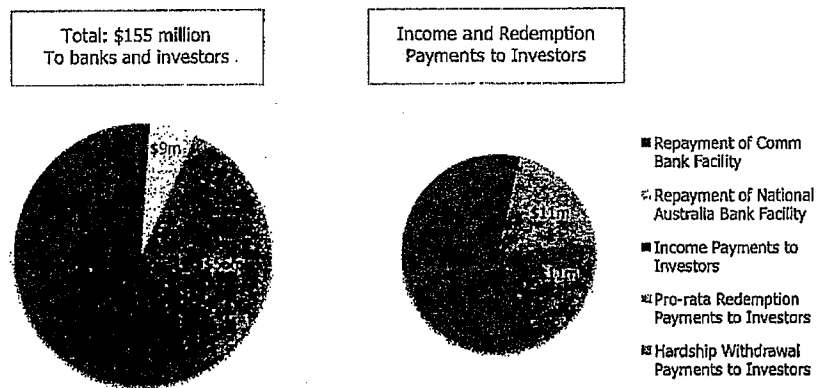


The Equititrust Income Fund (the Fund, the EIF) has now been in deferral mode for a little over two years. As such, we consider it appropriate that we now further update investors as to what has transpired during the last two years with respect to loan realisations, how such proceeds have been applied, and how our strategy to continue realisations and re-liquefy the Fund has progressed.

The Fund generates income for investors from interest payable on loans made to the Fund's borrowers. How we manage these loans, the underlying security assets, and the timing of borrower repayments, is paramount to delivering income to investors.

Over the past two years we have realised approximately \$120 million from the repayment of loans. Some of these loan repayments have been made voluntarily by borrowers, while others have required us to take possession of security property and dispose of it.

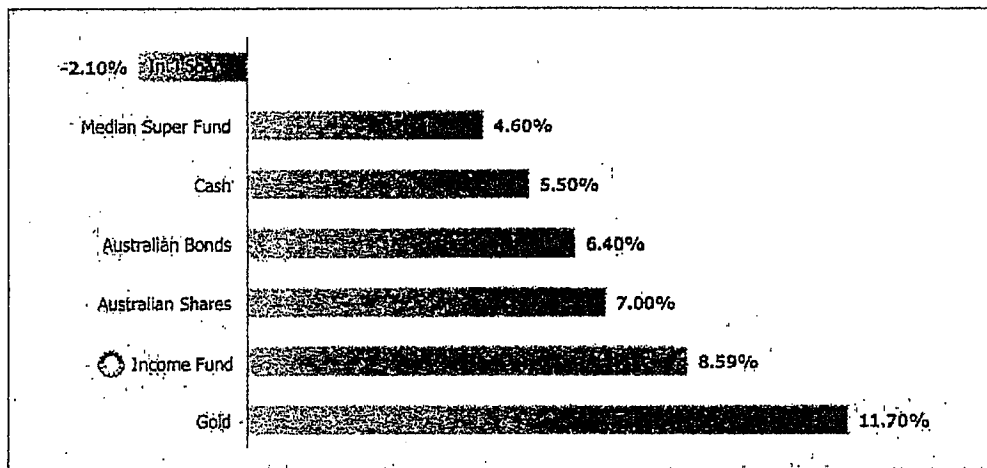
Since the deferral of the normal withdrawal process, loan repayment proceeds, along with cash on hand and new investment, have been applied, inter alia, as follows:



Many investors have asked us about the background of the banking facilities and why we chose to establish these facilities. These facilities were taken out and drawn down prior to the onset of the GFC when the cost of capital provided by the banks was considerably cheaper (by some 2% to 3%) than the investment return paid to investors.

This differential allowed us to lend that money out at an increased margin. In turn, this allowed us to build a greater buffer against impairments, should they occur, as well as pay superior returns to investors.

Over the past 10 years, for example, the Fund has delivered investors an 8.23% p.a. return on investments under \$100,000. For investments over \$250,000, the Fund has returned an average of 8.59% p.a.



Sources: Australian Financial Review (Chant West, UBS, Bloomberg). "Gloss comes off super funds". 23 July 2010. Equititrust Income Fund audited average annual distribution rates FY01-FY10, \$250,000+ 12-mths, income paid monthly

At the onset of the GFC the credit market contracted significantly. Interest rates increased substantially in a very short timeframe. This, coupled with the mainstream banks' new-found reluctance to continue to lend to the mortgage fund industry after the collapse of many of our competitors, meant that not only were the margins on these facilities no longer attractive but the banks no longer wanted to extend them on acceptable terms, if at all.

Whilst this has resulted in substantial illiquidity in the Fund whilst these facilities are repaid, exiting the banks does provide much greater scope for us to be in control of our own destiny moving forward; unshackling the Fund from the banks' approach.

Whilst we were disappointed that the banks adopted the view they did, particularly in light of the fact that the Federal Government's deposit guarantee supported these very same banks, we respect their right to do so. Not only was the Fund's liquidity severely constricted as a result of the banks requesting their facilities be repaid, there was also the concurrent increase in redemption requests upon the Fund due to the Government's bank guarantee.

These events led to the unfortunate, yet necessary, deferral of redemptions from the Fund. We simply could not have protected investors' interests as a whole had we not opted to defer the normal withdrawal process.

We have been working assiduously over the past two years in order to recover outstanding loans. Historically, most of the Fund's loans were for 1 to 2 year terms. The reason for this was that the large financial institutions were reluctant to lend to development projects until construction had commenced or development approvals had been granted. Accordingly, we often funded this initial period, with the major banks taking over the financing once construction or further development commenced.

By way of example, we had previously held a large exposure to the Raptis Group's Southport Central, on Queensland's Gold Coast, in the early stages of the project. After the first stage of construction was 70% complete, the loan was refinanced with the NAB on a margin of 0.8%. It simply did not make commercial sense for us to compete with this margin, and the Raptis Group's repayment of their loan to the Fund allowed us to turn the loan over and lend the funds out to someone else.

With the onset of the GFC, however, the banks' appetite for lending began to evaporate, to the point where, in some cases, it was almost non-existent

What this meant was that loans which previously, pre-GFC, we could have expected to be repaid within 12 to 24 months were no longer being repaid on time. In addition, the property market severely contracted such that many projects were no longer viable or they required significant strategic thought in order to make them viable. These problems take time and expertise to formulate appropriate solutions; they simply cannot be resolved overnight.

In late 2008 / early 2009 we focused on re-prioritising the loan book to ensure that we first addressed those loans that we considered had significant risk attached to them, as well as those loans that were easily convertible into cash. We established Landsolve®, which was resourced with up to a dozen personnel (depending on needs) experienced in all facets of project management and property development.

We do not consider it to be in investors' best interests to simply sell the Fund's underlying security assets at any cost. We considered it imperative to take a strategic approach to the security so that the interests of all investors were protected.

For some loans, we elected to sell down the security properties immediately, at current 'as is' market value, in order to optimise the cash flow needs of the Fund. Other loans, we have elected to further develop, in order to maximise the net return on the asset.

By way of example, many will be aware that we had made a loan of approximately \$45m to the Raptis Group with respect to the Breezes Project at Labrador, on the Gold Coast. We had done our due diligence on the project and were comfortable with the security provided for the loan. Upon the onset of the GFC, however, the project stalled and it was necessary for us to take a more active role in the completion of the building and the sale of the finished apartments. As a result of the steps taken by us, the loan - principal and interest - was fully repaid within 18 months, *plus* approximately

Landsolve® Partners

Strategic Property & Capital Solutions

It is important to note that whilst the formation of our Landsolve division significantly increased Equititrust's costs, in terms of salaries and overheads, these costs were not passed on to investors.

These costs have been borne entirely by Equititrust Limited. The management fee paid by the EIF to Equititrust to manage the Fund is not sufficient to cover the labour costs, let alone the other ongoing costs to run the Fund. Yet we have chosen to cover these costs, rather than seek to increase the management fee payable by the Fund.

\$2.3m in default interest was paid to the Fund. In fact, our actions helped to generate a *surplus* of security value, such that we passed approximately \$8m worth of assets to the second mortgagee for them to realise.

There are many more examples of loans that we have handled in this way. We mention this Raptis example because of its size and public profile. Whilst we could outline each individual loan that we have resolved for the Fund over the past two years, there seems little advantage in doing so here. However, we do want to provide you with an outline on the Fund's current loan book, the underlying security that we have, and how we are managing these in order to optimise results for investors.

CURRENT LOANS - DISTRIBUTION AND PROGRESS

After a particularly long work-out campaign post GFC, we are close to having the National Australia Bank fully repaid. It is our expectation that the NAB will be repaid well before the end of the facility's term date, October 2011. Once this is done, then surplus proceeds from loan realisations can be used to satisfy investors' outstanding redemption requests.

Outlined below is each loan in the Fund's portfolio with a book value of \$2.5 million or more. Whilst the Fund has several loans for amounts less than this, we have selected this as the benchmark for the purposes of this overview because a \$2.5m loan is approximately 1% of the total loan book. The 22 loans detailed below represent over 90% of the total EIF loan portfolio.

The purpose of this summary is to provide investors with further detail of our loan book along with our strategies for realisation.

For privacy reasons, we are unable to provide borrower details, however, we have provided as much detail as possible, recognising that some information with respect to realisations may be sensitive as sales campaigns progress. Furthermore, there are some loan securities where we are currently negotiating a sale and as such some details may have been omitted if we consider that the disclosure may adversely affect that process.

We considered it imperative to take a strategic approach to the security so that the interests of all investors were protected.

It is important to note that in order for us to actively take control of the underlying security for some of these loans it is necessary for the loans to be in default.

Historically, for most development loans and some commercial loans undertaken by the Fund, we have capitalised interest, as this is the nature of the lending performed by the Fund, whereby the interest is included in the loan facility and deducted progressively. Over the past three months, however, we have, with few exceptions, stopped the capitalisation of interest so as to allow the loan to go into default and thus enable Equititrust to take enforcement action for the control of it.

The difficulty with this strategy is that whilst it allows us ultimate control of the borrower's underlying security for the loan, it does mean that our loans in default percentage has increased substantially and will continue to do so. In effect, the increased percentage is an indicator of our strategic initiatives to take control, and investors should not be alarmed by it.

In short, our actions are designed to protect and maximise asset values to deliver the optimal result for investors. This is not an overnight nor static process, and we regularly review our strategic position for each asset.

LOAN 1

Security for this \$43.6m loan is primarily industrial land situated in Northern NSW plus collateral security against the borrower's farm. An independent valuation performed on the underlying security was performed in February 2009 valuing the security property at \$55m.

We are currently undertaking a sales campaign with respect to the bulk of the subdivided industrial land. We have also explored "land swaps" for some of the land, for other property which would be more easily realisable. In addition, we have reached agreement to secure the rights to approximately \$10m worth of future profits on projects that the borrower has secured and is working on over the next two years.

Whilst we are reasonably confident that we will receive full repayment of this loan, we impaired the amount of \$2.1m as at the end of December 2010 which we believe provides adequate head room moving forward.

LOAN 2

Security for this \$39m loan is a residential estate and golf course development in South Australia. The last valuation obtained for the property in September 2008 was for an amount of \$75m. We consider that the value of this property has dropped since this time and, taking into account the recent sales and discussions with sales agents, we expect the value may have fallen by as much as 20% to 25%. In late December 2010 we commenced a large-scale advertising campaign to accelerate sales of the secured property. This campaign involved TV ads, press ads and other editorials.

We have had various difficulties with the underlying security which we have now largely resolved, including sacred aboriginal burial sites, access and water issues and some historical negative sentiment towards the property from the local community. We have changed this perception by renovating the resort and demonstrating to the local market that things have changed. Visits to the resort and enquiries have increased

significantly. We consider that a large part of the secured property will be sold during the course of 2011.

LOAN 3

The loan is secured by a large residential development site west of Brisbane. This land was valued in September 2009 at \$81.5m. After performing considerable homework on this property over the past 12 months it is apparent that this valuation of \$81.5m was too high. We are currently seeking legal advice regarding pursuing the Valuer with respect to this.

This development site is challenging and is currently being worked upon by our Landsolve team. We are in discussions regarding re-configuring the site from its current 2,043 lots to approximately 1,400 lots, as well as changing other aspects of the development. We have recognised an impairment of \$7.6m against this loan, writing down principal from \$56.4m to \$48.8m as we do not consider that this loan, by itself, will be fully repaid. Although it is cross-collateralised with other loans, loans 4 and 5 below, we still believe that full repayment will not be achieved from this loan.

LOAN 4

Security for this loan is a large parcel of land in Bundall, a commercial district on the Gold Coast. The loan is for approximately \$3.7m and the Fund's first mortgage security value is \$3m, whilst the second mortgage security will cover any shortfall. We are in the process of seeking agents' proposals for this land and are confident that it will be realised within the next 6 months.

LOAN 5

This \$8.7m loan is related to the borrower for loans 3 and 4 above. The security comprises of a residential property development west of Brisbane which was last valued at \$10.4m in June 2008. The original feasibility on the property as submitted no longer appears viable and accordingly, we have been working with several parties in order to re-work the approval such that the project is viable.

When the re-work and a new valuation is finalised, we anticipate the security value of this property to be in the vicinity of \$5m to \$6m. This loan is cross-collateralised with the borrower's loan 3 above and as such we expect to receive full recovery for this loan.

LOAN 6

This loan is secured by a large residential development site at Port Augusta in South Australia, valued at \$4.3m in September 2010. Whilst Port Augusta is anticipated to thrive over the next few years as a result of the Olympic Dam Project, this time frame is unsuitable to our investors' needs. Accordingly, we are looking to take this property to the market in the next few months.

The outstanding loan of \$4.2m may not be fully satisfied from the sale of this loan security. However, the loan is cross-collateralised with the borrowers' security for loan 7 below, and there is more than adequate security in that loan to ensure this loan is repaid in full.

LOAN 7

This \$4.1m loan is cross-collateralised with loan 6 above. The latest valuation for the security property, in May 2010, was for \$6m without a DA. Whilst we could easily sell the property for the amount of this loan, we have decided to improve it in order to ensure that there is no net impairment on the cumulative total of loans to this borrower.

We have submitted a DA for the underlying security, which is a large residential development site in Mackay in North Queensland. We anticipate this DA being granted in late 2011.

The feasibility studies conducted by our Landsolve team, after discussions with agents and valuers, indicate that the underlying security will be worth more than \$11m upon issuance of the DA. This value-adding will ensure that both this loan and loan 6 are repaid in full, along with default interest. We do not expect these proceeds to be received until late 2011.

LOAN 8

This loan is for \$4.6m. The underlying security for this property is a prime 52 hectare site located at Lennox Head in Northern NSW and was last valued at \$7.2m in May 2009.

Lengthy court proceedings were successfully undertaken by us to get control of the security property. Whilst the proceedings lasted for over one year and resulted in delays in taking the property to the market, it is now on the market with tenders closing in March. We expect the property to be sold by April and full recovery of this loan to occur.

LOAN 9

This loan is for \$7.4m. The underlying security for this loan consists of properties located in North Queensland. The latest valuation, in October 2010, valued the primary security at \$3.8m. Although a purchase contract for \$6m on the primary security property has just recently fallen over, the property is now being placed back on the market and we expect a sale to be finalised by June. We anticipate that the other security that we hold for this loan will satisfy any shortfall from the sale of the primary security, if one were to arise.

LOAN 10

This loan, for \$5.2m, is secured by a residential property development site located just west of Brisbane. The most recent independent valuation for the security, in June 2010, was for \$7m. We are currently in discussions with two adjoining land owners who are interested in the property. We expect to realise the property, for full repayment of the loan, within the next 2 to 3 months.

LOAN 11

The balance for this loan of approximately \$4.5m is secured by a large parcel of land at Maclean in Northern NSW. We are in discussions with local Council regarding rezoning this land in order to maximise its value.

The land was valued at \$7.6m in April 2010 however we consider the market has fallen since this time and that further work is required to make the property more attractive to a purchaser. The loan is cross-collateralised with loan 12, below. We do not expect to receive full repayment of this loan before the end of 2011 as work continues toward maximising the potential for the property.

LOAN 12

This \$7.0m loan is secured by land at Yamba in Northern NSW. The last valuation obtained on the property, in July 2008, was for \$10.2m. We believe that the value has diminished since this time. Accordingly, we have taken an impairment of \$1m for this loan. The loan is cross-collateralised with loan 11 above and we do not expect to take any further impairment on this loan.

LOAN 13

We have recently agreed terms with the borrower for repayment of this \$4.4m loan and are in the process of entering into a Deed of Settlement for the amount of \$4.15m. We anticipate receiving repayment by April 2011. Although we expect to make a small impairment on this loan, this will be offset by the reversal of an impairment on a related loan to this borrower, such that no net impairment will be required.

LOAN 14

This loan is for \$3.3m and is secured by a property valued at \$6.2m in August 2008. There is currently an unconditional purchase contract on this property which we expect to settle in March 2011. Upon settlement, this will result in full repayment of this loan.

LOAN 15

When the borrower defaulted on this \$14.3m loan approximately 12 months ago our Landsolve team took on the project. At the time, the underlying security was an industrial site in the Toowoomba CBD. The current valuation of \$12m was performed in August 2010.

Over the past year considerable work has been done to resolve contamination issues on the site, as well as submitting a development

approval (DA) to rezone the property. We have worked together with the local Council in order to maximise the prospects for the DA.

Furthermore, we have had successful discussions with a national retailer regarding a large part of the site and have agreed terms with this party. We have also recently received a conditional offer for the purchase of the property at \$16.5m. We anticipate the DA will be granted towards the end of 2011, and expect the sale of the site be finalised thereafter. We do not expect to incur any impairment on this loan.

LOAN 16

This loan for \$3.9m is secured by 59 residential lots in Griffith, NSW. The lots are currently being sold. There are currently 18 purchase contracts in place, with an average price of \$105,000 per lot. We anticipate being repaid in full by end June. The last valuation of the site, performed in September 2009, was for \$4.5m, at \$75,000 per lot.

LOAN 17

This \$3m loan is secured against a development property in Port Macquarie on the NSW's Central Coast. An unconditional contract of sale has been entered into by the borrower for an amount of \$3.3m. This is due to settle in April 2011. Providing this contract settles, we anticipate this loan to be received in full within the next 3 months.

LOAN 18

This \$8.1m loan is secured by a high-rise residential site on Queensland's Gold Coast. The site was valued in November 2010 at \$6.8m. It is our expectation that the site is worth approximately \$8m. We have recently taken an impairment of \$2m on this loan.

We are currently in discussions whereby this land would be sold to a joint venture for \$8m, with the profits from the JV to also flow through to the loan. Whilst we believe the loan and default interest will be repaid in full if this JV proceeds, we have chosen to be prudent and have impaired the loan.

LOAN 19

The loan to this borrower is approximately \$6.9m. The underlying security property, valued at \$7.5m in June 2009, comprises high quality rural land located 1 hour north of Sydney.

Considerable work has been done over the past 12 months in order to prepare this property for sale; improvements that we anticipate will have enhanced its value. Also, we have recently agreed to sell water rights owned by the borrower, and expect to realise approximately \$1.75m from these rights. We anticipate that the current sales campaign will result in the amount owing being repaid in full within the next six months.

LOAN 20

This \$8.5m loan is cross-collateralised with loan 19 above and 21 below. It is secured by land currently being used as an operational turf farm about 1 hour north of Sydney. In addition to the sale of the water rights discussed above, we expect the sale of this land will realise between \$6m to \$8m. Whilst this may not be sufficient to fully repay this current loan, the cross-collateralised security will cover the loan and outstanding interest.

LOAN 21

This \$8.7m loan is secured by land situated about one hour north of Sydney. It is cross-collateralised with security property for loans 19 and 20, above. The last valuation on the property, performed in January 2008, was for \$11m. We expect that the value may have decreased since then, and we are currently undertaking an updated valuation.

We intend to subdivide and develop parts of this land in order to ensure that the return to investors is maximised. The first stage of this process is obtaining a DA for the subdivision. Upon approval, it is then likely that the property will be sold off to a developer to complete. We anticipate receiving sale proceeds from this loan in early 2012, however, it is possible that proceeds will be received before this as there are several interested parties currently looking at purchasing the land on an "as is" basis. We do not expect to take an impairment on this loan.

LOAN 22

This loan for \$3.3 million is secured by waterfront property on Sydney's Middle Harbour valued at \$5.5m in January 2010. The property is to be auctioned in March and we expect this loan to be fully repaid, along with default interest, by end April.

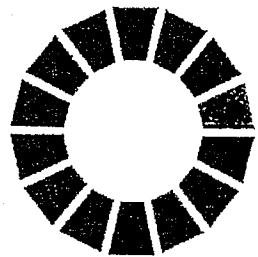
STATEMENT TO OUR INVESTORS' INTERESTS (3)

The loans detailed above represent over 90% of the Fund's current loan book. You will note that we have taken control of all loans over \$2.5 million.

In order to protect the interests of the Fund's investors, it has been necessary for us to actively take control of these loans, and this is the reason why the percentage of loans listed as in default has increased so substantially over the past three months and is likely to continue to do so over the coming months.

We have taken impairments against the EIF for some of these loans and it is our view that any further impairments will not be material and will likely be offset by gains, such as default interest on some loans, as they are realised.

Investors will be aware that Equititrust voluntarily subordinated its \$40 million investment in the Fund, at the onset of the GFC. This Capital Warranty investment is specifically designed to protect investors' interests. It is an initiative and commitment to investors that is unprecedented in the Australian mortgage funds industry.



It is our expectation that the impairments taken as at 31 December 2010 will result in the value of Equititrust's subordinated Capital Warranty investment units reducing from \$40m to approximately \$28m. Whilst this reduction may concern some investors, it is necessary to ensure that the current value of our underlying security is adequately reflected in the accounts of the Fund. In fact, the very reason Equititrust invests in the Capital Warranty Units is to absorb these impairments, thereby shielding ordinary investors from such losses.

It's worth noting that, as indicated in previous investor updates, Equititrust has also absorbed over \$30m in impairments across the loan book in the past three financial years. These impairments were funded by other investments and from Equititrust's yield on the subordinated Capital Warranty investment. Whilst it was not necessary for us to absorb these impairments – they could have been offset against the subordinated investment units – we do not believe that this would have been consistent with our investment philosophy that any capital loss is to be first borne by Equititrust to the extent possible.

THE ROAD AHEAD

Whilst it is not ideal that we have been required to work out many of these loans, the lingering effects of the GFC have meant that it has been necessary for us to take the initiative in this regard. We are confident that the strategies we have adopted on each and every loan, backed by the skills of our Landsolve team, are adequate to ensure that investors' capital in the Fund remains intact.

As we now continue with our aggressive realisation strategy, the risk of significant further impairments is reducing and asset realisations should be sufficient to ensure that EIF returns to a liquid status during 2011.

This information has been prepared by Equititrust Limited ABN 74 061 383 844 AFSL No. 230471. It is general information only and is not intended to provide you with financial advice or take into account your objectives, financial situation or needs. An investment in the Equititrust Income Fund ARSN 089 079 854 is not a bank deposit and carries the risk of investors not getting the return of their investment. Past performance is not an indicator of future performance and actual distributions may be lower than the Benchmark Rates. In deciding whether to invest in the Fund you should consider the relevant Disclosure Statements, available from our website www.equititrust.com.au or by contacting us on 1800 635 527. We welcome your feedback at any time. "You've earned the equity, we've earned the trust."

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS 10478 of 2011

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

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

CERTIFICATE OF EXHIBIT

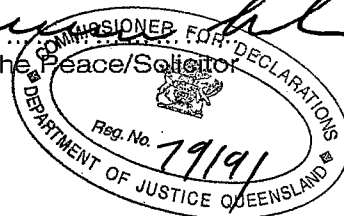
Exhibit "PJV-3" to the Affidavit of PAUL JAMES VINCENT sworn 18th November 2011.



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

Consolidated constitution

Equititrust Income Fund ARSN 089 079 854

Equititrust Limited ACN 061 383 944

Version: 1

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Deed poll

Dated 3rd June 2011

By

Manager **Equititrust Limited ACN 061 383 944**
of 67 Thomas Drive, Chevron Island, Queensland

In favour of

Members

Background

- A. The Manager is the responsible entity of the Equititrust Income Fund ARSN 089 079 854 established by Deed Poll dated 9 August 1999 as amended from time to time.
- B. Pursuant to a request from ASIC under section 601GC(3) of the Corporations Act the Manager lodges this consolidated copy of the Constitution. This consolidated Constitution is an amalgam of the original Deed Poll and all subsequent amendments to that Deed Poll.
- C. This Constitution is made with the intent that the Manager and each Member will be bound by it.

Agreed terms

Trust not Confirmed

- (a) Nothing expressly or impliedly contained in this consolidated Constitution (including the recitals) is effective to confirm, declare or otherwise acknowledge the trust declared under the original constitution, or to impress any new or additional trusts upon property held on trust as at the date of this consolidated Constitution.
- (b) Certain clauses (as identified) in this consolidated Constitution are reproduced (for the purpose of explanation only), but do not replace or restate the existing clauses.
- (c) Nothing in this consolidated Constitution should be interpreted as creating any new or further trust and at all times, the Scheme remains a simple trust.

Manager and Members bound

The Manager and the Members are bound by the terms of the Constitution as amended by this amending deed.

1 DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

In this Constitution unless the context otherwise requires:

'Accounting Standards' has the meaning given to that term in section 9 of the Law;

'Applicant' means a person who has completed and lodged with the Manager an Application, pursuant to a Prospectus, and has paid the Application Money to which the Application refers, and includes his or her successors in title and permitted assigns;

'Application' means a duly completed and signed application to invest in the Scheme, lodged with the Manager and accompanied by payment of the Application Money;

'Application Account' means the Bank account established by the Manager under clause 3.3;

'Application Money' means all money paid by the Applicant pursuant to a Prospectus, accepted by the Manager and held by the Manager in the Application Account;

'Approved Valuer' means any person or firm appointed by the Manager, to value any property and who is independent of the Manager and includes a person employed or engaged by a company or firm and who:

- (a) is authorised under any law of the State or Territory where the valuation takes place to practice as a valuer; and
- (b) has at least 2 years continuous experience of valuation; or
- (c) because of their experience or qualifications, the Manager considers is suitably qualified to provide an assessment of the value of the relevant property.

'Assets' means all assets and liabilities of the Scheme which are, or would be, recognised as assets or liabilities of the Scheme by the application of generally accepted accounting principles;

'Associate' means an associate as defined in division 2 of part 1.2 of the Law;

'Auditor' means the auditor for the Scheme, appointed by the Manager, as required under the Law;

'Authorised Investments' means:

- (a) Mortgage Investments;
- (b) deposits at call or for a term with any Bank;
- (c) bills of exchange (including commercial bills) issues, drawn accepted or endorsed by any Bank or negotiable certificates of deposit issued by any Bank; and
- (d) any authorised investment as defined in section 21 of the Queensland *Trusts Act 1973*.

'Bank' has the meaning given to an Authorised Deposit Taking Institution as that term is defined in the *Banking Act 1959* and also includes a bank constituted by or under a law of the State or Territory and a 'foreign bank' as that term is defined in section 5 of the *Banking Act 1959*;

'Benchmark Return' is the relevant distribution hurdle rate for each Member (as nominated by the Manager when the Member invests in the Scheme) which that Member must receive from their investment in the Scheme before the Manager is entitled to receive the management fee referred to in clause 21.1. The Benchmark Return is not a forecast or a representation that the Member will receive this return or indeed any return from their investment in the Scheme;

'Business Day' means any day on which trading banks on the Gold Coast are generally open for business;

'Cash' includes cheques, currency notes, bank cheques, bank transfers and bank drafts in the lawful currency of Australia or another country;

'Certificate' means a certificate or document issued by the Manager to the Applicant evidencing the acceptance by the Manager of the Application;

'Commencement Date' means the date on which the Constitution was originally registered by the Commission;

'Commission' means the Australian Securities and Investments Commission;

'Compliance Plan' means the compliance plan for the Scheme and registered by the Commission and includes any approved amendments to the compliance plan from time to time;

'Constitution' means this Deed, and prior to thereto, shall where the context permits, also include the Former Constitution;

'Current Interest Value' means:

- (a) In relation to an Interest for the purpose of determining the Issue Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time and adjusted as provided in clause 3.16; and
- (b) in relation to an Interest for the purpose of determining the Redemption Price, the value of an Interest at the relevant time computed by dividing the Current Value of the Scheme by the total number of Issued Interests at that time and adjusted as provided in clause 11.19;

'Current Liabilities' in respect of the Scheme includes all of those Liabilities of the Scheme that would in the ordinary course of business be due and payable within 12 Months from the date on which they are ascertained;

'Current Value' means in relation to the Scheme the amount derived by deducting from the Value of the Assets of the Scheme:

- (a) all amounts borrowed for the purpose of the Scheme and remaining owing;
- (b) the amount of all actual Liabilities of the Scheme (other than interest and those referred to in paragraph (a) of this definition) owing but unpaid;
- (c) such amounts as the Manager thinks necessary to provide for all accrued and contingent outgoings and Liabilities of the Scheme (other than those referred to in paragraphs (a) and (b) of this definition);
- (d) such amounts which the Manager thinks necessary or desirable to provide or allow for depreciation or the writing down or replacement of any Authorised Investments of the Scheme (including provision for amortising leasehold property) or for any other provisions or allowances; and
- (e) all other amounts which the Manager considers should be deducted for the purposes of making a fair and reasonable determination, in accordance with Accounting Standards, of the Current Value of the Scheme;

'Delay Event' means a circumstance where any of the following exist:

- (a) the Scheme's cash reserves fall and remain below 5% of the total assets of the Scheme for 10 consecutive Business Days; or
- (b) if in any period of 90 days, the Manager received valid net redemption requests equal to 10% or more of the Scheme's issued Interests and, during the period of 10 consecutive days falling within the 90 day period, the Scheme's cash reserves are less than 10% of the total assets of the Scheme; or

- (c) the Manager is not satisfied that sufficient cash reserves are available to pay the Redemption Price on the appropriate date and to pay all actual and contingent liabilities of the Scheme; or
- (d) any other event or circumstance arise which the Manager considers in its absolute discretion may be detrimental to the interests of the Members of the Scheme.

'Distribution Amount' means, in relation to the Scheme, the amount of any Income Warranty applicable to the particular Member;

'Distribution Period' means the period referred to in clause 8.4;

'Dispute Resolution Service' means the dispute resolution service approved by the Commission which the Manager nominates from time to time;

'Distributable Income' means subject to clause 8.5 any amount determined by the Manager from time to time to be distributed to Members, including –

- (a) the net income of the Scheme
- (b) other Income of the Scheme, and
- (c) any amount of capital of the Scheme.

'Distribution Surplus' means the surplus Income of the Scheme distributed in the manner provided in clause 8.5;

'Expert' includes solicitors, barristers, accountants, bankers, financial advisers, an Approved Valuer and other professionally qualified consultants;

'Facility Agreement' means any agreement (including any borrowing arrangements) to which the Manager is a party which may limit the capacity of the Manager to deal with Subordinated Interests;

'Fees' means all fees (including application and penalty), charges, late interest penalty payments paid by borrowers to the Manager on Mortgage Investments;

'Financial Statements' has the meaning given to that term in section 9 of the Law;

'Financial Year' means the period of 12 months ending on 30 June in each year during the continuance of this Constitution and includes the period commencing on the Commencement Date and expiring on the next succeeding 30 June and any period between 30 June last occurring before the termination of the Scheme;

'First Mortgage' means a registered first mortgage over the Land;

'Former Constitution' means the Deed Polls dated 9 August 1999 and 6 September 1999 made by the Manager and referred to in the Recitals;

'Gross Asset Value' means the aggregate of:

- (a) the Market Value of all investments of the Scheme including cash and amounts owing to the Scheme;
- (b) any prepayment of expenditure; and
- (c) such other increments or decrements as the Auditor approves to be included;

'GST' means a tax, impost or duty on goods, services or other things introduced by the Commonwealth, State or Territory either before or after the date of this Constitution;

'GST Act' means A New Tax System (Goods & Services Tax) Act 1999 as amended;

'Income' means all receipts from Authorised Investments which are paid into the Scheme Account;

'Income Warranty' has the meaning given to that term under Clause 8;

'Interest' means an undivided share in the Scheme as provided in clause 2;

'Interest Liabilities' means the liability of the Scheme to the Members for their undivided interest in the Assets.

'Investment Deed' is the deed by the holder of Subordinated Interests in favour of (amongst others) the Manager (in its capacity as responsible entity of the Scheme) relating to the acquisition, holding and redemption of Subordinated Interests;

'Issue Price' means in relation to the issue of an Interest, an amount equal to the Current Interest Value of the Interest at the time of issue plus:

- (a) the Statutory Revenue Charges (if any) payable by the Manager in connection with the issue of the Interest;
- (b) all other charges and disbursements of the Manager in connection with the issue of the Interest not included in the Issue Provision; and
- (c) the Issue Provision;

'Issue Provision' means such amount (if any) as may from time to time be determined by the Manager in respect of or as an allowance for costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, taxes and other costs that may be incurred or expected to be incurred in connection with the conversion of Application Money into Authorised Investments;

'Issued Interests' means all Interests for the time being created and issued and not cancelled;

'Land' means a freehold estate or interest in real property in any part of the Commonwealth of Australia or any State or Territory thereof and including buildings, fixtures and fittings (including furnishings) and other improvements erected or installed thereon;

'Law' means the Corporations Act 2001 and Corporations Regulation;

'Liabilities' in respect of the Scheme includes:

- (a) unpaid administrative costs and expenses, including fees of the Manager;
- (b) accrued charges in respect of or owing in relation to any Asset of Scheme;
- (c) amounts required to meet present liabilities of the Scheme;
- (d) amounts of all borrowings of the Scheme;
- (e) any provisions for Taxes which, in the opinion of the Manager, should be taken into account; and
- (f) any other amounts required to meet liabilities or other expenditure which, in the opinion of the Manager, should be taken into account and which have not otherwise been taken into account in determining the amount of the liabilities in any of the preceding paragraphs of this definition;

'Manager' means Equititrust Ltd or any other person for the time being acting as manager, provided that at all times the Manager is the responsible entity of the Scheme as defined in section 9 of the Law and the trustee of this trust;

'Market Value' of an investment means the current market value determined in accordance with a method agreed between the Manager and an Approved Valuer or Expert. If there is a

dispute between the Manager and the Approved Valuer, the decision of the Approved Valuer shall prevail;

'Member' means a person whose Application is accepted and for the time being is registered under the provisions of this Constitution as a member of the Scheme and includes persons jointly so registered;

'Minimum Investment Amount' is the minimum investment by the holder of a Subordinated Interest as provided under the Investment Deed;

'Minimum Redemption Amount' means the minimum amount a Member can withdraw from the Scheme at any time, as disclosed in the Prospectus;

'Month' means calendar month;

'Mortgage Investment' means a loan secured by a registered mortgage over Land and other property subject to the following provisions:

- (a) the mortgage will rank as a registered First Mortgage and/or Second Mortgage over the mortgaged Land; and
- (b) the total of all money advanced and secured over such Land and any other property, shall not exceed 80% of the value of the Land and other property that has been valued by an Approved Valuer as shown in the valuation furnished by an Approved Valuer; and
- (c) the loan shall be for a maximum period of 30 years.

'Officer' means a person who is a director, secretary or executive officer of the Manager;

'Prospectus' means a product disclosure statement or any offer document issued by the Manager inviting Applications or offers to join the Scheme established by the Constitution or where the context requires, means the documentation that forms part of the disclosure inviting Applications or offers to join the scheme established by the Constitution;

'Quarter' means each period of 3 months ending on the last days of March, June, September and December in each year;

'Redemption Amount' means the number of Interests to be redeemed or repurchased multiplied by the relevant Redemption Price less any Taxes;

'Redemption Date' means the date determined by the Manager in accordance with clause 11.1 or 11.17 with effect from which an Interest is to be redeemed or repurchased;

'Redemption Price' means in relation to the redemption of an Interest, an amount equal to the Current Interest Value of the Interest at the time of redemption less:

- (a) the Statutory Revenue Charges (if any) payable by the Manager in connection with the redemption of the Interest;
- (b) all other charges and disbursements of the Manager in connection with the redemption of the Interest not included in the Redemption Provision; and
- (c) the Redemption Provision.

'Redemption Provision' means such amount (if any) as may from time to time be determined by the Manager in respect of or as an allowance for costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, taxes and other costs that may be incurred or expected to be incurred in connection with the conversion of Authorised Investments into cash;

'Register' means the register of Members to be established and kept by the Manager under clause 12.1;

'Regulations' means the Corporations Regulations of Queensland;

'Related Party' means a related party as defined in part 5C.7 of the Law;

'Scheme' means the scheme established in accordance with the Constitution;

'Scheme Accounts' means the Bank accounts of the Scheme established and maintained in accordance with the Law and any ASIC policy;

'Second Mortgage' means a registered second mortgage over the Land;

'Statutory Revenue Charge' means a fee, tax, fine, duty, penalty, impost or other charge imposed by statute, rule or regulation and includes any bank account debit or financial institutions duty or tax;

'Subordinated Interest' is an Interest in the Scheme with the special rights and restrictions as provided in clause 2.12;

'Tax Act' means the *Income Tax Assessment Acts of 1936 and 1997* (Cth) and the regulations made thereunder from time to time; and

'Taxes' includes, without limitation, any:

- (a) present or future stamp or documentary taxes, or any other excise or property taxes, GST, charges or similar levies, interest, penalties, fees or other amounts (if any) imposed, levied, collected, withheld or assessed which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder or which are imposed on the Manager in respect of the Scheme, a Members Interest or any of the Authorised Investments thereof;
- (b) taxes, levies, imposts, duties, deductions or withholdings (however called), interest, GST, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed of any nature whatever, whensoever and howsoever imposed, and all liabilities with respect thereto which arise from any payment made to or by the Manager under this Constitution or any other instrument delivered hereunder; or
- (c) taxes, interest, penalties, charges, fees GST, or other amounts (if any) imposed, levied, collected, withheld or assessed upon:
 - (i) Application Money;
 - (ii) the Scheme, a Members Interest, Scheme Accounts, or the Income, capital gains, profits, transactions, accounts, accruals, receivables or any change in the worth or value of the Scheme, a Members Interest, the Assets or the Authorised Investments; or
 - (iii) the Manager in its capacity as manager of the Scheme,
 - (iv) all such taxes and imposts to include, without limitation, all imposts made pursuant to the Tax Act, financial institutions duty, debits tax, withholding tax, GST, stamp or documentary taxes, or any other excise or property taxes, charges or similar levies (howsoever called) imposed, levied, collected withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction from, or to, which a payment is made by, or on behalf of a Member or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing;

'Value' of an Asset when the value of that Asset is required to be ascertained or taken into account under this Deed or the Scheme shall mean its Market Value as last determined.

'Wholesale Client' has the meaning contained in the Law;

'Withdrawal Date' is the date from which a Member is entitled to have their Interests redeemed by the Manager as provided in clause 11.

'Withdrawal Request Form' means the request form prescribed by the Manager and given to the Manager by a Member for the purposes of clause 11.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) words expressing the singular include the plural and vice versa;
- (b) words denoting a natural person include corporations and body corporates and vice versa;
- (c) words denoting gender include both genders;
- (d) a reference to a part, clause, paragraph or schedule is a reference to a part, clause, paragraph or schedule of this Constitution;
- (e) references to this Constitution are references to this Constitution as amended, supplemented or varied from time to time;
- (f) a reference to writing includes printing, engraving, typewriting, lithography, photography and any other mode of reproducing words in a visible form;
- (g) a reference to a thing or matter includes a reference to a part of the thing or matter;
- (h) headings are included for convenience only and do not affect interpretation;
- (i) references to a party to this Constitution include the party's successors and permitted assigns;
- (j) references to a document or agreement include references to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (k) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (l) references to dollars and '\$' refer to amounts in Australian currency;
- (m) the schedules to this Constitution form part of this Constitution; and
- (n) where any word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

2 CONSTITUTION AND DURATION

2.1 Equititrust Income Fund

[Not altered but reproduced]

The Constitution establishes the Equititrust Income Fund, which commences on the Commencement Date.

2.2 Assets of the Scheme

[Not altered but reproduced]

The Manager declares that it holds and will at all times hold the Assets on trust for Members of the Scheme subject to the provisions of the Constitution and the Law.

2.3 Manager to act as responsible entity of the Scheme

[Not altered but reproduced]

The appointment of the Manager as manager of the Scheme is hereby confirmed and the Manager agrees to manager the Scheme upon and subject to the terms and conditions contained in the Constitution.

2.4 Manager to establish Scheme

[Not altered but reproduced]

The Manager shall, on the execution of the Constitution, lodge and hold the sum of one hundred dollars (\$100) to establish and constitute the Scheme. The Manager may, from time to time, cause or cause to be received more cash by way of addition to the Scheme to be held upon the trusts of the Constitution.

2.5 Interests

The beneficial interest in the Scheme shall be divided into Interests.

2.6 Different Classes of Interest

The Manager may issue Interests or classes of Interests with special rights or restrictions and those rights and restrictions prevail over any inconsistent provision of this Constitution. The rights or restrictions of a particular Interest or class of Interest shall be disclosed in any disclosure document offering investors the opportunity to invest in the Scheme.

2.7 Creation of Additional Interests

As and when an addition is made to the Scheme pursuant to this Constitution, additional Interests equal in number to the number computed by dividing the amount of Cash so added by the relevant Issue Price shall be created. The Manager may, instead of Cash, accept Authorised Investments as consideration for the issue of Interests in the Scheme provided that the Manager shall be satisfied as to the Value of such Authorised Investments and the number of Interests to be issued in respect thereof shall be the Value of such Authorised Investments divided by the relevant Issue Price at the date of issue of the Interests.

2.8 Fractional Interests

The Manager may at its discretion create a fractional Interest in 100 parts for an amount less than a whole dollar notwithstanding any other provision of this Constitution, the expression 'Interest' shall, where the context will allow, be deemed to include such a fractional Interest and such fractional Interest shall carry with it the rights and obligations which attach to a whole Interest and limited to the proportion of those rights and obligation which the number of 100ths in such fractional Interests bears to 1. A fractional Interest may also be created by the redemption of part of a whole Interest.

2.9 Nature of Beneficial Interest

A Member shall be entitled as herein provided or as provided by the Law to a beneficial interest in the Scheme but such interest shall not entitle the Member other than as provided by this Constitution:

- (a) to interfere with the rights or powers of the Manager in its dealings with the Scheme or any part thereof; or
- (b) to exercise any rights, powers or privileges in respect of any Authorised Investment.

2.10 Minimum Investment Amounts and Holdings

The Manager may at any time determine minimum amounts which may be invested and accepted as Application Moneys in the Scheme including any minimum holding of Interests in the Scheme.

2.11 Binding Effect of Constitution

This Constitution operates as a deed and is binding on the Manager and each Member and all persons claiming through them as if they were parties to this Constitution, and each Applicant by signing the Application, acknowledges being so bound.

2.12 Subordinated Interests

The Manager may pursuant to clause 2.6, issue Subordinated Interests to itself or any other person, provided that person is a Wholesale Client. The rights and restrictions of Subordinated Interests are:

- (a) The holder of a Subordinated Interest will have the same rights to vote at meetings of Members as the holders of Interests.
- (b) The holder of a Subordinated Interest has no entitlement to participate in any Income Warranty.
- (c) The holder of a Subordinated Interest has the right to receive the Distribution Surplus to be shared between the holders of Subordinated Interests in proportion to the number of Subordinated Interests they hold when the Distribution Surplus is distributed in accordance with clause 8.5.
- (d) The holders of Subordinated Interests must maintain the Minimum Investment Amount.
- (e) Subordinated Interests cannot be issued at an Issue Price which is less than the current Issue Price for Interests which are not Subordinated Interests.
- (f) Subject to paragraph (d) above, the redemption of a Subordinated Interest can only occur:
 - (i) with the consent of the Manager; and
 - (ii) all valid Withdrawal Request Forms have been processed and paid at a Redemption Price of not less than \$1.00 per Interest; and
 - (iii) provided the redemption does not breach any existing Facility Agreement;
 - (iv) there being retained sufficient surplus in the Scheme to meet any Income Warranty for the current month; and
 - (v) the Manager has a reasonable belief that:
 - (A) any Income Warranty; and
 - (B) any Benchmark Return,
 - (C) will continue to be met.
- (g) In the event the Manager is removed as responsible entity of the Scheme (other than with its consent) all Subordinated Interests will (subject to any existing Facility Agreement) on its removal convert to Access Investment Interests in the manner provided in clause 2.13.

2.13 Conversion of Subordinated Interests to Access Investment Interests

Where Subordinated Interests are converted to Access Investment Interests the following formula applies:

$$A = B \times (C/D)$$

- (a) Where:
- (b) A is the number of Access Investment Interests to which the Subordinated Interests are converted.
- (c) B is the number of Subordinated Interests held by the Subordinated Interests holder.
- (d) C is the Current Interest Value of the Subordinated Interests.
- (e) D is the Current Interest Value of Access Investment Interests.

3 APPLICATION PROCEDURES

3.1 Offer

The Manager may, in accordance with the provisions of the Law and this Constitution, invite investment in the Scheme and issue a Prospectus in relation to such an invitation.

3.2 Applications

A person who wishes to invest in the Scheme must make an Application in the manner specified in the Prospectus and pay the Issue Price associated with the Application Money payable.

3.3 Application Account

Unless otherwise required by the Law, the Manager must establish and maintain a Bank account in the name of the Manager to be designated the Application Account for the Scheme. The Application Account must be established and operated in accordance with the requirements of the Law.

3.4 Application Money to be paid to Manager

The Manager must, in each Prospectus and other representations relating to the Scheme, direct how all cheques and other payment orders in respect of Applications are to be drawn on account of the Scheme.

3.5 Application Money with completed Application

Where the Manager receives Application Money with a completed Application relating to a current Prospectus, the Manager must pay the Application Money into the Application Account as soon as practicable after its receipt, but no later than the close of business on the next Business Day after the day of receipt.

3.6 Application Money without completed Application

Where the Manager receives Application Money that is not accompanied by a completed Application relating to a current Prospectus it will, as soon as practicable, return the Application Money to the Applicant or:

- (a) attempt to obtain the Application from the Applicant;
- (b) pay the Application Money into the Application Account; and
- (c) if interest accrues while the Application Money is held in the Application Account, ask the Applicant, in writing, whether the Applicant wants the interest to be dealt with as additional Application Money or to be paid to the Applicant.

3.7 Dealing with Application Money

Should the Manager pay the Application Money into the Application Account under clause 3.6, the Manager will:

- (a) hold the Application Money on trust for the Applicant, until the Application is received; and
- (b) if the Application is received by the Manager within 30 days after the Application Money is received:
 - (i) apply the Application Money to the Scheme Accounts as soon as practicable after receiving the Application; and
 - (ii) deal with any interest accrued while the Application Money was held by the Manager in the Application Account in the manner disclosed in the Prospectus; and
- (c) if the Application has not been received by the Manager within 30 days after the Application Money was received, return the Application Money and interest (if any) to the Applicant as soon as practicable.

3.8 Manager's discretion

The Manager has the sole discretion to determine whether to accept or reject an Application in whole or in part without giving reasons. Where the Manager determines to reject an Application, it must give written notice to the Applicant within a reasonable time after receipt of the Application. The Manager must within a further 10 Business Days after the notice of rejection is given, refund to the Applicant the Application Money.

3.9 Manager may withdraw Prospectus

The Manager may in its sole discretion determine at any time to withdraw a Prospectus. The Manager within 5 Business Days after the notice to withdraw the Prospectus is given, repay to all Applicants all Application Money paid pursuant to that Prospectus and held in the Application Account. Any interest that has accrued on Application Money in the Application Account shall be dealt with as disclosed in the Prospectus.

3.10 Manager to Confirm Acceptance

- (a) Once the Application is accepted the Manager must enter the Applicant on the Register as a Member.
- (b) The Manager must transfer the Application Money of the Member to the Scheme Accounts.

3.11 Issue Price

The issue price of an Interest shall be at the Issue Price and initially for each Interest shall be one dollar (\$1.00) of Application Money.

3.12 Certificates

The Manager

- (a) may issue to each Member a Certificate as evidence of the Members' investment in the Scheme; and
- (b) may cancel existing Certificates and reissue new Certificates where the Manager has been supplied with evidence to the satisfaction of the Manager that the existing Certificate has been lost, or stolen.

3.13 Form of Certificate

The Certificate is to be in the form as determined by the Manager.

3.14 Joint Members

In the case of joint Members, only the person whose name appears first in the Register is entitled to a Certificate relating to that Members Interest.

3.15 Replacement Certificates

Replacement Certificates may be issued in the circumstances and subject to such conditions as determined by the Manager.

3.16 Issue Price Adjustment

Where the Manager calculates the Issue Price of an Interest, and the Issue Price is less than \$1.00 per Interest the following will apply:

- A = the Current Value of the Scheme
- B = the total number of Issued Interests
- C = the total number of Subordinated Issued Interests
- $A/(B-C) = D$
- $D - \$1.00 = E$

If E is zero or a negative number then the Issue Price of Interests which are not Subordinated Interests will be D and the Issue Price of Subordinated Interests will also be D.

If E is a positive number then the Issue Price of Interests which are not Subordinated Interests will equal \$1.00 and the Issue Price of a Subordinated Interest will also be \$1.00.

4 RESPONSIBILITIES, POWERS AND DUTIES OF MANAGER

4.1 Exercise of powers of the Manager

- (a) Subject to the provisions of this Constitution and the Law, the Manager has absolute and uncontrolled discretion as to the exercise of its powers, authorities and duties, in relation to the manner, mode and time of exercise of those powers, authorities and duties.
- (b) The Manager has all the powers of a natural person and a body corporate, including the power to invest and to borrow or raise money for the purposes of the Scheme and on security of the relevant Assets.

4.2 Power to Appoint Agent (Section 601FB(2))

- (a) The Manager has power to appoint an agent, or otherwise engage a person, to do anything that it is authorised to do in connection with the Scheme.
- (b) For the purpose of determining whether:
 - (i) there is a liability to the Members; or
 - (ii) the Manager has properly performed its duties for the purposes of section 601GA(2) of the Law;

the Manager is taken to have done (or failed to do) anything that the agent or person has done (or failed to do) because of the appointment or engagement, even if they were acting fraudulently or outside the scope of their authority or engagement.

4.3 Authority for Agent (Section 601FB(3))

An agent appointed, or a person otherwise engaged, by:

- (a) the agent or person referred to in clause 4.2; or
- (b) a person who is taken under this clause to be an agent of the Manager;

to do anything that the Manager is authorised to do in connection with the Scheme is taken to be an agent appointed by the Manager to do that thing for the purposes of clause 4.2.

4.4 Liability of Agent (Section 601FB(4))

If:

- (a) an agent holds any Assets on behalf of the Manager; and
- (b) the agent is liable to indemnify the Manager against any loss or damage that:
 - (i) the Manager suffers as a result of a wrongful or negligent act or omission of the agent; and
 - (ii) relates to a failure by the Manager to perform its duties in relation to the Scheme;

then any amount recovered under the indemnity forms part of the Assets.

4.5 Duties of Manager (Section 601FC)

In exercising its powers and carrying out its duties, the Manager must:

- (a) act honestly;

- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Manager's position;
- (c) act in the best interests of the Members and, if there is a conflict between the Members' interests and the Manager's own interests, give priority to the Members' interests;
- (d) treat the Members of the same class equally and Members of different classes fairly;
- (e) not make use of information acquired through being the Manager in order to:
 - (i) gain an improper advantage for itself or another person; or
 - (ii) cause detriment to the Members of the Scheme;
- (f) ensure that the Constitution meets the requirements of sections 601GA and 601GB of the Law;
- (g) ensure that the Compliance Plan meets the requirements of section 601HA of the Law;
- (h) comply with the Compliance Plan;
- (i) ensure that the Assets are:
 - (i) clearly identified as Assets; and
 - (ii) held separately from property of the Manager, the assets of other Schemes established under the Constitution and the property of any other managed investments scheme;
- (j) ensure that all payments out of the Assets are made in accordance with the Constitution and the Law;
- (k) report to the Commission any breach of the law by the Manager that:
 - (i) relates to the Scheme; and
 - (ii) has had, or is likely to have, a materially adverse effect on the interests of Members;
 as soon as practicable after the Manager becomes aware of the breach; and
- (l) carry out or comply with any other duty, not inconsistent with the Law, that is conferred on the Manager by the Constitution.

5 DUTIES OF OFFICERS AND EMPLOYEES OF MANAGER

5.1 Duties of Officers of the Manager (Section 601FD(1))

An Officer of the Manager must:

- (a) act honestly;
- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Officer's position;
- (c) act in the best interests of the Members and, if there is a conflict between the Members' interests and the interests of the Manager, give priority to the Members' interests;
- (d) not make use of information acquired through being an Officer of the Manager in order to:
 - (i) gain an improper advantage for the Officer or another person; or
 - (ii) cause detriment to the Members;
- (e) not make improper use of their position as an Officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Members; and

- (f) take all steps that a reasonable person would take, if they were in the Officer's position, to ensure that the Manager complies with:
 - (i) the Law;
 - (ii) any conditions imposed by the Manager's licence;
 - (iii) the Constitution; and
 - (iv) the Compliance Plan.

5.2 Duties of Employees of the Manager (Section 601FE(1))

An employee of the Manager must not:

- (a) make use of information acquired through being an employee of the Manager in order to:
 - (i) gain an improper advantage for the employee or another person; or
 - (ii) cause detriment to Members; or
- (b) make improper use of their position as an employee to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Members.

6 INDEMNITIES AND REIMBURSEMENTS OF EXPENSES

6.1 Indemnity

To the extent permitted by statute the Manager is indemnified out of the Assets for all debts, liabilities, damages, costs, Taxes, charges, expenses and outgoings reasonably and properly incurred by it in the proper performance of its functions and duties and exercising its powers under this Constitution or at law, except in the case of debts, liabilities, damages, costs, Taxes, charges, expenses or outgoings incurred or payable in respect of or as a result of gross neglect, deceit or a material breach of covenant of the Manager.

6.2 Limitation of liability

Except in the case of a failure to exercise care and diligence, the Manager will not to the extent permitted by statute be liable to account to nor to indemnify the Scheme, a Member or person claiming under or on behalf of a Member, for anything done in good faith in the performance of its functions and duties and the exercise of its powers under this Constitution or at law including:

- (a) a failure to perform or do an act or thing which or the Manager is hindered, prevented or forbidden from doing or performing by reason of any present or future law (statutory or otherwise); or
- (b) payments made by the Manager in good faith to a duly empowered fiscal authority of the Commonwealth, a State or Territory for Taxes or other charges on the Scheme, an Authorised Investment or a Certificate, or with respect to any transaction reasonably and properly entered into under this Constitution, although the payment as a matter of law ought or need not have been made; or
- (c) anything done in good faith relying upon advice from an Expert instructed or appointed by the Manager and independent of the Manager; or
- (d) anything done in good faith by the Manager in respect of an Application or notice on which there is a forged signature or inaccurate details provided that there were at the time of the doing of the act, matter or thing no reasonable grounds to believe that the signature or detail was not genuine or accurate.

6.3 Further limitation of liability of the Manager

Except in the case of the Manager's failure to exercise care and diligence, the Manager is not to the extent permitted by statute liable to Members to any extent greater than the extent of the

Assets vested in the Manager or received and/or held by It in accordance with the provisions of this Constitution.

6.4 Transactions Involving the Scheme

Subject to the Law and the Manager's duties to Members, the Manager is entitled, in any capacity other than as manager of the Scheme, to contract with a Member, the Scheme or any Authorised Investment or any property proposed to be acquired as an Asset, without any liability to account to the Members only if:

- (a) the transaction is not in breach of any covenant contained in this Constitution; and
- (b) the Manager acts in the transaction with good faith to the Members.

6.5 Further indemnity

If the Manager acquires an Asset the holding of which exposes or may expose the Manager to personal liability or if the Manager enters into any contract, credit facility or other transaction on behalf of the Scheme which exposes or may expose the Manager to any personal liability, the Manager has a right of indemnity out of the Assets in respect of that liability.

6.6 General Compliance Related Party Transactions

- (a) The Manager must comply with part 5C.7 of the Law in respect of all Related Party transactions. In particular the Manager must not, unless permitted by the Law, give a financial benefit:
 - (i) to itself, or to a Related Party, out of the Assets; or
 - (ii) that could diminish or endanger the Assets;
- (b) Paragraph (a) does not prevent the Manager from paying itself fees, and exercising rights to an indemnity, in this Constitution and under section 601GA(2) of the Law and the law.

6.7 Dealings by the Manager

Nothing in this Constitution prevents the Manager or any person associated with the Manager from being a Member.

7 INVESTMENT

7.1 Investment Management

It is the role of the Manager to seek and invest the funds of the Scheme in Mortgage Investments.

7.2 Investment of Assets in another managed investment scheme (Section 601FC(4))

[Deleted and not replaced]

7.3 Investment Oversight

The Manager shall implement practices, systems and procedures to monitor the performance of Authorised Investments made by it and shall where considered prudent and appropriate take whatever action as may be necessary to protect the capital value of the Authorised Investments of the Scheme including institution of any recovery action under Mortgage Investments or other securities held in respect of Authorised Investments made in order to recover or maximise recovery of the capital and any unpaid income component of any Authorised Investment.

7.4 Income Warranty

- (a) The Manager may in a Prospectus or other offer document make provision for or representations as to the payment to Members of a minimum rate of distribution to be received by Members on their respective investments notwithstanding the percentage rates of interest payable under Mortgage Investments or Authorised Investments which

shall comprise Assets of the Scheme (in this and other clauses of the Deed to be called an Income Warranty').

- (b) The terms of any such Income Warranty may vary for each Prospectus or other offer document issued by the Manager on application to Applicants having regard to terms made by the Manager and based on the Manager's estimates of the Scheme's income, liabilities and expenses to be taken into account in estimating the likely return to Members and Applicants for periods (if any) nominated by the Manager in each prospectus or other offer document issued by it. The Manager may determine that the percentage rate of any Income Warranty be specified or provided for in any Application under a Prospectus or offer document issued by it or may leave such rate blank in any Application, with the Manager reserving the right to complete and/or accept an Application dependent upon the prevailing percentage rate of Income Warranty determined by and acceptable to the Manager at the time. Any Income Warranty given shall be deemed to be given by the Manager personally and shall not be binding on nor affect the Scheme notwithstanding that references to an Income Warranty may be included in an Application.

7.5 Amending the Income Warranty

The Manager may at any time amend the Income Warranty. In such circumstances the amendments must be notified to the Applicants before or at the time they complete their Application.

8 INCOME OF THE SCHEME

8.1 Manager to collect Income

The Manager will collect, receive and get in the Income of the Authorised Investments and will pay it into the Scheme Accounts. The Manager will make all payments relating to the Scheme from the Scheme Accounts.

8.2 Decision of Manager final

The decision of the Manager in consultation with the Auditor as to whether any amount to be distributed to Members is Income or capital shall be final.

8.3 Distribution to Members

The Manager shall distribute to the Members (excluding the holders of Subordinated Interests) the Distribution Amount within 14 days of the end of the Distribution Period for that Member.

8.4 Distribution Period

The Distribution Period for each Member (excluding the holders of Subordinated Interests) shall be:

- (a) quarterly, monthly, half yearly, or yearly as disclosed by the Manager in the Prospectus; or
- (b) If the Manager so provides, as agreed between the Member and the Manager at the time the Members Application is accepted.

8.5 Distribution Surplus

Following the payment in each Distribution Period to each Member (excluding the holders of Subordinated Interests), their Distribution Amount, any remaining surplus Income of the Scheme shall be paid in the following order of priority and subject to the provisions of clauses 2.12 and 21.5:

- (a) in payment of Scheme expenses;
- (b) payment to each Member a distribution up to their particular Benchmark Return;

- (c) in payment of the Manager's management fee; then the balance
- (d) as a distribution to the holders of Subordinated Interests as between those Members in proportion to the number of Subordinated Interests they hold.

8.6 Manager to keep separate accounts

The Manager may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to any Member.

8.7 Reinvestment of income entitlement

- (a) The Manager may invite Members in the Scheme to reinvest any or all of their Distribution Amount by way of application for additional Interests in the Scheme. The terms of any such invitation will be determined by the Manager and may, amongst other things, provide that unless a Member otherwise directs the Manager, that Member will be deemed to have elected to reinvest all or part of their Distribution Amount. Any invitation may be withdrawn or varied by the Manager.
- (b) Interests so applied for will be deemed to have been issued on the first day of the Distribution Period immediately following the Distribution Period in respect of which the Distribution Amount has accrued or such other date determined by the Manager.

8.8 Members presently entitled to Distributable Income

In accordance with clause 8.5, at the end of each Distribution Period the Members will be presently entitled (within the meaning of the Tax Act) to all Distributable Income derived during the relevant Distribution Period.

9 TERMINATION OF THE SCHEME

9.1 Termination of the Scheme

[Not altered but reproduced]

Subject to clause 9.2, the Scheme will terminate 80 years from the Commencement Date unless otherwise specified in the Prospectus for the Scheme.

9.2 Defined Event of Winding Up

The Manager must wind up the Scheme or cause the Scheme to be wound up on the occurrence of any one of the following circumstances:

- (a) the Scheme is without a Manager for whatever reason;
- (b) the Manager uses the mechanism provided for in Section 601NC of the Law;
- (c) the Members decide in a meeting called in accordance with this Constitution and the Law to wind up the Scheme;
- (d) the Scheme comes to the end of its term (as set out in clause 9.1);
- (e) any of the circumstances set out in Section 601NE of the Law apply such that the Manager is required to wind up the Scheme; or
- (f) a court orders the Scheme to be wound up pursuant to Section 601ND of the Law.

9.3 Procedure for Winding Up

- (a) Unless otherwise required by the Law, the Manager is responsible for winding up the Scheme.
- (b) The Manager must convert to money all Assets, deduct all proper costs and then distribute the money to each Member in proportion to the Members Interests in the Scheme. The Manager may make interim distributions during the winding up process.

- (c) The Manager must proceed with the winding up efficiently, diligently and without undue delay. The Manager must complete the winding up process within such time frame as it considers is available to do so, whilst complying with its duties under this Constitution.
- (d) The Manager may retain from the proceeds of winding up:
 - (i) sufficient funds to meet future obligations which the Manager reasonably believes will fall due after a distribution is made to Members; and
 - (ii) to pay its own remuneration expenses for work to be done following the realisation of the Assets.
- (e) During the winding up of the Scheme, the Manager may terminate any agreements or arrangements it has entered into with Members which relate to the Scheme. The Manager must give notice to the Members of the termination of those agreements or arrangements.
- (f) Once the Manager believes the winding up is complete, the Manager must engage a registered company auditor to audit the final accounts of the Scheme. The Manager must send a copy of any report made by the auditor to Members within 30 days after the Manager receives the report from the auditor.
- (g) The operation of this clause is subject to the priority obligations in clause 9.4.

9.4 Priority on a winding up

In the winding up of the Scheme the realisation of the assets of the Scheme will be applied in the following priority:

- (a) must apply the assets of the Scheme, or the proceeds of their realisation, to pay any Liabilities (excluding Interest Liabilities); then
- (b) pay to the holders of Interests (excluding the holders of Subordinated Interests) the sum equivalent to their Issue Price for their Interests;
- (c) pay to the holders of Subordinated Interests the sum equivalent to their Issue Price for their Subordinated Interests; and thereafter
- (d) distribute the remaining assets or the net proceeds to all Members in proportion to the number of Interests of which they are the registered holder on the date of termination of the Scheme.

9.5 Limitation of liabilities

A Member is not liable to contribute towards the debts or liabilities of the Manager and is not liable to indemnify the Manager or any creditor or either of them in the event of any deficiency of the Scheme. The only rights, if any, of indemnity of the Manager and their respective creditors shall be limited to the Assets. The limitation of liability of Members set out in this clause 9.5 also apply to any liability which is incurred by the Manager as a result of any directions or requests of the Members.

10 TRANSFER AND TRANSMISSION OF MEMBERS INTERESTS

10.1 General principles when dealing with Members' Interests

- (a) A Member may transfer their Interests only in accordance with the provisions of this Constitution and, in particular:
 - (i) the transferee must agree to be bound by the provisions of this Constitution; and
 - (ii) a stamped transfer of the Interests in the Scheme must be delivered to the Manager together with the Certificate or Certificates in respect of the Interests to be transferred.

- (b) The Manager will not be required to effect any transaction or dealing in any Interest on behalf of or for the benefit of or at the request of any Member unless the Member has paid or otherwise provided for, to the Manager's satisfaction, all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage fees and other charges (whether similar to the foregoing or not) which may have become or may be payable in respect of the transaction or dealing. The Manager is entitled, if it thinks fit, to pay and discharge all or any of those duties and charges on behalf of the Member concerned and retain the amount so paid out of any moneys to which the Member may be, or become, entitled.
- (c) The Manager may decline to register any transfer during the period that the Register is closed pursuant to clause 12.6.
- (d) Every instrument of transfer of an Interest which is registered will be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Constitution to the contrary) the Manager may destroy it.
- (e) Where the Manager refuses to register any instrument of transfer, within 2 Months after the date on which the instrument was deposited with the Manager, the Manager will give notice of the refusal to the person who deposited it and any instrument of transfer which the Manager refuses to register will (except in the case of suspected fraud) be returned to the person depositing it upon request by such person within 2 months of the giving of the notice.
- (f) The Manager may refuse to register or fail to register or give effect to any transfer of an Interest without assigning a reason.
- (g) Upon the registration of a transfer of any Interest, the Manager will within one Month after the date of such registration issue to the transferee or transmittee written confirmation of the transfer or transmission.

10.2 Form of transfer

The transfer of an Interest shall be form in the nominated by the Manager. The form will have regard to the need for the transferee to be bound to this Constitution and any other arrangements which go to the integrity of the Scheme.

10.3 Transmission

Subject to the provisions of this Constitution:

- (a) in the case of the death of any Member the survivor or survivors (where the deceased was a joint holder) or the executors or administrators (where the deceased was the sole holder) are the only persons recognised by the Manager as having any title to or interest in the Interests registered in the deceased's name;
- (b) any person becoming entitled to any Interests in consequence of the death or bankruptcy of a Member may upon:
 - (i) producing to the Manager evidence of the capacity in which they propose to act under the provisions of this clause or of their title to the Interests as the Manager deems sufficient;
 - (ii) in the case of the death of the Member, producing to the Manager evidence of payment of any duties the Manager may require; and
 - (iii) delivering up to the Manager for cancellation the Certificate for the Interests, be registered as the holder of the Interests and the Manager shall cancel the existing Certificate for Interests and issue a new Certificate for Interests in their name;
- (c) any person becoming entitled to any Interests because of the death or bankruptcy of a Member may give a good and sufficient discharge to the Manager for any money paid to

them but are not entitled to receive notices of or to attend or vote at any meetings of Members until they have become registered as a Member in respect of such Interests.

11 WITHDRAWAL

11.1 Obligation to redeem

- (a) The Withdrawal Date applicable to each Member who invests for a fixed 12 month investment term will be each annual anniversary of the date that Member's Application was accepted by the Manager and Interests are issued. For the avoidance of doubt, if a Member's Application is accepted by the Manager and Interests are issued on 2 December 1999, then the first Withdrawal Date for those funds invested by that Member will be 2 December 2000 or if this is not a Business Day, the next Business Day thereafter. If a Member does not lodge a Withdrawal Request Form within the time prescribed by this clause 11, then the Member's next Withdrawal Date will be 2 December 2001 or if this is not a Business Day, the next Business Day thereafter.
- (b) A Member or a Member's duly authorised agent approved by the Manager, must at least 30 days before the Withdrawal Date give the Manager a Withdrawal Request Form specifying the number of Interests to be redeemed and such notice is to be accompanied by the relevant Certificates (if any).
- (c) Subject to the following provisions of this clause 11 and the existence of a Delay Event, on receipt of a Withdrawal Request Form and Certificates (if any), the Manager must within 180 days of the Withdrawal Date redeem the required Interests out of the Scheme at the Redemption Price applicable on the date the Members Interests are redeemed by the Manager for that Member. The date the Members Interests are redeemed by the Manager pursuant to this clause is the Redemption Date for that Member.
- (d) Subject to the Manager's rights under clause 11.7, the days and times specified in clauses 11.1 and 11.2 may be varied upon not less than 60 days' notice to Members.
- (e) Notwithstanding this clause 11.1, the Manager may at its discretion allow the Member to withdraw from the Scheme all or part of the Member's funds at any time, in accordance with clause 11.18.

11.2 Access and 7 day call Investment Interests

- (a) Pursuant to clause 2.6 the Manager has created a separate class of Interests referred to as the Access Investment Interests and the 7 day call Investment Interests. Members who hold Interests of these classes, may lodge a Withdrawal Request Form with the Manager at any time they wish their Interest to be redeemed by the Manager on behalf of the Scheme.
- (b) From the date of this amendment 7 day call Investment Interests will thereafter be called and also referred to in this Constitution, as Access Investment Interests. The redemption provisions applying to Access Investment Interests apply equally to 7 day call Investment Interests.
- (c) Subject to the following provisions of this clause 11.2 and the existence of a Delay Event the Manager will generally redeem an Access Investment Interest within 7 days of receipt of that Members Withdrawal Request Form with respect to that Access Investment Interest. However, the Manager has up to 180 days from receipt of the Withdrawal Request Form, to redeem that Access Investment Interest and pay the Redemption Amount to the holder of the Access Investment Interest.
- (d) The date upon which the Manager redeems the Access Investment Interest in accordance with clause 11.2, will be the Redemption Date for that Access Investment Interests.

11.3 Extension of Redemption Date

- (a) Notwithstanding clauses 11.1(c) and 11.2, in the circumstances of a Delay Event the Manager must redeem Interests within 360 days of receiving a valid Withdrawal Request Form. Nothing in this clause 11.3 prohibits the Manager from redeeming Interests within these maximum timeframes.
- (b) The Manager is not required to process a redemption request where:
 - (i) the provisions of this Constitution relating to appropriate evidence of title have not been satisfied; or
 - (ii) the redemption would cause the Members Interests to fall below any minimum investment balance, as disclosed in the Prospectus.
- (c) The date the Manager redeems the Members Interests as provided in this clause 11.3 is the Redemption Date.
- (d) In satisfying redemption requests the Manager must treat all Members of the same class equally and as between classes fairly. Where the Manager holds more than one valid Withdrawal Request Form of the same class, it shall process them in order of receipt.

11.4 Suspension by Manager

The Manager may suspend the redemption of Interests for such period as it determines where it is impractical to calculate the Redemption Price due to:

- (a) the closure of a securities exchange or trading restrictions on a securities exchange;
- (b) an emergency or other state of affairs;
- (c) the declaration of a moratorium in a country where the Scheme has investments;
- (d) a closure of or restrictions on trading in the relevant foreign exchange market; or
- (e) the realisation of investments not being able to be effected at prices which would be realised if investments were realised in an orderly fashion over a reasonable period in a stable market.

No suspension may exceed 30 days unless a longer period is permitted by the Manager having regard to the circumstances. All outstanding redemptions with Redemption Dates which fall within that period of suspension and any Withdrawal Request Form received while the redemption of Interests is suspended, shall be reactivated with effect from the first Business Day after the suspension ceases.

11.5 Other suspension of redemption obligation

The Manager is not obliged to cause the redemption of Interests in the Scheme in any of the following circumstances:

- (a) the person making the request holds more than the Minimum Redemption Amount in the Scheme and the request relates to less than the Minimum Redemption Amount; or
- (b) carrying out the redemption will result in the person making the request holding less than the Minimum Redemption Amount in the Scheme; or
- (c) the request is made:
 - (i) after any notice convening a meeting of Members to vote on whether to wind up the Scheme has been sent by the Manager and before those eligible to vote have so voted; or
 - (ii) while the Scheme is being lawfully wound up, whether pursuant to a resolution to wind up the Scheme or in accordance with the Constitution or otherwise;

The Manager will remain entitled in its absolute discretion to or cause the redemption of Interests in accordance with clause 11.1 in the above circumstances.

11.6 Staggering of Redemption Dates

Despite any provision of this Constitution, the Manager may determine more than one Redemption Date for Interests to be redeemed pursuant to a Withdrawal Request Form and such Interests will be redeemed over those days in such proportions as the Manager determines, provided that all such Interests are redeemed within the time specified in clause 11.1.

11.7 Funding of redemption

To fund the redemption of Interests out of the Scheme, the Manager may apply or realise part of the Assets, and/or raise or borrow money, either unsecured or secured against Assets.

11.8 Time for Payment of Redemption Amount

The Manager will pay or cause to be paid to the Member the Redemption Amount in respect of any Interests within 90 days of the Redemption Date.

11.9 Resale and redemption of Interests by Manager

Where the Manager holds Interests for its own benefit, it may redeem those Interests out of the Scheme. This clause 11 will apply, with the necessary changes, to that redemption.

11.10 Cancellation of Interests

Interests which have been redeemed out of the Scheme will be cancelled and the Manager will record the cancellation in the Register.

11.11 Transfer of specific assets

The Manager may determine that the Redemption Amount will be satisfied wholly or in part by the transfer of investments of the Scheme at their Market Value. Expenses incurred in respect of the transfer must be paid by the Member.

11.12 Compulsory redemption of small holdings

If the Redemption Price of all Interests in the Scheme held by a Member is less than the Minimum Redemption Amount, the Manager may compulsorily redeem those Interests.

11.13 Components of Redemption Price and payment of accrued distributions

- (a) Unless the Manager otherwise notifies a Member whose Interests are redeemed, the Redemption Price paid to that Member will comprise capital only. The Manager may notify a Member that the Redemption Price comprises part capital and part Income. Where the Redemption Price paid to a Member comprises Income and capital, the Member will be presently entitled (within the meaning of the Tax Act) to the Income component and the Manager must notify the Member of the Income component of the Redemption Price paid to them. This notice may be given at the time of redemption but must in any case be given within 3 months of the end of the Financial Year of the Scheme in which the redemption occurs.
- (b) Where an Interest is redeemed after a right to a distribution, whether income or capital, has accrued in respect of that Interest, that distribution may be paid to the holder of the Interest at the time of payment of the applicable Redemption Price notwithstanding that the distribution has not been paid at that time to holders of other Interests.

11.14 No required disposal

A Member is not required to dispose of its Interests except as otherwise provided in this Constitution and the Corporations Law.

11.15 Early Redemption

Notwithstanding anything else contained in this clause 11:

- (a) A Member shall have no right of withdrawal during any period of twelve months following the application of funds by that Member other than as provided in clause 11.1.

- (b) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during the first six months following acceptance by the Manager of the Member's Application or during the first six months of any annual anniversary of a Member's Investment. In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed to the Member at the time of the request. In such circumstances the Redemption Date for the Member will be the date nominated by the Manager.
- (c) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during a period not otherwise provided in clause 11.11.15(a) or 11.15(b). In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed in the Prospectus. The Redemption Date for the Member in those circumstances shall be the date the Manager receives from the Member the Withdrawal Request Form.

11.16 Liquidity Protection Rules

Notwithstanding any provision in this clause 11, the Manager may withhold or suspend payment to a Member or Members of a Redemption Amount or Redemption Amounts payable and/or withhold or suspend for further processing, any Withdrawal Request Forms then on hand if:

- (a) The Manager in any 30 day period receives Withdrawal Request Forms from a Member or Members where the Redemption Amount or Redemption Amounts is equal to or greater than 5% of the total value of the Assets of the Scheme; or
- (b) During a period of 10 consecutive days falling within a 90 day period, the Scheme's cash reserves are less than 5% of the total value of the Assets of the Scheme. In these circumstances, the Manager may refuse to accept any new Withdrawal Request Forms and may refuse to accept any new Applications for such period not exceeding 12 months as may be required to realise, in an orderly manner, the Assets of the Scheme.

11.17 Additional Investments

- (a) Notwithstanding any other provision of clause 11, the Manager may (at its discretion) allow a Member to invest additional amounts to their 12 month investment for up to 30 days from the date their initial investment is accepted by the Manager and Interests issued. Where this occurs the Redemption Date for both the initial Interest and subsequent Interests will be the 12 month anniversary of the issue of the initial Interests. For example, the Member invests \$20,000 on 1 February 2006 and acquired 20,000 Interests (assuming the Issue Price is \$1.00 per Interest), and the Member (with the consent of the Manager) contributes a further \$15,000 and is issued 15,000 Interests on 25 February 2006 (assuming the Issue Price is \$1.00 per Interest). In this circumstance the Redemption Date (assuming the Member has lodged a valid Redemption Withdrawal Request Form) of all the Members Interest is 31 January 2007.
- (b) The Manager (at its discretion) may also allow Members to add to their 12 month investment during the 30 days prior to their Redemption Date. In this instance such an additional investment will constitute the early termination of their initial investment with both their initial and subsequent investments being deemed to be reinvested for a further full 12 months. For example, the Member invests \$20,000 on 1 February 2006 and is issued 20,000 Interests (assuming the Issue Price is \$1.00 per Interest). On 25 January 2007 the Member advises the manager that the Member wishes to invest an additional \$15,000 in the Scheme as an additional investment to their original investment and not as a new investment. Then with the consent of the Manager, the original Interests of the Member are redeemed by the Manager on the Redemption Date nominated by the Manager (which for the purpose of this example is 25 January 2007), and (assuming the then Redemption Price and Issue Price of Interests is \$1.00 per Interest) 35,000 new Interests are issued by the Manager on 25 January 2007 with a new Redemption Date of 24 January 2008.

- (c) Notwithstanding any other provision in this Constitution, the Manager in exercising its discretion in this clause 11 or as otherwise contained in the Constitution:
 - (i) must do so in accordance with its obligations under the Corporations Act 2001; and
 - (ii) nothing in any way obliges or requires the Manager to exercise its discretion in favour of the Member or redeem the Members Interests before their original Redemption Date.

11.18 Early Redemption

Notwithstanding anything else contained in this clause 11:

- (a) A Member who invests pursuant to clause 11.1 shall have no right of withdrawal during any period of twelve months following the application of funds by that Member other than as provided in clause 11.1.
- (b) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during the first six months following acceptance by the Manager of the Member's Application or during the first six months of any annual anniversary of a Member's Investment. In such circumstances, the Manager may charge the Member an early withdrawal fee as disclosed to the Member at the time of the request. In such circumstances the day the Manager allows the Member to withdraw early will be the Withdrawal Date (as provided in clause 11.1) and the process and timing of the withdrawal will be undertaken in the manner provided in clauses 11.1.
- (c) Notwithstanding the foregoing, the Manager may at its complete discretion allow a Member to withdraw during a period not otherwise provided in clauses 11.1 or 11.2. In such circumstances the day the Manager allows the Member to withdraw early will be the Withdrawal Date (as provided in clause 11.1) and the process and timing of the withdrawal will be undertaken in the manner provided in clause 11.1.

11.19 Redemption Price Adjustment

Where the Manager calculates the Redemption Price of an Interest, and the Redemption Price is less than \$1.00 per Interest the following will apply:

A = the Current Value of the Scheme

B = the total number of Issued Interests

C = the total number of Subordinated Issued Interests

$$A/(B-C) = D$$

$$D - \$1.00 = E$$

If E is zero or a negative number then the Redemption Price of Interests which are not Subordinated Interests will be D and the Redemption Price of Subordinated Interests will be nil.

If E is a positive number then the Redemption Price of Interests which are not Subordinated Interests will equal \$1.00 and the Redemption Price of Subordinated Interests will be H, calculated as:

$$(B-C) \times \$1.00 = F$$

$$A - F = G$$

$$G / \text{total number of Subordinated Issued Interests} = H.$$

12 REGISTERS

12.1 Member Register

The Manager will keep and maintain an up-to-date Register at the registered office or principal place of business of the Manager in such form and containing such particulars as are required by the Law or any declaration, exemption or ruling granted or made thereunder, and such other particulars as the Manager may from time to time considers appropriate.

12.2 Details on Register

Subject to clause 12.3, there will be entered in the Register:

- (a) the names and addresses of the Members from time to time;
- (b) the number of Interests from time to time held by each Member;
- (c) the date on which the name of each Member was entered in the Register, and
- (d) the date on which any person ceased to be a Member.

12.3 Expunging Information

The information relating to a Member (or any of it) may be expunged from the Register at any time after the first day of the Financial Year occurring 7 years after the Financial Year in which the Member ceased to be a Member.

12.4 Inspection of Register

The Manager need not allow inspection of the Register or any part thereof by any person except where:

- (a) the person seeking inspection is a Member or representative of a Member and the inspection relates to that part of the Register that contains particulars of the Member's Interest relevant to that person; or
- (b) the person provides to the Manager a written undertaking duly signed by the person and to the effect that inspection of the Register will not be used for any purpose other than the purpose of:
 - (i) calling a meeting of Members;
 - (ii) notifying a Member of a matter relating to the carrying out by the Manager of its functions and duties under the provisions of the Law or this Constitution; or
 - (iii) any other purpose approved in writing by the Commission.

12.5 Copies of Register

- (a) If any person has the right to inspect the Register then that person also has the right to obtain copies of those parts of the Register inspected. The costs of copying and handling will be a rate set by the Manager but shall not exceed \$2.50 per page.
- (b) Paragraph (a) does not require the Manager to make available or provide copies of the Register in excess of its obligations to do so under the Law having regard to any declaration or exemption made or given by the Commission.

12.6 Closure of Register

The Manager may close the Register or part of the Register for any time or times but so that no part of the Register may be closed for more than 30 days in the aggregate in each calendar year.

12.7 Change of Member Details

Each Member will give the Manager notice of any change of name or address on the part of such Member and the Manager, upon receiving such notification, will alter the Register accordingly.

13 MEMBER MEETINGS (PART 2G.4)

13.1 Managers Power to call Members Meeting (Section 252A)

The Manager may call a meeting of the Members at any time.

13.2 Members power to call a meeting (Section 252B)

- (a) The Manager must call and arrange to hold a meeting of the Members to consider and vote on a proposed special or extraordinary resolution on the request of:
 - (i) Members with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Members who are entitled to vote on the resolution.
- (b) The request by the Members must:
 - (i) be in writing; and
 - (ii) state any resolution to be proposed at the meeting; and
 - (iii) be signed by the Members proposing to move the resolution.
- (c) The request may be accompanied by a statement about the proposed resolution provided by the Members making the request.
- (d) Separate copies of a document setting out the request and statement (if any) may be used for signing by Members if the wording of the request and statement (if any) is identical in each copy.
- (e) The percentage of the votes that Members have is to be worked out as at the midnight before the request is given to the Manager.
- (f) The Manager must call the meeting within 21 days after the request is given to it. The meeting must be held not later than 2 months after the request is given to the Manager.
- (g) The Manager must give to each of the Members a copy of the proposed resolution and statement (if any) at the same time, or as soon as practicable afterwards, as it gives notice of the meeting. The Manager must distribute the copies in the same way in which it gives notice of the meeting.
- (h) The Manager does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.
- (i) The Manager is responsible for the expenses of calling and holding the meeting and making the distribution. The Manager may meet those expenses from the Assets.

13.3 Failure of Manager to call meeting of the Members (Section 252C)

- (a) Members with more than 50% of the votes carried by interests held by the Members who make a request under section 252B of the Law may call and arrange to hold a meeting of the Members and distribute the statement (if any) if the Manager does not do so within 21 days after the request is given to the Manager.
- (b) The meeting must be called and the statement is to be distributed in the same way, so far as is possible, in which meetings of the Members may be called by the Manager and information is distributed to Members by the Manager. The meeting must be held not later than 3 months after the request is given to the Manager.
- (c) To call the meeting the Members requesting the meeting may ask the Manager for a copy of the Register. The Manager must give the Members requesting the meeting the copy of the Register without charge.
- (d) The Manager must pay the reasonable expenses the Members incurred because the Manager failed to call and arrange to hold the meeting and to make the distribution (if any). The Manager must not pay or be reimbursed those expenses from the Assets.

13.4 Calling of meetings of Members by Members (Section 252D)

- (a) Members who hold interests carrying at least 5% of the votes that may be cast at a meeting of Members may call and arrange to hold a meeting of the Members to consider and vote on a proposed special resolution or a proposed extraordinary resolution. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which meetings of the Members may be called by the Manager.
- (c) The percentage of the votes carried by interests that Members hold is to be worked out as at the midnight before the meeting is called.

14 HOW TO CALL MEETINGS OF MEMBERS

14.1 Notice of meetings (Section 252F)

At least 21 days notice must be given of a meeting of Members.

14.2 Notice of meetings of Members to Members, directors and auditors (Section 252G)

- (a) Written notice of a meeting of Members must be given to:
 - (i) each Member entitled to vote at the meeting;
 - (ii) each director of the Manager;
 - (iii) the Auditor; and
 - (iv) the auditor of the Compliance Plan.
- (b) Notice to joint Members need only be given to the joint Member named first in the Register.
- (c) The Manager may give notice of the meeting to a Member:
 - (i) personally; or
 - (ii) by sending it by post to the address for the Member in the Register or an alternative address (if any) nominated by the Member; or
 - (iii) by sending it to the fax number or electronic address (if any) nominated by the Member.
- (d) A defect in the notice given or failure to receive the notice does not invalidate a meeting.
- (e) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

14.3 Auditors entitled to other communications (Section 252H)

The Manager must give the Auditor and the auditor of the Compliance Plan all communications relating to the meeting that a Member is entitled to receive.

14.4 Contents of notice of meetings of Members (Section 252J)

A notice of a meeting of Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special or extraordinary resolution is to be proposed at the meeting, set out an intention to propose the special or extraordinary resolution and state the resolution; and
- (d) contain a statement setting out the following information:

- (i) that the Member has a right to appoint a proxy;
- (ii) that the proxy does not need to be a Member; and
- (iii) that if the Member appoints 2 proxies the Member may specify the proportion or number of votes the proxy is appointed to exercise.

14.5 Notice of adjourned meetings (Section 252K)

When a meeting is adjourned, new notice of the adjourned meeting must be given if the meeting is adjourned for one month or more.

15 MEMBERS' RIGHTS TO PUT RESOLUTIONS AT MEETINGS OF MEMBERS

15.1 Members' resolutions (Section 252L)

- (a) The following Members may give the Manager notice of a special or extraordinary resolution that they propose to move at a meeting of Members:
 - (i) Members with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Members who are entitled to vote at a meeting of Members.
- (b) The notice must:
 - (i) be in writing;
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the Members giving the notice.
- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.
- (d) The percentage of the votes that Members have is to be worked out as at the midnight before the Members give the notice.

15.2 Manager giving notice of Members' resolutions (Section 252M)

- (a) If a Manager has been given notice of a special or extraordinary resolution under section 252L of the Law, the resolution is to be considered at the next meeting of Members that occurs more than 2 months after the notice is given.
- (b) The Manager must give all the Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Manager is responsible for the cost of giving Members notice of the resolution if the Manager receives the notice in time to send it out to Members with the notice of meeting.
- (d) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Manager in giving Members notice of the resolution if the Manager does not receive the Members' notice in time to send it out with the notice of meeting. A resolution may be passed at a meeting of Members that the Manager is to meet the expenses out of the Assets.
- (e) The Manager need not give notice of the resolution:
 - (i) if it is more than 1,000 words long or defamatory; or
 - (ii) if the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

15.3 Members' statements to be distributed (Section 252N)

- (a) Members may request a Manager to give to all its Members a statement provided by the Members making the request about:

- (i) a resolution that is proposed to be moved at a meeting of Members; or
- (ii) any other matter that may be properly considered at a meeting of Members.
- (b) The request must be made by:
 - (i) Members with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Members who are entitled to vote at the meeting.
- (c) The request must be:
 - (i) in writing; and
 - (ii) signed by the Members making the request; and
 - (iii) given to the Manager.
- (d) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (e) The percentage of the votes that Members have is to be worked out as at the midnight before the request is given to the Manager.
- (f) After receiving the request, the Manager must distribute to all the Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives a notice of a meeting.
- (g) The Manager is responsible for the cost of making the distribution if the Manager receives the statement in time to send it out to Members with the notice of meeting.
- (h) The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Manager in making the distribution if the Manager does not receive the statement in time to send it out with the notice of meeting. A resolution may be passed at a meeting of the Members that the Manager is to meet the expenses out of the Scheme's Assets.
- (i) The Manager need not comply with the request:
 - (i) if the statement is more than 1,000 words long or defamatory; or
 - (ii) if the Members making the request are responsible for the expenses of the distribution, unless the Members give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

16 HOLDING MEETINGS OF MEMBERS

16.1 Time and place for meetings of Members (Section 252P)

A meeting of Members must be held at a reasonable time and place.

16.2 Technology (Section 252Q)

A Manager may hold a meeting of the Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

16.3 Quorum (Section 252R)

- (a) The quorum for a meeting of Members is 2 Members and the quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Member has appointed more than one proxy or representative, these proxies or representatives only count as one person. If an individual is attending both as a Member and as a proxy or body corporate representative they shall all only be counted as one individual.

- (c) A meeting of Members that does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and place the Manager specifies. If the Manager does not specify one (1) or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified—the same day in the next week; and
 - (ii) if the time is not specified—the same time; and
 - (iii) if the place is not specified—the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, the meeting is dissolved.

16.4 Chairing meetings of Members (Section 252S)

- (a) The Manager may, in writing, appoint an individual to chair a meeting called under section 252A or 252B of the Law.
- (b) The Members present at a meeting called under section 252A or 252B of the Law must elect a Member present to chair the meeting (or part of it) if:
 - (i) a chairperson has not previously been appointed to chair the meeting; or
 - (ii) a previously appointed chairperson is not available, or declines to act for the meeting (or part of the meeting).
- (c) The Members present at a meeting called under sections 252C, 252D or 252E of the Law must elect a Member present to chair the meeting.

16.5 Auditors' right to be heard at meetings of Members (Section 252T)

- (a) The Auditor and the auditor of the Compliance Plan are entitled to attend any meeting of the Members.
- (b) An auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) An auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the Members.

16.6 Adjourned meetings (Section 252U)

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

17 PROXIES AND BODY CORPORATE REPRESENTATIVES

17.1 Who can appoint a proxy (Section 252V)

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) A Member may appoint one or 2 proxies. If the Member appoints 2 proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (d) Fractions of votes resulting from the application of paragraphs (b) and (c) are to be disregarded.

17.2 Rights of proxies (Section 252W)

- (a) A proxy appointed to attend and vote for a Member has the same rights as the Member:
 - (i) to speak at the meeting; and
 - (ii) to vote (but only to the extent allowed by the appointment).
- (b) A proxy is entitled to vote on a show of hands.
- (c) A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

17.3 Manager sending appointment forms or lists of proxies must send to all Members (Section 252X)

If the Manager sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list—the Manager must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise—the Manager must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

17.4 Appointing a proxy (Section 252Y)

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:
 - (i) the Member's name and address;
 - (ii) the Scheme's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used.
- (b) An appointment of a proxy remains valid even if paragraph (a) is not strictly complied with, provided in the reasonable opinion of the Manager the intentions of the Member is clear.
- (c) An undated appointment is taken to have been dated on the day it is given to the Manager.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
 - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and
 - (iii) if the proxy is the chairperson—the proxy must vote on a poll, and must vote that way; and
 - (iv) if the proxy is not the chairperson—the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (e) If a proxy is also a Member, this clause does not affect the way that the person can cast any votes they hold as a Member.
- (f) The appointment of a proxy does not have to be witnessed.
- (g) The later appointment of a proxy revokes an earlier appointment, if both appointments could not be validly exercised at the meeting.

17.5 Proxy documents (Section 252Z)

- (a) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Manager at least 48 hours before the meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Manager at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) A Manager receives an appointment authority when it is received at any of the following:
 - (i) the Manager's registered office;
 - (ii) a fax number at the Manager's registered office; or
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) An appointment of a proxy is ineffective if:
 - (i) the Manager receives either or both the appointment or authority at a fax number or electronic address; and
 - (ii) a requirement (if any) in the notice of meeting that:
 - (A) the transmission be verified in a way specified in the notice; or
 - (B) the proxy produce the appointment and authority (if any) at the meeting;
 is not complied with.

17.6 Validity of proxy vote (Section 253A)

- (a) Unless the Manager has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing Member dies; or
 - (ii) the Member is mentally incapacitated; or
 - (iii) the Member revokes the proxy's appointment; or
 - (iv) the Member revokes the authority under which the proxy was appointed by a third party; or
 - (v) the Member transfers the Interest in respect of which the proxy was given.
- (b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

17.7 Body corporate representative (Section 253B)

- (a) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of Members. The appointment may be a standing one.
- (b) The appointment must set out what the representative is appointed to do and may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (c) A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.

- (d) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

18 VOTING AT MEETINGS OF MEMBERS

18.1 How many votes a Member has (Section 253C)

- (a) On a show of hands, each Member has one vote.
- (b) On a poll, each Member has one vote for each dollar of the value of the total interests they have in the Scheme.

18.2 Jointly held interests (Section 253D)

If an interest is held jointly and more than one Member votes in respect of that interest, only the vote of the Member whose name appears first in the Register counts.

18.3 Manager and associates cannot vote if interested in resolution (Section 253E)

The Manager and its Associates are not entitled to vote their interest on a resolution at a meeting of Members if they have an interest in the resolution or matter other than as a Member.

18.4 How to work out the value of an interest (Section 253F)

The value of an interest of a Member in the Scheme is the amount that the Manager determines in writing to be the price that a willing but not anxious buyer would pay for the Member's interest if it was sold on the Business Day immediately before the day on which the poll is taken.

18.5 Objections to a right to vote (Section 253G)

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson, whose decision is final.

18.6 Votes need not all be cast in the same way (Section 253H)

On a poll a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

18.7 How voting is carried out (Section 253J)

- (a) A special or extraordinary resolution put to the vote at a meeting of Members must be decided on a poll.
- (b) Any other resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50% of the votes cast by Members entitled to vote on the resolution.
- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

18.8 Matters on which a poll may be demanded (Section 253K)

- (a) A poll may be demanded on any resolution.
- (b) A poll cannot be demanded on any resolution concerning:
- (i) the election of the chairperson of a meeting; or
- (ii) the adjournment of a meeting.

- (c) A demand for a poll may be withdrawn.

18.9 When a poll is effectively demanded (Section 253L)

- (a) At a meeting of Members, a poll may be demanded by:
 - (i) at least five (5) Members present entitled to vote on the resolution; or
 - (ii) Members present with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the chairperson.
- (b) The poll may be demanded:
 - (i) before a vote is taken; or
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that Members have is to be worked out as at close of business on the day before the poll is demanded.

19 MINUTES AND MEMBERS' ACCESS TO MINUTES

19.1 Minutes (Section 253M)

- (a) A Manager must keep minute books in which it records within one month:
 - (i) proceedings of meetings of Members; and
 - (ii) resolutions of meetings of Members.
- (b) The Manager must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chairperson of the meeting or the chairperson of the next meeting.
- (c) The Manager must keep the minute books at:
 - (i) its registered office; or
 - (ii) its principal place of business in Australia; or
 - (iii) another place approved by the Commission.
- (d) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

19.2 Members' access to minutes (Section 253N)

- (a) The Manager must ensure that the minute books for the meetings of Members are open for inspection by Members free of charge.
- (b) A Member may ask the Manager in writing for a copy of any minutes of a meeting of the Members or an extract of the minutes.
- (c) The Manager is entitled to charge a Member a copying fee of not more than \$2.50 per page or an amount not exceeding any amount prescribed, whichever is the lesser.
- (d) If the Manager requires payment for the copy, the Manager must send it:
 - (i) within 14 days after the Manager receives the payment; or
 - (ii) within any longer period that the Commission approves.

20 CHANGING THE CONSTITUTION

20.1 Power to Amend

The Constitution may be modified, or repealed and replaced with a new constitution:

- (a) by special resolution of the Members; or
- (b) by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights.

20.2 Lodgement of Amendment

The Manager must lodge with the Commission a copy of the modification or the new Constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

21 REMUNERATION OF MANAGER

21.1 Management Fee

- (a) Subject to clause 21.5, the:
 - (i) Manager is entitled to be paid out of the Income of the Scheme a management fee of up to 1.5% per annum of the Gross Asset Value of the Scheme; and
 - (ii) the fee is calculated and payable monthly in arrears.
- (b) The Manager's management fee must be paid up to the date of completion of the final winding up of the Scheme.

21.2 Custodian's fees

If a custodian is appointed, the Manager shall be responsible for payment of the custodian's fees and expenses.

21.3 Disputes between the Manager and Members

A Member claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing (including by email) or by telephone.

21.4 Best Efforts to Resolve the Dispute

- (a) On receipt of a dispute from the Member, the Manager shall promptly reply (within 5 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member seek to finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the Manager has been unable to substantially respond to the complaint within 45 days the dispute resolution officer will report in writing to the Member advising them reasons for the delay, when a response can be expected and referring them to the external dispute resolution scheme.
- (e) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

21.5 Priority

Income distributions from the Scheme are to be conducted in the following order:

- (a) the Income Warranty (if any) has been paid;
- (b) expenses of the Scheme;
- (c) payment to each Member a distribution up to their Benchmark Return;
- (d) the Manager will pay any management fee;
- (e) as provided in clause 8.5(d).

22 RETIREMENT, REMOVAL OR LIQUIDATION OF MANAGER

22.1 Retirement of the Manager (Section 601FL)

- (a) If the Manager wants to retire, it must call a Members' meeting to explain its reason for wanting to retire and to enable the Members to vote on an extraordinary resolution to choose a new Manager.
- (b) If the Members choose a manager and that person has consented, in writing, to becoming the Scheme's Manager:
 - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the current Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to the name of the new Manager;
 - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i) the person chosen by the Members to be the new Manager may lodge that notice.
- (c) If the Members do not choose a person to be the new Manager, or the person they choose does not consent to becoming the Scheme's Manager, the current Manager may apply to the court for the appointment of a temporary Manager under section 601FP of the Law.

22.2 Removal of the Manager by Members (Section 601FM)

- (a) If the Members want to remove the Manager, they must take action under clause 13.2 for the calling of a Members' meeting to consider and vote on:
 - (i) an extraordinary resolution that the current Manager should be removed; and
 - (ii) an extraordinary resolution choosing a person to be the new Manager.
- (b) If the Members vote to remove the Manager and, at the same meeting, choose a person to be the new Manager that consents, in writing, to becoming the Scheme's Manager:
 - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the Manager must lodge a notice with the Commission asking it to alter the record of the Scheme's registration to name the person chosen as the Scheme's Manager; and
 - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i), the person chosen by the Members to be the new Manager may lodge that notice.

23 CONSEQUENCES OF CHANGE OF MANAGER

23.1 Former Manager to hand over books and provide reasonable assistance (Section 601FR)

If the Manager of the Scheme changes, the former Manager must:

- (a) as soon as practicable give the new Manager any books in the former Manager's possession or control that the Law requires to be kept in relation to the Scheme; and
- (b) give other reasonable assistance to the new Manager to facilitate the change of manager.

23.2 Rights, obligations and liabilities of former Manager (Section 601FS)

- (a) If the Manager of the Scheme changes the rights, obligations and liabilities of the former Manager in relation to the Scheme become rights, obligations and liabilities of the new Manager.
- (b) Despite paragraph (a), the following rights and liabilities remain rights and liabilities of the former Manager:
 - (i) any right of the former Manager to be paid fees for the performance of its functions before it ceased to be the manager; and
 - (ii) any right of the former Manager to be indemnified for expenses it incurred before it ceased to be the manager; and
 - (iii) any right, obligation or liability that the former Manager had as a Member of the Scheme; and
 - (iv) any liability for which the former Manager could not have been indemnified out of the Property if it had remained the Scheme's manager.

24 NOTICES

24.1 Notices to be in writing

Notices given under or for the purpose of this Constitution must be written in the English language.

24.2 Notices to the Manager

Notices to the Manager may be addressed to its principal place of business as disclosed in the Prospectus or notified to Members from time to time.

24.3 Joint Members

Notices to a joint Member may be addressed to the one of them whose name first appears in the Register, at that one's address shown in the Register, and may be served at that address.

24.4 Form of Notice

A notice may be delivered by hand, by prepaid post or by facsimile transmission.

24.5 Time of delivery

If, before 5 pm. local time on a Business Day in the place of delivery, a party delivers a notice:

- (a) by hand; or
- (b) by facsimile transmission and the party completes transmission,

the notice will be taken as given on the day of delivery or transmission and in any other case on the next following Business Day.

24.6 Notices by post

If a party gives a notice by prepaid post the notice will be taken as given on the second Business Day after the notice is posted.

24.7 Incomplete facsimile transmission

If a party gives a notice by facsimile transmission and the transmission is not fully legible, the party giving the notice may not rely on this clause to prove the giving of the notice.

24.8 Facsimile transmission reasonably believed to be unintelligible

A facsimile transmission may not be relied upon if the party giving the notice has reason to believe that the transmission or part of the transmission is illegible, or not an accurate representation of the original document.

24.9 Request for re-transmission

A party is not entitled to object to a facsimile transmission as being not fully legible or accurate unless the party requests re-transmission within 2 hours (being hours between 9 am. and 5 pm local time on a Business Day at the place of receipt) of completion of transmission; if a facsimile transmission is made within 2 hours before 5 pm on a Business Day and is unintelligible, the receiving party has until 10 am local time on the next Business Day at the place of receipt to request re-transmission.

24.10 Signatures

A notice given by the Manager must be signed by an Officer of the Manager.

24.11 Address of Applicants

The address for service of an Applicant is the address shown in its Application until it notifies the Manager of another address in accordance with this clause.

24.12 Address of Members

The address for service of a Member is the address shown in the Register, or in the case of joint Members, the address shown in the Register of the joint Member who is first named in the Register.

24.13 Changes of address for service of the Manager

The Manager may by notice to the Commission, change its address or facsimile number for service under this clause.

25 FINANCIAL STATEMENTS

25.1 Preparation of Financial Statements (Section 292)

A financial report and directors' report for the Scheme must be prepared for each Financial Year in accordance with the requirements of the Law.

25.2 Compliance with Accounting Standards and Regulations (Section 296)

- (a) The financial report for a Financial Year must comply with the Accounting Standards.
- (b) The financial report must comply with any further requirements in the Regulations.

25.3 True and Fair View (Section 297)

The Financial Statements and notes for a financial year must give a true and fair view of:

- (a) the financial position and performance of the Scheme; and
- (b) if consolidated Financial Statements are required - the financial position and performance of the consolidated entity.

25.4 Audit of annual financial report (Section 301)

Each Scheme must have the financial report for the Financial Year audited in accordance with division 3 of part 2M.3 of chapter 2M of the Law and obtain an Auditors report.

25.5 Annual Financial Report to Members (Section 314)

- (a) The Manager must report to Members for a Financial Year by either:
 - (i) sending Members copies of:
 - (A) financial report for the year; and
 - (B) the directors' report for the year (see sections 298 - 300 of the Law); and
 - (C) the Auditors report on the financial report; or
 - (ii) sending Members a concise financial report for the year the complies with the Law.
- (b) A Scheme must report to its Members within 3 months after the end of the Financial Year.

25.6 Members choices for Annual Financial Information (Section 316)

- (a) A Member may request the Manager:
 - (i) not to send them the annual financial reports; or
 - (ii) to send them a full financial report and the directors' report and Auditors report.

A request may be a standing request or for a particular Financial Year. The Member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.
- (b) The time for complying with a request under paragraph (a)(ii) is:
 - (i) 7 days after the request is received; or
 - (ii) 3 months after the end of the Financial Year;

whichever is later.
- (c) A full financial report, directors' report and Auditors report are to be sent free of charge unless the Member has already received a copy of them free of charge.

25.7 Supplying information to the Auditor

The Manager must supply the Auditor with any information the Auditor requests and which is necessary for the performance of the duties of the Auditor.

25.8 Accounts of other Members

- (a) The Manager must not prepare the financial report of the Scheme in such a way as to make it apparent to others reading the financial report (including Members) the details of individual Members Interest.
- (b) Nothing in this Constitution is to be read as requiring the Manager to send or make available reports of Member's Interests and to any person other than the Member concerned (or the Member's authorised agents).
- (c) The Manager may disclose details of the Members Interests to those involved in the preparation and auditing of the Scheme.
- (d) This clause is subject to any requirements imposed on the Manager by law.

26 AUDITOR

26.1 Appointment

- (a) The Manager will appoint the Auditor and the auditor of the Compliance Plan. The appointments will be a registered company auditor according to the provisions of the Law;
- (b) The appointee may be the auditor of the Manager unless otherwise restricted by the Law.

26.2 Removal or Retirement of Auditor

- (a) The Manager may remove the Auditor or auditor of the Compliance Plan at any time.
- (b) The auditors may retire after giving notice to the Manager. The auditors must give at least one month's notice unless otherwise agreed with by the Manager.

27 GENERAL

27.1 Payments to Members

Any money payable by the Manager to a Member under this Constitution may be paid by any means as directed by the Member from time to time and, in the absence of a direction, may be made by direct Bank transfer or by crossed not negotiable cheque payable to the Member or order and sent through the post to the Member at its address in the Register, or in the case of joint holders made payable to the joint holders or bearer and sent to the Members at the address shown in the register of the joint holder who is first named in the Register. Payment of a cheque drawn and posted in accordance with this clause is in full satisfaction of the monies payable to the Member and a good discharge to the Manager.

27.2 Retention of documents

The Manager is to retain, and make available to the auditor for inspection at reasonable times, for a period of at least 7 years from their respective dates, the following:

- (a) Applications;
- (b) cancelled Certificates; and
- (c) instruments of transfer and transmission.

27.3 Copies of this Constitution

A copy of this Constitution must be held by the Manager at its principal office and registered office and made available during normal business hours at those places for inspection by Members. A Member is entitled to a copy of this Constitution upon payment to the Manager of the reasonable costs and expenses of preparing a copy.

27.4 Governing law and jurisdiction

This Constitution is governed by and is to be construed in accordance with the laws of the State of Queensland. Each party and the Members and Applicants irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.

27.5 No Waiver

The failure of a party at any time to require full or partial performance of any provision of this Constitution shall not affect in any way the full right of that party to require that performance subsequently. The waiver by any party of a breach of a provision of this Constitution shall not be deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently. Any waiver of a breach of this Constitution shall be in writing signed by the party granting the waiver, and shall be effective only to the extent specifically set out in that waiver.

28 RESOLUTION OF DISPUTES

28.1 Complaints Handling System

The Manager shall establish a complaints handling framework that complies with AS ISO 10002-2006 Customer satisfaction - Guidelines for complaints handling in organizations (ISO 10002:2004, MOD) for the handling of disputes under this Constitution.

28.2 Essential Elements

The complaints handling process shall have as a minimum requirements for:

- (a) **(Commitment).** There shall be a commitment to efficient and fair resolution of complaints.
- (b) **(Fairness).** The complaints handling process shall recognise the need to be fair to both the complainant Member and the Manager.
- (c) **(Resources).** There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- (d) **(Visibility).** The complaints handling process shall be well publicised to Members and staff of the Manager and shall include information to Members about the right to complain.
- (e) **(Access).** The complaints handling process shall be assessable to all Members and information shall be readily available on the details of making and resolving complaints.
- (f) **(Assistance).** Assistance shall be available for Members in a formulation and lodgement of complaint.
- (g) **(Responsiveness).** Complaints shall be dealt with quickly and the Members shall be treated courteously.
- (h) **(Charges).** Complaints handling shall be at no charge to the particular complaining Member. The Manager shall be entitled to be reimbursed for its costs from Scheme assets in dealing with the particular complaints.
- (i) **(Remedies).** The complaints handling process shall have the capacity to determine and implement remedies.
- (j) **(Data collection).** There shall be appropriate systematic recording of complaints by Members and their outcome.
- (k) **(Systematic and recurring problems).** Complaints shall be classified and analysed for the identification and rectification of systematic and recurring problems.
- (l) **(Accountability).** There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- (m) **(Review).** The complaints handling process shall be reviewed annually to ensure that it is sufficiently delivering effective outcomes.

28.3 Disputes between the Manager and Members

A Member claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing.

28.4 Best Efforts to Resolve the Dispute

- (a) On receipt of the written notice of dispute from the Member, the Manager shall promptly reply (within 7 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.

- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the dispute is not resolved to the satisfaction of the Member the Member shall have 30 days from receipt of the report of the dispute resolution officer to refer the matter to the Manager's compliance committee if a compliance committee exists or alternatively the board of the Manager.
- (e) The Manager's board or compliance committee shall meet within 21 Business Days of receipt of a written complaint by a member, received pursuant to paragraph (j) to consider the dispute.
- (f) The Member shall be entitled to be present at the meeting of the board or compliance committee with or without legal representation and to be heard either in person or through the Member's legal representative.
- (g) Subsequent to hearing the Member's complaint the board or compliance committee shall have a maximum of 14 Business Days within which to consider the complaint and either accept, reject or resolve the dispute.
- (h) The board or compliance committee must notify the Member within 21 Business Days of the hearing under paragraph (e), of its decision.
- (i) If the Member is dissatisfied with the determination of board or compliance committee then the Member may refer the complaint to the Dispute Resolution Service.
- (j) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

29 IMPACT OF INTERNATIONAL ACCOUNTING STANDARDS

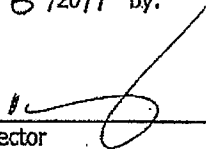
Notwithstanding anything to the contrary contained or implied by this Deed, where:

- (a) Assets;
- (b) Current Interest Value;
- (c) Current Value;
- (d) Gross Asset Value;
- (e) Income;
- (f) Issue Price;
- (g) Issue Provision;
- (h) Liabilities;
- (i) Market Value;
- (j) Net Income;
- (k) Redemption Price;
- (l) Redemption Amount;
- (m) Authorised Investments;
- (n) Scheme;
- (o) Value; or


- (p) similar terms or phrases ('the Items'),
- (q) are used for the purposes of calculating:
- (r) the issue or redemption price of Interests;
- (s) the fees payable to the Manager, any agent of the Manager or any custodian who holds Scheme property;
- (t) the extent of any limitation on borrowings or on investment of Scheme property; or
- (u) the amount of a distribution payable to Members,
- (v) the Items are to be calculated by reference to generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005.

EXECUTED as a Deed Poll

Signed sealed and delivered
by
EQUITRUST LTD ACN 061 383 944
on 3 16 /2011 by:

A  _____
Director

A DAVID KENNEDY
Full name of Director

A  _____
Director/Secretary

A MARK MCIVOR
Full name of Director/Secretary

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS 10478 of 2011


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

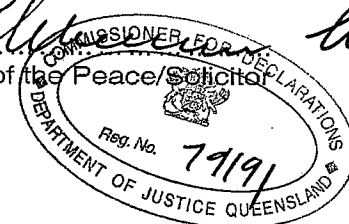
Applicant: EQUITITRUST LIMITED A.C.N. 061 383 944

CERTIFICATE OF EXHIBIT

Exhibit "PJV-4" to the Affidavit of PAUL JAMES VINCENT sworn *18th* 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

099

Company Profile – Stacks Finance

1. Introduction

Stacks Finance was established in January 1999 after an extensive review of the non-conforming commercial mortgage market in 1998. Prior to this time Ray and Paul Stack operated a Solicitors Mortgage Practice under the applicable Class Order exemption at the time. Ray Stack has been arranging mortgages since 1966.

In 1999 Ray and Paul Stack established Stacks Managed Investments Limited with the express purpose of operating a range of managed investment schemes.

Stacks Finance also established The Mortgage Fund ARSN 088 928 081, which commenced trading in November 1999. The Mortgage Fund operates as a pooled mortgage trust with approximately \$160 million in funds under management.

Stacks Finance is one of the few mortgage funds not to freeze withdrawals and distributions in the wake of the Global Financial Crisis.

Recently Stacks Managed Investments Limited was appointed the replacement responsible entity for the Kingsway Premium Income Fund ARSN 099 747 663, to continue the management of the wind up of that Fund.

Stacks Finance is licensed to operate all types of mortgage schemes and is not limited to a specific mortgage scheme.

Stacks Finance lends throughout Australia, with a particular focus on the Eastern Seaboard and have offices in Sydney, Taree and Tweed Heads.

Stacks Finance is a specialist mortgage manager with over 45 years' experience in the mortgage market. We believe that our success is based on the trust that our investors place on our capacity to obtain, verify, approve and manage mortgages on their behalf.

2. Key Personnel

Raymond Thomas Stack LLB (Sydney), Notary Public, OAM - Chairman



Ray Stack has over 45 years' experience in lending in the commercial lending market. Ray is the Director in charge of lending and oversees the management of our loans. His specialities include the qualification of borrowers, recovery of overdue interest and repayment of problem loans. He is also part of the Lending Committee for Stacks Finance and is responsible for the approval of new loans and increases.

In addition he is a Solicitor with over 45 years' experience in mortgage, finance and property law. He is accredited by the New South Wales Law Society as a Property Law Specialist.

In 1999 he was awarded the Medal of the Order of Australia, for services to the Community.

Paul Anthony Stack BA, Dip Law, MBA, Dip FS (FP), F Fin, Notary Public – Managing Director



Paul Stack has 18 years' experience in the commercial lending market, and as Managing Director has overall responsibility for the day to day management of the Fund. He is a Fellow of the Australasian Institute of Banking and Finance.

He specialises in compliance, investor relations, debt recovery and the settlement of loans. He is part of the lending Committee for Stacks Finance and with Ray Stack is responsible for the approval of new loans and increases, and the repayment of problem loans.

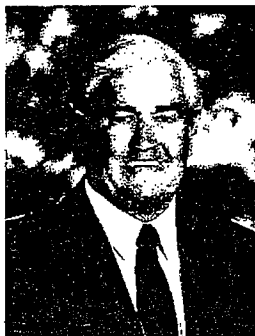
He is a Solicitor with 18 years' experience in mortgage, finance and property law and is accredited by the New South Wales Law Society as a Property Law Specialist. He is a Licensed Real Estate Agent, has a Diploma in Financial Services (Financial Planning) and holds a post graduate management degree in accounting.

Robert Danvers Crossman - Director



Bob Crossman is an accountant with more than 30 years experience, including 20 years as principal of his own practise and a decade with Coopers & Lybrand in Sydney. Retired from public practise he manages a variety of family businesses and is a member of the Institute of Chartered Accountants in Australia.

On behalf of Stacks Finance he specialises in internal compliance.



Noel Herbert Gilmour - Director

Noel Gilmour has had 27 years experience in the insurance and financial services industry, conducting his own business in the Taree and surrounding areas over that period. Noel retired from his business in 1993 and during the last few years has served as a Director on the board of Mayo Hospital, Taree.

On behalf of Stacks Finance he specialises in internal compliance.

Senior Officers:

Mark Wayne Newnham

Mark is the senior loans manager at Stacks Finance. He has over 25 years' experience in banking and finance, commencing with the ANZ Banking Corporation in 1981. He is responsible for all new lending applications. Mark pre-qualifies most new lending applications (including any increases) and provides detailed information to the lending committee for their consideration.

Leanne Nicole Elford

Leanne is the client relationship manager for Stacks Finance. She has over 15 years' experience in banking and finance, commencing with the Commonwealth Bank of Australia in 1995. In addition Leanne is property Conveyancer and has experience in mortgage, finance and property law. She is the head of the Defaults section for Stacks Finance and is responsible for the recovery of investors' funds.

Support Staff

In addition to our key personnel Stacks Finance has 15 staff involved in the day to day operation of the Firm. This includes managing current loans, answering investor's queries and ensuring interest payments are made on the due date.

3. Stacks Finance

Today Stacks Finance is a group of independent finance professionals who provide a range of services including:

Investment

Stacks Managed Investments Limited (SMI) holds an Australian Financial Services Licence (AFSL), number 227673, issued by the Australian Securities and Investments Commission (ASIC).

As Responsible Entity of The Mortgage Fund (the Fund), SMI invests the Fund's money on behalf of Members, primarily through loans to borrowers approved by SMI, repayment of which is secured by mortgages over property.

During the recent Global Financial Crisis the Fund was one of the few mortgage funds operating in Australia which did not freeze redemptions and has continued to operate throughout the crisis.

Commercial Lending

Ray Stack has operated a commercial lending practice for over 45 years and as Chairman of Stacks Finance has brought a wealth of experience to The Mortgage Fund. Stacks Finance now lends in all States and Territories (except the Northern Territory) within Australia and specialises in low loan to value ratio (LVR) lending.

Default Management

The Collections Department specialise in the recovery of mortgage security and will act on all stages of the process, including obtaining possession, determining the appropriate selling strategy and the sale of the relevant security.

Professional Associations

Stacks Finance has appointed lawyers who liaise with the Collections Department to ensure that we are able to recover any defaulting mortgages in a timely, efficient and cost effective fashion.

4. Restructure of Mortgage Practices

Experience

Over the past 10 years Ray and Paul Stack have been involved in the restructuring and winding up of mortgage practices throughout the Eastern Seaboard of NSW.

In particular Stacks has been invited by other mortgage trusts to assist in the recovery of their investments. Recently (September 2011) members of the Kingsway Premium Income Fund (Kingsway) voted to appoint Stacks Managed Investments Limited as the new responsible entity of their fund.

Ray and Paul Stack have acted in all aspects of the winding up of registered and unregistered mortgage schemes operated by various fund managers and the restructuring of mortgage schemes including:

- Meeting with investors to discuss their fund;
- Consenting to act as replacement Responsible Entity;
- General advice regarding restructuring and winding up of managed investment schemes and debenture schemes;
- The review of the existing scheme and the assets that comprise the scheme;
- The provision of custodial and registry services;
- The management of the investor register;
- The repayment of investors on sale of mortgage property;
- The development of strategies to facilitate the efficient sale of scheme assets;
- The liaising with borrowers to develop a work out solution for loans in default; and
- The issuing of default notices and applying to the Court for orders for possession and the forced sale of securities.

SUPREME COURT OF QUEENSLAND


REGISTRY: Brisbane
NUMBER: BS 10478 of 2011

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

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

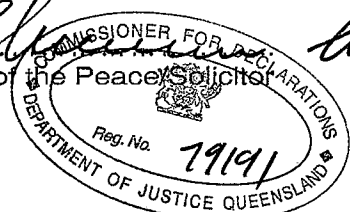
CERTIFICATE OF EXHIBIT

Exhibit "PJV-5" to the Affidavit of PAUL JAMES VINCENT sworn *18* November 2011.



.....
Deponent

Ch...
.....
Justice of the Peace/Solicitor *bl*



Investment deed poll

Equititrust Limited ACN 061 383 944

Version: 1

Investment deed poll

Dated

By

Investor **Equititrust Limited ACN 061 383 944**
of 67 Thomas Drive, Chevron Island, Queensland

In favour of

**The Responsible
Entity and CBA**

Background

- A The Responsible Entity is the responsible entity and trustee of the Equititrust Income Fund ARSN 089 079 854 (EIF). The EIF was originally established by the Constitution.
- B The Responsible Entity has offered investors in the EIF a form of Capital Warranty. The purpose of the Capital Warranty is to support investors funds in the EIF in the event the EIF suffers an investment loss.
- C The Investor has agreed to support the Capital Warranty by investing in the EIF and acquiring Subordinated Units. The Subordinated Units will carry different entitlements to Ordinary Units.
- D The CBA has agreed to continue to provide finance facilities under a Facility Agreement to the Responsible Entity for the EIF subject to receiving the benefit of this document.
- E The Investor has entered into this document in favour of the Responsible Entity and the CBA with the intent that the Investor will be bound by it.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document:

Term	Definition
Access Investment Units	means Access Investment Interests as that term is referred to in the Constitution and if there are no Access Investment Interests in the EIF at that time, the class of Interests in the EIF which most closely approximates

Term	Definition
	that class of Interests.
Business Day	means a day that is not a Saturday, Sunday or public holiday in Brisbane.
Capital Warranty	has the meaning represented in the PDS.
CBA	means the Commonwealth Bank of Australia Limited ACN 123 123 124
Constitution	means the constitution of the EIF.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
EIF	means the Equititrust Income Fund ARSN 089 079 854 established by the Constitution.
Equititrust	means Equititrust Limited ACN 061 383 944.
Facility Agreement	means any agreement (including any borrowing arrangements) to which the Responsible Entity is a party which may limit the capacity of the Responsible Entity to deal with Subordinated Interests;
Interest	has the meaning given to that term in the Constitution.
Minimum Investment Amount	means the amount disclosed in the Schedule and amended as provided in clause 3.2.
Ordinary Units	has the same meaning as Interests which are not Subordinated Interests in the Constitution.
PDS	means the current product disclosure statement for the EIF.
Related Entity	has the same meaning as that given to it by the Act.
Responsible Entity	means the responsible entity of the EIF which at the date of this document is Equititrust.
Subordinated Units	has the same meaning as Subordinated Interests in the Constitution.

1.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (k) a reference to 'month' means calendar month.

2 Obligations of Investor

2.1 Acquisition of Subordinated Units

The Investor for the benefit of the Responsible Entity and CBA:

- (a) agrees to subscribe for Subordinated Units; and
- (b) maintain at all times thereafter the Minimum Investment Amount.

2.2 Terms of Subordinated Units

The Subordinated Units will have the rights, restrictions and obligations as disclosed in the Constitution.

3 Limitation of liability

3.1 Limited liability

- (a) Notwithstanding anything else in this document, the maximum amount the Investor is required to invest and maintain in the EIF is the Minimum Investment Amount.
- (b) The Investor may with the consent of the Responsible Entity subscribe for additional Subordinated Units over the Minimum Investment Amount (**Oversubscription**).
- (c) Where there is an Oversubscription by the Investor, the Subordinated Units issued to the Investor will not form part of the Minimum Investment Amount and the Investor may subject to the terms of the Subordinated Units and any Facility Agreement, apply to redeem these Subordinated Units at any time by written notice to the Responsible Entity.

3.2 Amending the Minimum Investment Amount

Subject to any Facility Agreement the Investor, the Responsible Entity and CBA may at any time by written agreement between them, increase or decrease the Minimum Investment Amount provided:

- (a) where the Minimum Investment Amount decreases, the Responsible Entity has an appropriate opportunity to amend the PDS; and
- (b) any subsequent redemption of Subordinated Units is undertaken in accordance with the Constitution.

4 Term

4.1 Term

Subject to any Facility Agreement this document is to remain in force provided Equititrust or a Related Entity is the responsible entity of EIF.

4.2 Early termination

In the event Equititrust retires, resigns or is removed as a responsible entity of the EIF and is not replaced by a Related Entity, the Investor (subject to any Facility Agreement) will be entitled by notice in writing to the responsible entity of the EIF, to terminate this document effective immediately.

4.3 Conversion

Where the Investor terminates this document in accordance with clause 4.2, then, subject to any Facility Agreement:

- (a) the Subordinated Units will immediately convert to Access Investment Units;
- (b) the issue price of Access Investment Units on conversion will be the current Issue Price of Access Investment Units;
- (c) the Minimum Investment Amount shall be deemed to be zero; and
- (d) the Investor may lodge a valid written redemption request with the new responsible entity of the EIF for the redemption of the Access Investment Units held by the Investor.

5 General

5.1 Notice

- (a) A notice, consent or communication under this document is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given as follows:
 - (A) delivered by hand to that person's address;
 - (B) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address; or
 - (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating

the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.

- (b) A notice, consent or communication delivered under clause 5.1(a) is given and received:
- (i) if it is hand delivered or sent by fax:
 - (A) by 5.00pm (local time in the place of receipt) on a Business Day—on that day; or
 - (B) after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day—on the next Business Day; and
 - (ii) if it is sent by post:
 - (A) within Australia—three Business Days after posting; or
 - (B) to or from a place outside Australia—seven Business Days after posting.
- (c) A person's address and fax number are those set out below, or as the person notifies the sender:

(i) **Responsible Entity**

Equititrust Limited in its capacity as responsible entity of the Equititrust Income Fund

67 Thomas Drive, Chevron Island

Facsimile: 07 5527 5900

Attention: Chief Executive Officer

(ii) **Investor**

Equititrust Limited

67 Thomas Drive, Chevron Island

Facsimile: 07 5527 5900

Attention: Company Secretary

(iii) **Commonwealth Bank of Australia Limited
Premium Business Services
Level 9, 240 Queen Street
Brisbane Qld 4000**

Facsimile No. 07 55708352

Attention: Vice President, Client Relationship Management, Institutional Banking and Markets

5.2 Amendments

The Investor may with the prior written consent of both the Responsible Entity and CBA amend this document.

5.3 Assignment

A party may only assign this document or a right under this document with the written consent of the other party.

5.4 Further assurances

The Investor must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

5.5 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

5.6 Governing law and jurisdiction

- (a) Queensland law governs this document.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

Schedule 1

Minimum Investment Amount

The Minimum Investment Amount is an initial investment of \$40 million for the issue of 40 million Subordinated Units. Thereafter the Minimum Investment Amount will be that 40 million Subordinated Units at whatever is their current value.

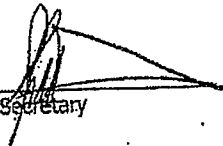
Execution

EXECUTED as a deed poll

Executed as a Deed in accordance with section 127
of the Corporations Act 2001 by
Equititrust Limited ACN 061 383 944 by:


A Director


A Full name of Director


A Director/Secretary


A Full name of Director/Secretary

18 February 2009

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS 10478 of 2011

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

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

CERTIFICATE OF EXHIBIT

Exhibit "PJV-6" to the Affidavit of PAUL JAMES VINCENT sworn *18th* 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

Handwritten initials

Building Relationship

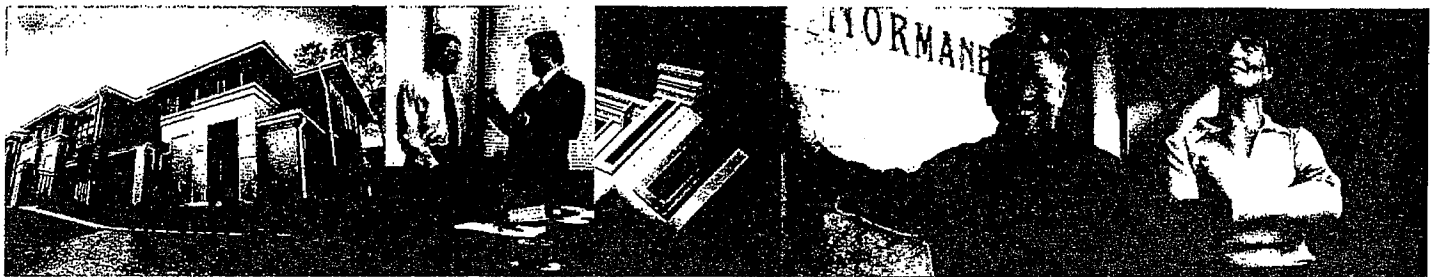
EQUITILIFE

Income & Finance

Product Disclosure Statement
Financial Information
Risk Factors

who we are

We are a responsibly aware company,
Always delivering on its word,
Nurturing its people,
And building enduring relationship.
We provide excellence
In investment return
And creative finance solutions,
Through strong property knowledge.



corporate directory

MANAGER AND ISSUER Equititrust Limited ACN 061 383 944 ABN 74 061 383 944 AFSI No. 230471

HEAD OFFICE 67 Thomas Drive Chevron Island Queensland 4217 Phone 07 5527 5527 Free call 1800 635 527 Fax 07 5527 5900

POSTAL ADDRESS Box 8111 Gold Coast Mail Centre Bundall Queensland 9726

DIRECTORS Mark Melvor Chief Executive Officer Wayne Melvor Executive Director Thomas John Haney Non-executive Director

COMPANY SECRETARY Sidney Super

LAWYERS FOR THE MANAGER McCullough Robertson Level 11 Central Plaza Two 66 Eagle Street Brisbane Queensland 4000

AUDITORS FOR THE MANAGER AND THE FUND KPMG Corporate Centre One Bundall Road Bundall Queensland 4217

This Product Disclosure Statement ('PDS') is dated 6/2/2009. You should read this entire PDS before deciding to make an investment. Except to the extent stated in this PDS, neither Equititrust Limited ('Equititrust') nor its directors guarantee the performance of any investment nor the repayment of capital. There may be loss of income or principal invested and delays in repayment. If you have any questions, please call Equititrust on freecall 1800 635 527, or contact your professional investment adviser.

Equititrust Limited holds an Australian Financial Services Licence No. 230471 with the Australian Securities and Investments Commission (ASIC). The investor should note that Equititrust Limited or its representatives do not provide financial planning advice. Our advice to you is confined to factual information about our investment product: The Equititrust Income Fund ARSN 089 079 854 (Fund). Images depicted in this PDS do not represent assets of Equititrust or the Equititrust Income Fund, but are indicative only of the types

of properties over which security may be taken by Equititrust on behalf of investors. This PDS is available in electronic form via www.equititrust.com.au. This PDS does not constitute an offer in any place or country in which, or to any persons to whom, it would not be lawful to make such an offer. No offer or invitation is made by the PDS, directly or indirectly, in any other jurisdiction where the offer or invitation would breach the applicable law or require the PDS or any other document to be lodged or registered. If you have received an electronic copy of this PDS, you may obtain a paper copy of the PDS (free of charge) by telephoning Equititrust on 1800 635 527. Applications may only be made using the application form attached to this PDS, or in its paper copy form as downloaded in its entirety from www.equititrust.com.au. You are not permitted to pass on the application form to another person unless it is attached to a hard copy of this PDS or the complete and unaltered electronic version of this PDS.



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Chief Executive Officer/Director
Equititrust Limited

message from the chief executive officer

Equititrust's hallmark skill has always been the provision of premium income. Our objective is to provide a higher yield to enable our investors to 'live life to the fullest'

We're proud of our investment record and we value highly our client relationships. In an investment market that often carries uncertainty it is imperative your capital achieves an optimum return. We invite your investment in the Equititrust Income Fund and look forward to building relationship with you.

Mark McIvor
Chief Executive Officer

1. background and growth

Equititrust is a specialist provider of premium income. Established in 1993, its origins trace to the law firm, McIvor Coghlan, which serviced mortgage investment clients since 1982. Combining absolute commitment to investor protection with keenly honed property finance skills, Equititrust has grown substantially. To ensure it is adequately resourced, Equititrust Limited has maintained a long-term strategy of growing retained earnings (as at 31 December 2008 this figure was \$62,053,068). A substantial portion of the earnings are invested in the Fund (\$40 million as at 31 December 2008). This investment:

- is subordinated to the interests of investors as a safety buffer against loss; and
- in this PDS is referred to as the Capital Warranty Investment.

2. key features

Equititrust is licensed as a responsible entity in accordance with the Corporations Act and acts in this capacity for the Equititrust Income Fund.

What is the Fund?

The Fund is a mortgage trust and a registered managed investment scheme.

What investment is being offered?

Equititrust is offering units in the Fund. Units are generally issued and redeemed at \$1.00 each.

Who is the manager?

Equititrust Limited is the trustee, responsible entity and manager of the Fund. Equititrust is not required to appoint an external custodian in relation to Fund assets as it maintains net tangible assets in excess of \$5 million.

How long has the Fund been operating?

The Fund has been open to investment since 1999.

What does the Fund invest in?

The Fund takes mortgages over property (with the majority in property development) and holds cash investments. Mortgage loans are typically made for loan terms not exceeding a maximum of two years. Investors' funds are spread across a portfolio of mortgages.

Who holds the assets of the Fund?

All mortgages and investments made by the Fund are held by Equititrust in its name as trustee for and on behalf of the investors in the Fund.

What is the Fund's past performance?

Historically, as a result of the performance of the Fund, no investor in the Fund (or in mortgage investment funds managed by Equititrust's predecessor) has failed to receive an income payment or experienced a loss of capital. Past performance should not be used as a guide for future performance.

Is there a capital warranty?

As proof of its commitment to investor security, Equititrust must maintain a minimum investment in the Fund of \$20 million as a Capital Warranty Investment to act as a buffer

and absorb losses on loans should they occur. Equititrust may maintain a higher level of investment in the Fund; as at 31 December 2008 that investment totalled \$40 million. Equititrust's investment is subordinated to the interests of investors and its entire investment would have to be lost prior to any investor loss. For further information see Section 7.5.

What is the investment strategy?

To provide investors with stable income over the medium term. An investment in the Fund does not generate capital growth.

3. Deferred withdrawals

Equititrust as the responsible entity of the Fund determined on 30 October 2008 it appropriate in the current economic climate to defer the processing and payment of valid withdrawal for an initial period of 90 days.

The constitution of the Fund allows Equititrust to defer the processing and payment of withdrawal requests for up to 180 days and in certain circumstances an additional 180 days.

In response to significant financial market turbulence, Prime Minister Kevin Rudd announced efforts to underwrite stability of the banking sector by promising an unlimited Government guarantee on bank deposits.

This historic intervention in the market had the consequence of creating two classes of investments – those covered by the guarantee (retail and wholesale deposits at banks, building societies and credit unions) and those not covered (cash management trusts, mortgage funds and other investment funds).

A flight of a massive amount of investor money from non-bank financial institutions to those guaranteed by the Federal Government ensued. In the words of the Reserve Bank Governor Glenn Stevens, the Government's 'blanket guarantee' created 'serious dislocation' in the financial system.

Australia's largest mortgage funds subsequently suspended withdrawals exacerbating investor concern.

As a logical consequence of these events, the Fund has experienced an increase in investors wishing to withdraw. In the context of the fear and pessimism prevailing, Equititrust understands and respects investor concern. However, Equititrust is obliged by the Corporations Act and the constitution of the Fund to act in the best interests of all investors.

With these obligations foremost in our mind, the Board of Equititrust resolved on 30 October 2008 to defer the withdrawal process.

Withdrawals

Equititrust understands there are some investors who require urgent access to their maturing funds. To this end, Equititrust applied for and was granted permission by the Australian Securities and Investments Commission (ASIC) to process valid withdrawal requests for investors suffering financial hardship, subject to certain conditions. Specific details of the ASIC

Information Release can be located at www.asic.gov.au or Equititrust will send you a copy of the Information Release on request.

Equititrust does not guarantee any hardship application will result in the investor being allowed to withdraw some of their investment.

In addition to allowing specific withdrawal requests from financially distressed investors, the Corporations Act allows Equititrust to undertake periodic withdrawal offers to various classes of investors who:

- have an investment in the Fund which entitles them to lodge a valid withdrawal request at any time; or
- held a fixed term investment, and did not roll over their investment at the end of the term.

Eligible Investors

Equititrust is not required to make a withdrawal offer to these classes of Eligible Investors, however Equititrust may, during the deferred withdrawal period, offer a periodic withdrawal offer.

Equititrust will notify Eligible Investors of a particular class in the event a withdrawal offer is made. The withdrawal offer will:

- be open for at least 21 days;
- be available to Eligible Investors within the particular class only;
- disclose the amount of money available to meet withdrawal requests;
- explain the method of dealing with withdrawal requests in the event withdrawal requests exceed the amount of money available under the withdrawal offer; and
- be accompanied by a specific withdrawal application form which will need to be completed and returned by those Eligible Investors within the relevant class seeking to withdraw some or all of their investment.

The method for processing oversubscribed withdrawal requests is specified in section 601KD of the Corporations Act by using the following formula:

$$\text{Amount of money available} \times \frac{\text{Amount an Eligible Investor requested to withdraw}}{\text{Total of all amounts Eligible Investors request to withdraw}}$$

For example:

- If there is \$10 million available to meet withdrawal requests.
- An Eligible Investor (Mr Smith) requests to withdraw the amount of \$50,000.
- Eligible Investors within the class lodge valid withdrawal requests totaling \$15 million.
- Then the Eligible Investor Mr Smith would receive \$33,333.

This is an example only and the actual results will depend on the particular circumstances of any offer and the Eligible Investor's own particular circumstances. Equititrust does not

guarantee a periodic withdrawal offer will be made, or an amount of \$10 million (or any other amount) will be available under any offer.

Ongoing Operations and Withdrawals

Whilst the processing and payment of withdrawal requests are deferred, the Fund will still continue to accept new investment. Further:

- existing investors can either rollover their existing fixed term investment at maturity or prior to maturity lodge a withdrawal request (in the manner detailed in the PDS) in which case their investment will not rollover and they will at the end of their fixed term be treated as an Eligible Investor of a particular class for future periodic withdrawal offers made to that class (whilst the deferred withdrawal process remains); and
- new investors are entitled to apply to invest in a fixed investment term. New investors need to understand that whilst the deferred withdrawal process remains (Equititrust cannot guarantee when or if this process will cease) investors will only be eligible to be offered a withdrawal offer following expiry of their investment term and in the manner detailed above.

Until financial markets return to some level of normality, Equititrust cannot predict how often and how much money will be available to undertake periodic withdrawal offers to Eligible Investors. However, it is anticipated that withdrawals will occur on a periodic basis over the next 9-12 months.

4. ASIC Benchmarks

In September 2008 ASIC issued Regulatory Guide 45 - "Mortgage Schemes - improving disclosure for retail investors", which set out eight Benchmarks formulated by ASIC to assist investors understand the risks and assess the rewards being offered and whether the investment is suitable for them. It stated that managers of mortgage schemes should disclose whether they comply with those Benchmarks and if not, why not.

Table below identifies those Benchmarks and whether the Fund satisfies each of them.

Benchmark	Compliance with benchmark
1 Liquidity	No
2 Scheme borrowing	Yes
3 Portfolio diversification	Yes
4 Related party transactions	Yes
5 Valuation policy	Yes
6 Lending Principles	Yes
7 Distribution Practices	Yes
8 Withdrawal arrangements	Yes

This section addresses each of those benchmarks with a statement as to whether Equititrust meets the benchmark and, if it does not, an explanation is provided as to how we deal with the benchmark. This is done by identifying the management processes in place to satisfy and mitigate against operational, financial, credit or business risk that the Fund may experience, which will help you assess the risk-reward prospects.

Liquidity

Status: No

ASIC Regulatory Guide 45 requires Equititrust to have estimates of, and provisions for meeting, cash flow requirements over the next three months. However, ASIC requires that established credit lines cannot be taken into account. Equititrust disagrees with this approach.

Equititrust has policies and procedures in place to estimate the Fund's cash flow projections, taking into consideration:

- estimated rollovers of investors' maturing investments;
- payment of loan instalments or loan repayments; and
- cash flows from operational activities.

In determining the level of cash flow required during the period, the cash flow forecast process is subject to a series of estimates and judgements, including:

- the probability of non rollover of investors' maturing investments;
- the risk and maturity profile of the mortgage loan portfolio; and
- management's reasonable expectation of future cash flow requirements based on expected business and operational trends and the projected economic and legislative environment.

To complement and support the estimation process, Equititrust has management systems in place to monitor and review historical cash flow performance, as well as trends over time associated with investors' new investments and the advances of mortgage loans. This analysis evidences the trend of rollovers of investors' investments and turnovers in the loan portfolio. Equititrust's mortgage portfolio comprises loans with varying maturities generally between 12 to 18 months, funded by investments with varying maturities up to 12 months, supported by the retained earnings of Equititrust Limited.

Equititrust has policies and procedures in place to ensure it has sufficient cash or available credit lines to meet projected cash requirements. These policies and procedures include:

- monitoring liquidity position on a daily basis;
 - reviewing weekly forecast cash flow needs for the next quarter; and
 - reviewing quarterly cash flow needs for the next year.
- Unlike the ASIC Regulatory Guide Benchmark, Equititrust includes in its cash flow forecasts undrawn credit facilities.

To mitigate liquidity risk, Equititrust has agreed to maintain a minimum investment balance in the Fund of \$40 million to 31 October 2009 and thereafter at least \$20 million. To further mitigate this risk, the Fund has maintained bank financing with two banks. The Fund also has indirect access to other bank credit lines of \$36.8 million of which \$7.7 million was available at 31 December 2008. These facilities are with three banks and are secured by registered first mortgage charges over the assets of parties related to Equititrust.

For information about the Fund's liquidity protection rules, see Section 11.

ASIC Regulatory Guide 45 requires responsible entities to disclose Fund policy on balancing the maturity of assets with those of liabilities.

The Fund's liquidity management policy reflects the position of funding short term mortgage loans with a mix of short term investor funds, short term and long term bank credit lines and long term investment by Equititrust. For further details refer Benchmark 3 for current mortgage portfolio mix and Benchmark 2 for the maturity dates of bank credit lines.

Scheme borrowing

Status: Yes

ASIC Regulatory Guide 45 states that, where the Fund has borrowed funds, Equititrust must disclose:

- for each borrowing that will mature in five years or less – the amount owing and the maturity profile in increments of not more than 12 months;
- for borrowings that mature in more than five years – the aggregate amount owing;
- for each credit facility – the aggregate undrawn amount and the maturity profile in increments of no more than 12 months;
- the fact that amounts owing to lenders and other creditors of the Fund rank before an investor's interest in the Fund; and
- the purpose for which the funds have been borrowed, including whether they will be used to fund distributions or withdrawal amounts; and
- any information about breaches of loan covenants that is reasonably required by investors.

Credit Lines

The constitution of the Fund allows Equititrust to borrow funds on behalf of the Fund. The credit line facilities allow Equititrust to approve and settle loans in a timely manner where the temporary available cash of the Fund may otherwise be insufficient. Likewise, when Fund cash is surplus, Equititrust retires credit lines ensuring the Fund efficiently utilises these facilities. Lines of credit will generally be used for:

- financing direct mortgages by the Fund;
- providing secured finance to other licensed mortgage fund operators;
- loan partnering, which involves the Fund jointly investing in a direct mortgage with another party; and
- paying distributions and withdrawals which assists in managing the cash liquidity of the Fund.

The finance facilities are secured by charges over the assets of the Fund. Details of the status of the finance facilities are updated quarterly at www.equititrust.com.au. The rights of investors to the income and assets of the Fund rank behind the rights of the banks. For further information, refer Benchmark 8.

Equititrust in its capacity as responsible entity of the Fund (as at 31 December 2008) has the following finance facilities:

Approved Limit	Total Drawn Down	Remaining Credit available	Facility expiry date
\$70 million	\$69,899,822	\$100,178	31/10/09
\$35 million	\$26,000,000	\$9,000,000	31/10/09

what about facilities provided by Equititrust

Facility repayment

The directors of Equititrust have accepted a letter of offer from the bank to extend the existing facility of \$70 million to 31 October 2009 on the basis of quarterly repayments of \$20 million commencing 31 March 2009, with a final repayment of \$10 million by 31 October 2009. Forecast cash flows indicate the Fund will meet these repayments, including investor distributions and borrower commitments. Surplus cash and credit lines to 31 December 2009 after meeting these commitments is expected to exceed \$30 million.

Risk

These finance facilities or similar facilities may be varied by Equititrust from time to time to prudently manage the cash flows of the Fund. In utilising external financing, there is a risk that Equititrust may not be able to renew existing credit facilities on similar or no less favourable terms to those it currently receives. In such an event, the Fund may have lower available cash resources and its ability to meet short-term liquidity objectives will be detrimentally affected. This may require the Fund to deploy a lower proportion of investors' funds in income producing loans and therefore detrimentally affect overall Fund performance. Equititrust does not envisage credit line facilities exceeding 40% of the value of assets of the Fund.

Benchmark 3

Portfolio diversification

Status: Yes

ASIC Regulatory Guide 45 requires Equititrust to disclose details of the current nature of the Fund's investment portfolio, including by number and value:

- loans by class of activity;
- loans by geographical region;
- what proportion of loans are in arrears or default;
- what is the nature of the security for loans made (e.g. first or second ranking);
- loans that have been approved but have funds that have yet to be advanced and the funding arrangements in place for any of these undrawn loan commitments;
- the maturity profile of all loans in increments of not more than 12 months;
- loan-to-valuation ratios for loans in percentage ranges;
- interest rates on loans in percentage ranges;
- loans where interest has been capitalised.

Additional information includes:

- total loan monies that have been lent to the largest borrower and the 10 largest borrowers
- the use of any derivatives; and
- a clear description of the non-loan assets of the scheme including the value of such assets.

Portfolio at 31 December 2008

The following unaudited information has been compiled by Equititrust to provide a 'snapshot' of the Fund portfolio as at 31 December 2008.

Cash deposited with banks	\$11,705,770
Net receivables*	\$2,725,481
Total Mortgages	\$338,698,674
Distributions due to investors	\$3,513,040

* Interest receivable from borrowers less management fees payable to Equititrust Limited

Fund information

Undrawn loan commitments \$7,087,354
(Anticipated progress draws over 18 months from 31/12/08. These are 10 loans with approved amounts totalling \$126,013,920.) The funding sources of these anticipated loan commitments are loan repayments by other borrowers and available credit lines.

Number of loans	66
Number of loans secured by first mortgage	66
Number of second mortgages	0**
Number of borrowers	40
Average loan-to-value ratio	58.8%
Largest loan as % of total loans	12.6%
Average loan value	\$5,268,793
Average loan interest rate	11.5%
Number of loans in excess of 5% of Fund value	3

** Refer final paragraph of this benchmark commentary: "Loan partnering / Syndication"

Percentage of the Fund's total approved loans lent to top five borrower groupings	57.8%
Borrower one: 4 loans totalling \$46,337,874	13.3%
Borrower two: 2 loans totalling \$44,878,102	12.9%
Borrower three: 3 loans totalling \$41,275,987	11.9%
Borrower four: 4 loans totalling \$40,281,540	11.6%
Borrower five: 4 loans totalling \$28,284,575	8.1%
Borrower six: 7 loans \$23,610,587	6.8%
Borrower seven: 3 loans totalling \$18,780,500	5.4%
Borrower eight: 2 loans totalling \$11,315,000	3.3%
Borrower nine: 3 loans totalling \$9,190,658	2.6%
Borrower ten: 1 loan totalling \$8,573,000	2.5%

Percentage of loans by dollar value with capitalised income was 77%, (being 38 loans) with the value of these totalling \$259,874,721. Equititrust generally provides development loans with terms of 12 to 18 months and the interest accrues during the term.

Interest rates payable on loans

Interest rates	No. of loans	\$
9.55% - 10%	19	130,213,311
10.55% - 11%	1	86,874
11.05% - 11.5%	0	0
11.55% - 12%	7	31,387,088
12.05% - 12.5%	15	111,631,639
12.55% - 13%	14	43,950,124
13.05% - 13.5%	7	13,769,621
13.55% - 14%	1	3,785,477
14.55% - 15%	1	3,673,791
15.55% - 16%	1	200,750
	66	338,698,674

Loan maturity profile

Loan maturity profile	No. of loans	\$
Past due	3	738,745
Within 12 months	61	332,416,234
12-18 months	2	5,543,695
	66	338,698,674

Loans by security type

	No. of loans	\$	% of total
Residential	27	118,437,704	35
Commercial/Industrial	10	81,017,629	24
Future development	18	83,678,142	25
Residential Development	6	34,259,979	9
Rural/Rural Residential	5	21,305,220	7
Total	66	338,698,674	100

Loan geographies

Our preferred location is coastal metropolitan. Funds lent as at 31 December 2008 were represented as follows:

	No. of loans	\$	% of total
Gold Coast	15	69,048,954	20
Brisbane/Sunshine Coast	9	69,322,747	21
Queensland Other	18	59,573,858	18
Sydney	8	34,336,172	10
New South Wales Other	13	75,298,689	22
Other	3	31,118,254	9
Total	66	338,698,674	100

Portfolio at 31 December 2008 Continued

Status of loans as at 31 December 2008

Loans with interest in arrears were as follows:

	Principal \$	Interest in arrears \$	Number of loans
60-90 days	0	0	0
90-120 days	1,750,000	45,902	1
120+ days	2,698,744	196,107	4
Total	4,448,744	242,009	5

All the above interest in arrears is considered to be recoverable and no loss of interest or principal is anticipated. Not all the above loans are past their maturity date. Loans in default, but which do not have interest in arrears, are as follows:

	Principal
Loan 1	\$5,291,122
Loan 2	\$2,380,000
Loan 3	\$2,233,530
Loan 4	\$1,900,000
Loan 5	\$1,250,000
Loan 6	\$86,874
Total	\$13,141,525

Fixed / variable loan interest rate split

Variable*** 100%

*** The borrower rate on development loans may only be varied at Equititrust's discretion.

Undrawn funds on approved loans: 10 loans totalling \$7,087,354. Funding for these commitments is taken account of in our long-range cash flow.

The loan-to-value ratios of loans within the fund as at 31 December 2008 were:

	No. of loans	\$	% of total
10% - 20%	1	86,874	0
20% - 30%	1	918,472	0
30% - 40%	1	561,483	0
40% - 50%	11	91,666,996	27
50% - 60%	17	98,599,723	29
60% - 70%	20	65,367,460	20
70% - 80%	15	81,497,666	24
Total	66	338,698,674	100

Quarterly updates of portfolio information are available via the Equititrust website (www.equititrust.com.au) or by phoning Equititrust on 1800 63 5527.

Maximum Loan

At the date of the approval of loan advance the maximum single loan is not expected to exceed 15% of the mortgage portfolio, which based on the size of the Fund at 31 December 2008 would be approximately \$51 million.

Loan Allocation

There are no target allocations within the portfolio with respect to loan security type and geography.

Lending Policy

All loans are secured by registered mortgages. Before funds are advanced, a valuation or market appraisal is obtained taking into account relevant factors such as the sale price likely to be obtained for the proposed security property, and factors affecting the possible sale of the security property. All valuations are obtained only from approved valuers and are no more than six months old at the time of the initial advance.

Lending Management checks each valuation and regularly confers with a network of property industry professionals. Members of the credit committee are expected to research each property they present to the committee.

If the borrower is a corporate entity, Equititrust undertakes searches of the ASIC register and requests copies of the company's assets and liabilities statements.

Loans are to be no greater than 80% of the value of the security property. Generally Equititrust's lending policy will restrict the loan to 70% of the security property's value.

Each improved security property is to be insured to replacement value.

Loan applications involving specialised security properties are generally not considered.

Property investigation is undertaken through land titles registries and other relevant authorities.

To encourage borrowers to make prompt interest payments we impose a lower interest rate for timely payments. Equititrust has implemented procedures under its compliance plan whereby appropriate action is taken against the borrower if they default. Such action may include working with the borrower collaboratively to resolve non-payment or effecting completion (if necessary) and sale of the asset.

Where appropriate, Equititrust issues a default notice to the borrower and, if this is not satisfied, we exercise our rights under the mortgage, such as exercising power of sale. In this event, the proceeds of sale are applied in the following priority:

- a) towards payment of any liabilities having priority at law
- b) in payment of the Fund's capital investment
- c) in payment of any accrued income
- d) in payment of any of Equititrust's costs and expenses (including legal costs on a full indemnity basis); and
- e) in accordance with its obligations at law.

This priority schedule aligns Equititrust's interests with those of investors. Specifically, investors receive priority over Equititrust (as the responsible entity) in the event of loan defaults.

The Fund's Investment Policy in Relation to Mortgage Investment Schemes

The Fund may invest in another unlisted mortgage investment scheme provided that:

- it is registered under Chapter 5C of the Corporations Act;
- it deals only in first mortgages over property of the nature similar to that detailed in this PDS;
- the term of investment does not exceed two years; and
- the Equititrust Credit Committee believe it to be in the best interest of investors.

There are no current investments in other schemes. Before making any investment we will update this benchmark disclosure. In this event it is likely that we would require the other operator to satisfy Benchmarks 2-8.

Equititrust's Credit Assessment Process

Before lending to another fund, Equititrust assesses its credit history, management and lending team (including their track record) and obtains a first ranking equitable mortgage over its relevant assets.

Loan Partnering and Joint Lending

Equititrust may itself or in collaboration with other financiers or banks in relation to the provision of property loans. The loan assessment criteria and process will be identical to those loans for which the Fund is the sole financier. Where Equititrust engages in loan partnering the mortgage documents may be held in the name of a trustee on behalf of the Fund and its loan partner. Also, Equititrust will be at liberty to offer its loan partner (where the loan partner is not Equititrust) a priority mortgage position. In that instance the Fund's priority would be second ranking behind the loan partner. The Fund's participation in loan partnering will not exceed 20% of the total assets of the Fund.

Derivatives

Equititrust uses no derivatives (eg. futures, options, swaps, forward rate contracts) in relation to any of its operations.

Benchmark 4

Related party transactions

Status: Yes

ASIC Regulatory Guide 45 states that Equititrust should discuss its approach to transacting with related parties of the Fund including lending or investing Fund money with related parties and Equititrust should disclose these transactions.

Equititrust has a policy of not using Fund money to provide loans to, or making investments in, any related parties. There are no loans undertaken by the Fund to related parties. Related parties can (provided they are on commercial arms length terms):

- invest in the Fund;
- lend monies to Equititrust Limited (if required); and
- enter into co-lending arrangements with the Fund.

Entities associated with the directors may from time to time provide services to Equititrust. The arrangements for these services are reviewed annually to ensure they remain on commercial arms length terms.

Benchmark 5

Valuation policy

Status: Yes

ASIC Regulatory Guide 45 states that Equititrust should take the following approach to valuations of property over which the Fund has taken security:

- Properties (i.e. real estate) should be valued on an 'as is' and (for development property) also on an 'as if complete' basis.

- Equititrust should have a clear policy on how often it obtains valuations, including how recent a valuation has to be when Equititrust makes a new loan.
- Equititrust should establish a panel of valuers and ensure that no one valuer conducts more than 1/3rd of the Fund's valuation work, calculated by the value of the security properties.

Equititrust's policy in relation to valuations of security properties incorporates the following:

- Properties are valued on an 'as is' and (for development property) also on an 'as if complete' basis.
- Valuations in relation to new loans are to be no older than six months at the time of initial advance.
- Equititrust ensures no one valuer conducts more than 1/3rd of valuation work for the Fund.
- Equititrust may accept an assignment of the valuation instead of obtaining a valuation directly from a panel valuer, in certain circumstances, subject to our guidelines. These guidelines include ensuring that the valuer is a panel valuer and that the valuer states in writing that the valuation complies with Equititrust's valuation instructions and may be relied upon by Equititrust. Equititrust's Lending Management Team must confirm that these guidelines have been met before an assignment of a valuation is acceptable.

Valuations of security properties are updated at least every three years. In the interim, the Equititrust credit committee reviews all loans at the end of their term to determine whether or not to extend each loan for a further term and whether obtaining an updated valuation is appropriate.

ASIC Regulatory Guide 45 states that Equititrust should include information about the valuation of a particular property where a loan secured against the property accounts for more than 5% or more of the total value of the Fund.

	Approved	Drawn	Security	Loan-to-value ratio	Date of valuation	% of scheme assets
Property 1	\$43,918,102	\$40,715,242	\$57,950,720	75.8%	4/06/07	12.6%
Property 2	\$36,903,540	\$36,144,869	\$71,470,400	51.6%	19/2/08	10.6%
Property 3	\$35,790,874	\$35,590,724	\$87,500,000	40.9%*	16/9/08	8.0%

* This loan is cross collateralised with another loan.
At the date of this PDS, the respective properties comprised:
Property 1 - Industrial land in Northern New South Wales
Property 2 - Residential units on the Gold Coast
Property 3 - Residential development land outside Brisbane

Equititrust reviews the qualifications and experience of each valuer before they are appointed to our panel of valuers. Each panel valuer must be independent of Equititrust and the borrower, be registered (if applicable) to undertake and provide valuations in the relevant state or territory where the security

property is located, hold an appropriate level of professional indemnity insurance and have at least two years of continuous valuation experience in valuation. Valuers must also include in their valuation reports a warranty confirming that the report complies with all relevant standards and codes.

Benchmark 6
Lending principles – loan-to-value ratios
Status – Yes

ASIC Regulatory Guide 45 states that property development loans should not exceed 70% of 'as if complete' valuations, and 80% of non-development loans based on the latest market valuations.

Equititrust has the power under its constitution to lend up to 80% of the value on real estate property based upon independent valuations. However, as a rule, lending limits are maintained at a maximum of 70% of the value of the security property. Facilities that exceed this level require approval from Credit Committee. The table below sets out standard loan value rates in respect to security types.

Property type	Loan-to-value ratio (LVR)
Commercial/ Industrial Premises	Generally a maximum of 70% with strong tenancies. Reduced LVRs may be required for owner-occupiers, or vacant possession valuation may be applied.
Development Facilities	A maximum of 70%. Due consideration to the saleability of the end product must be given and LVRs reduced accordingly..
Residential Properties	Generally a maximum of 70% of investment properties. Reduced LVRs may be enforced for loans required for business purposes but secured by residential property.
Vacant Land	Generally up to 70% LVR in areas where a high demand for vacant land is evident. Generally kept to 60% if there is no immediate intention to develop the site.

The Fund currently has no loans for construction or development which exceed 70% of the on completion value of the security property. If the Fund does undertake a construction or development loan that exceeds this 70% threshold, this benchmark disclosure will be updated.

Fund money may be advanced with respect to second mortgages taken as principal security where the LVR is no greater than 80%. No greater than 10% of the Fund may be used for such loans.

ASIC Regulatory Guide 45 states loans provided by the Fund relating to property development, should only be provided progressively as works are completed.

Prior to advancing construction funding Equititrust provides all plans, specifications and building contracts to a quantity surveyor who approximates the cost to complete the development. This ensures the borrower has allowed appropriate development costs. Funds are then advanced progressively on a 'cost to complete' basis. The quantity surveyor appointed by Equititrust inspects the development at set stages of construction prior to further loan advances and certifies to Equititrust the cost of completing the development at each stage in writing.

Equititrust withholds the amount of loan funds necessary to complete the development in accordance with the advice received from the quantity surveyor. If the borrower becomes unable to complete the development, Equititrust based on the advice of the quantity surveyor should have sufficient funds to complete the development.

Benchmark 7
Distribution practices
Status – Yes

ASIC Regulatory Guide 45 states that where Equititrust expects the Fund to make distributions to investors, Equititrust should disclose:

- the source of the current distributions;
- the source of any forecast distributions;
- if the current or forecast distribution is not sourced solely from income received in the relevant distribution period, the reasons for making those distributions;
- if the current distribution or forecast distribution is sourced other than from income, whether this is sustainable over the next 12 months.

The Fund provides investors with income distributions either monthly or annually. The current distribution rate is nominated at commencement of an investors investment and is referred to as the Benchmark Rate. For fixed term investors and Access investors the Benchmark Rate remains fixed for 12 months. The Benchmark Rate is not a warranty or forecast that the investor will receive this rate of distribution for the term of their investment. Distributions rates are variable and may be less than the Benchmark Rate.

The Benchmark Rate is the distribution rate that must be paid to investors before Equititrust is entitled to be paid its management fees. The Benchmark Rate is in effect the monthly performance hurdle which must be achieved before management fees may be paid to Equititrust.

10/11

The distribution rate paid by the Fund for the term of the investors investment will not exceed the Benchmark Rate.

Equititrust may (but is not obliged to) contribute money to the Fund to supplement the distributions; and whilst an investor does not receive their Benchmark Rate in a particular month (during the 12 month term of their investment), Equititrust is not entitled to receive any managed fees).

Irrespective of the distribution rate paid from the Fund, all expenses of the Fund and expenses incurred by Equititrust on behalf of the Fund will continue to be paid.

When the income of the Fund is higher than the amount necessary to pay all investors Benchmark Rates, Equititrust will, after payment of the Benchmark Rates, receive its managed fee and any remaining surplus will be paid to Equititrust as the holder of the subordinated Capital Warranty Investment.

ASIC Regulatory Guide 45 states that, where the Fund promotes a particular return, Equititrust should disclose details of the circumstances in which a lower return may be payable, together with details of how that lower return will be determined.

A lower return to investors may be payable if:

- income payments by borrowers are insufficient to enable income distributions to investors; and
- Equititrust does not contribute additional money to the Fund.

In this event investors would receive income distributions (if any) based on the cash and income available for distribution.

Equititrust does not represent investors will receive their Benchmark Rate of distribution. As mentioned above the Benchmark Rate is merely the hurdle rate which must be achieved before Equititrust is entitled to its management fees.

Withdrawal arrangements

Status – Yes

ASIC Regulatory Guide 45 requires Equititrust to disclose:

- the maximum withdrawal period;
- any significant risk factors or limitations that may affect the ability of investors to withdraw from the Fund;
- the approach to rollovers, including whether the 'default' is that investments in the Fund are automatically rolled over; and
- if withdrawals from the Fund are to be funded from an external liquidity facility, the material terms of this facility, including any rights the provider has to suspend or cancel the facility.

Equititrust has no fixed obligation to satisfy withdrawal requests within, or upon the maturity of, the stated investment periods below. If the Fund does not satisfy the statutory liquidity requirements investors will only have a limited ability to withdraw, if any. Specifically, under normal operating conditions the Fund constitution allows Equititrust up to 180 days or, in particular circumstances, a further 180 days to pay any valid withdrawal request.

Equititrust has currently deferred the processing and payment of withdrawals. During this period, Equititrust expects (but is not obliged) to make periodic withdrawal offers subject to available cash and the operations requirements of the Fund. Please refer to section 3 for further details of the current withdrawal procedure.

ASIC Regulatory Guide 45 requires Equititrust to provide details of whether, and the circumstances of how, a lower unit price may be payable than that relating to a person's original investment.

The price of units in the Fund has historically remained at \$1.00 per Unit. Equititrust has invested in the Fund a minimum \$40 million to 31 October 2009 and thereafter at least \$20 million as a Capital Warranty Investment. The Capital Warranty Investment acts as a buffer in the event the Fund suffers a loss arising from the operation of the Fund. A loss could arise due to:

- loan defaults by borrowers;
- valuations not accurately reflecting the value of the security property at the time they are undertaken;
- a fall in the security property during the term of the loan; and
- diminished value of the security as a result of non-completion of works (in respect of development loans).

In the event of a loss to the Fund, the value of that loss (up to \$20 million) is first apportioned to the Equititrust Capital Warranty Investment. This means the Fund would need to suffer a loss of at least \$40 million to 31 October 2009 and thereafter at least \$20 million (which at 31 December 2008 represented 9.4% of the total assets of the Fund) before the value of an investor's investment is affected.

Equititrust may utilise third party financing to assist in funding withdrawals. There is a risk that Equititrust may not be able to renew existing credit facilities on similar or no less favourable terms to those it currently receives. If this occurred the Fund may have lower available cash resources and its ability to meet short-term liquidity objectives will be detrimentally affected. This may require the Fund to deploy a lower proportion of investors' funds in income producing loans and therefore also affect overall Fund performance.

If Equititrust (on behalf of the Fund) defaults on the credit facilities then the banks will have first right of access to the assets of the Fund in priority to the investors. This will impact on the capacity of Equititrust to meet current withdrawal requests. If the Fund is unable to meet the liabilities to the banks then the investors will likely suffer a capital loss.

External liquidity facilities are subject to maintaining certain loan covenants. One of these covenants is to maintain a total-debt-to-total-eligible-assets ratio of 25% for the \$70 million facility and 12.5% for the \$35 million facility. If this or any other material covenant is not maintained this will result in a breach of the facility. Where a breach occurs the banks are entitled to review the facilities and may decide to do all or any of the following:

- declare that the amount owing as immediately payable;
- appoint a firm of independent accountants, or other experts, to review and report to the banks on the affairs, financial condition and business generally of Equititrust and the Fund.

5. Commonly asked questions

What are the benefits and risks?

Key benefits are:

- Income distributions
- Investment term options
- Manager with a proven track record.

Key risks are:

- Disruption or loss of income due to borrower default.
- Changes in the value of security property, resulting in capital loss.
- Higher lending risk.
- Credit Lines secured against Fund assets.
- Lack of liquidity.

(For more information see Section 9)

How are distributions paid?

Distributions on Access and 6-month investments is paid monthly.

On 12-month investments, investors can elect to receive distributions monthly or annually.

What are the returns?

The distributions rate (the rate of return that you will receive) may vary from time to time during the term of your investment. When you invest, the current distribution rate is nominated by Equititrust and this is referred to as the Benchmark Rate. The actual distributions to investors is variable and may be less than the Benchmark Rate.

For fixed term investors and Access investors the Benchmark Rate remains fixed for 12 months.

The Benchmark Rate is not a warranty or forecast that the investor will receive this rate of distribution for the term of their investment.

The Benchmark Rate is the distribution rate that must be paid to investors before Equititrust is entitled to be paid its management fees. The Benchmark Rate is in effect the monthly performance hurdle which must be achieved before management fees may be paid to Equititrust.

The distribution rate paid by the Fund for the term of the investors investment will not exceed the Benchmark Rate. For fixed term investors and Access investors the Benchmark Rate remains fixed for 12 months.

Irrespective of the distribution rate paid from the Fund, all expenses of the Fund and expenses incurred by Equititrust on behalf of the Fund will continue to be paid.

When the income of the Fund is higher than the amount necessary to pay all investors Benchmark Rates, Equititrust will, after payment of the Benchmark Rates, receive its managed fee and any remaining surplus will be paid to Equititrust as the holder of the subordinated Capital Warranty Investment.

Refer to section 7.1 for further details.

Initial investment

Minimum \$10,000.

Distributions

Income is paid monthly or annually in arrears as determined by the investor.

Minimum subsequent investments

\$5,000. However lesser amounts may be accepted at the Manager's discretion.

Automatic reinvestment of income on the Fund

Not available.

Minimum investment balance

\$10,000.

Entry fees

Nil.

Management and Investment Fees

Equititrust as manager of the Fund is entitled to receive a management fee of 1.65% p.a. of the gross asset value of the Fund (currently Equititrust is paid 0.65% pa) and be reimbursed for its expenses (currently 1% p.a.) of the net assets of the Fund in operating the Fund.

Equititrust is not entitled to receive any management fees for a month unless all investors have received a distribution for that month equal to their Benchmark Rate. See Section 7.1.

Additional investment

Where an Investor chooses a 6-month or 12-month investment term, Equititrust may (at its discretion) allow that investor to invest additional amounts to that investment for up to 30 days from the date of the initial investment. For example, the investor invests \$20,000 on 1 February 2008 for a 12-month term and the investor contributes a further \$15,000 on 25 February 2008. Both investments mature on 1 February 2009. Additionally, Equititrust may (at its discretion) allow investors to add to their 6-month or 12-month investment during the last 30 days of the investment. Where this occurs, the investment will result in both the original and subsequent investments being reinvested for a full further 6-month or 12-month term respectively. For example, the investor invests \$20,000 on 1 February 2008 for a 12-month term and a further \$15,000 on 25 January 2009. Both investments mature on 25 January 2010.

How do I invest?

Please complete the application form at the back of this PDS. Instructions on how to complete the application form are set out in Section 14. If you have any questions about completing the application, please call us toll-free on 1800 635 527.

Cooling-off Period

Whilst the Fund has moved to a periodic withdrawal offer arranged, no cooling off period applies.

How to contact us

Refer to the Corporate Directory on the inside front cover of this Product Disclosure Statement.

What if I have a complaint?

Equititrust has internal complaints handling procedures. We are also members of an external complaints scheme. If you have any problems with the service provided, see Section 7.4 for further details.

To properly understand an investment in the Fund, investors should read this Product Disclosure Statement in full.

6. fees and other costs

Consumer advisory warning

The warning below is required by law. The fees and other costs associated with investing in the Fund are described in this section.

Did you know?

Small differences in both investment performance and fees and costs can have a substantial impact on your long-term returns. For example, total annual fees and costs of 2% of your fund balance rather than 1% could reduce your final return by up to 20% over a 30-year period (for example, reduce it from \$100,000 to \$80,000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs. You may be able to negotiate to pay lower contribution fees and management costs where applicable. Ask the fund or your financial adviser.

Find out more

If you would like to find out more, or see the impact of the fees based on your own circumstances, the Australian Securities and Investments Commission (ASIC) website (www.fido.asic.gov.au) has a managed investment fee calculator to help you check out different fee options.

1. This section shows fees and other costs that you may be charged. These fees and costs may be deducted from your money or from the returns on your investment, or from the fund assets as a whole.
2. Taxes are set out in another section of this document.
3. You should read all of the information about fees and costs as it is important to understand their impact upon your investment.

Fees when your money moves in or out of the Fund <i>Establishment fee:</i> The fee to open your investment.	Not applicable	Not applicable
<i>Contribution fee:</i> The fee on each amount contributed to your investment	Not applicable	Not applicable
<i>Withdrawal fee:</i> The fee on each amount you take out of your investment.	Nil for fixed term investors who hold their investment for the full 6-month or 12-month investment term. Nil for Access investments. 0.5% of the withdrawn amount where a fixed term investor is permitted to withdraw early.	Not applicable At the time the early withdrawal is paid
<i>Termination fee:</i> The fee to close your investment.	Not applicable	Not applicable
<i>Management Fees:</i> The fees and costs for managing your investment.	0.65% of the gross asset value of the Fund.	Calculated and paid monthly in arrears (provided all investors have received their Benchmark Return).
<i>Expenses</i>	1.0% of the net assets of the Fund.	Paid as and when incurred irrespective of the returns paid to investors.
<i>Investment Switching fee:</i> The fee for changing investment options.	Not applicable	Not applicable

All fees stated in this PDS are inclusive of GST.
The Fund has a number of sources of income:

- interest payments from borrowers on the loans made to them by the Fund;
- fees and charges paid by borrowers for the establishment and maintenance of their loan accounts (which represents approximately 1.5% .a. of the gross assets the Fund); and
- any early withdrawal fees paid by investors.

All this income is paid directly into the accounts of the Fund. From the Fund, Equititrust then pays:

- interest payments to the banks for the finance facilities (historically approximately 4.11% pa of the net asset value of the Fund) plus Fund expenses (historically approximately 1% pa of the net asset value of the Fund);
- distributions to investors up to their Benchmark Rate;
- to Equititrust a current management fee of 0.65% pa of the gross assets of the Fund, then
- the balance (if any) is paid to the holder of Capital Warranty Investment (which is currently Equititrust).

The Capital Warranty Investment represents the minimum \$40 million to 31 October 2009 and thereafter at least \$20 Million investment by Equititrust in the Fund. The Capital Warranty Investment does not participate in any income distributions from the Fund until all the above payments are made. Once these payments are made, the Capital Warranty Investment holder receives all surplus Fund income.

Equititrust may pay referrers a commission from time to time. All commissions are paid by Equititrust from its own funds. The commissions may be:

- up to 1% p.a. of the initial amount invested in the Fund; and
- thereafter up to 1% p.a. of the investment amount while this amount remains invested in the Fund.

The Manager has paid from its own funds all establishment and set up costs relevant to the finance facilities for the Fund. The ongoing interest obligations payable to the financiers for the finance facilities are however paid by the Fund

This table gives an example of how the fees and costs can affect your investment over a one year period. These fees and costs are deducted from Fund income. The example assumes that a balance of \$50,000 has already been in the Fund, that it remains in the Fund for the whole of the year and that an additional investment of \$5,000 is also made. You should use this table to compare this product with other managed investment products.

Example		Balance of \$50,000 with total contributions of \$5,000 during year
Contribution Fees	Nil	For every \$5,000 you put in, you will be charged Nil
PMS Management costs	1.6546%	And, for every \$50,000 you have in the Fund, you will be charged (indirectly) \$827.30 each year.
LOI/ALS Cost of fund investment		If you had an investment of \$50,000 at the beginning of the year and you put in an additional \$5,000 during that year, you would be charged \$827.30 plus $((\$5,000 \times 1.6546\%) \times (\text{Days } \$5,000 \text{ invested}/365))$ What it costs you will depend on the investment option you choose.

The actual fees and costs are deducted from the income of the Fund and not from an Investors investment balance. Distributions advised to Investors are net of all fees and expenses.

7. more information

7.1 Nominated Benchmark Rate

Your nominated Benchmark Rate applies for the term of your original investment (fixed term investors) or 12 months for Access investments (Investment Term). The Benchmark Rate is not a forecast and Equititrust makes no representation you will receive the Benchmark Rate or any rate of return. At the end of your Investment Term, Equititrust will either nominate a new Benchmark Rate or alternatively no rate will apply.

7.2 Is the Fund suitable for me?

Personal investment recommendations are not made by us. Personal recommendations demand a full 'needs analysis' of your individual investment objectives, and financial situation. Personal recommendations are not the role of Equititrust or its representatives. Should you require personal advice you should consult an independent and licensed investment adviser.

7.3 What are your rights?

As an investor you have the right to:

- know about the risks involved in the investments recommended to you. These risks are generally explained in Section 9 of this PDS but, if uncertain, you should ask us about the impact of such risks;
- attend and vote at meetings of investors; and
- receive the financial statements of the Fund

7.4 What can I do if I have a complaint?

Equititrust has internal complaints handling procedures. If you have any problems with the service provided, you can take the following steps:

- Step 1 If you are not satisfied with our representative's response, contact Equititrust Dispute Resolution Officer at PO Box 8111 GCMC QLD 9726, or freecall 1800 635 527.
- Step 2 If after providing details of your complaint to Equititrust you do not consider you have obtained a satisfactory solution in writing within 30 days, you may refer the dispute to Equititrust's Board.
- Step 3 If you are not satisfied with the Board's decision

you have the right to make a complaint to the Financial Ombudsman Service on 1300 78 08 08.

7.5 Capital Warranty Investment

Equititrust holds a Capital Warranty Investment in the Fund. The Capital Warranty Investment is the amount invested by Equititrust as a subordinated investment. This is a minimum sum of \$20 million with no maximum. As at 31 October 2008, \$40 million was held as a Capital Warranty Investment. Capital Warranty – in the event the Fund suffers a capital loss, that loss is first incurred against the Capital Warranty Investment held by Equititrust in the Fund. The Capital Warranty Investment is a separate class of units on issue in the Fund and these units rank behind other investors in the payment of distributions.

The Capital Warranty Investment remains for so long as Equititrust remains the responsible entity of the Fund. In the event Equititrust ceases to be the responsible entity, then (subject to any Fund financier requirements) the Capital Warranty Investment automatically converts to an Access investment ranking equally with other investors. Despite the Capital Warranty Investment provided by Equititrust, there can be no guarantee of a return of capital or payment of income to investors.

7.6 Inability to source funds

In the case of construction or development loans where the loan amount is substantial, the loan advance may be structured in such a way that the funds are provided to the borrower in drawdowns as construction proceeds. Equititrust may effect the initial advance to the borrower without having sufficient investor funds immediately available for the entire loan amount at that time. There is a risk that Equititrust may be unable to source additional funds at the time required by the borrower, which may cause delays in construction or development. Equititrust makes a conservative assessment of the amount of funds available at the likely time of requiring the further instalments, prior to approving any loan which requires payment in several stages.

8. Equitrust Management

Equitrust's assets are its people. They understand property lending and have expertise in property, finance, law and accounting. They are energetic and committed to the performance and security of the Fund.

Equitrust's business has three specialised areas under guidance of our management team:

- lending;
- investment and client services; and
- financial and information management



MARK MCIVOR LLB

Chief Executive Officer/Director, Credit Committee Member

Mr McIvor has been with Equitrust since 1991. He has worked in various positions in the property industry, including as a Director of Property Services, a Director of Property Management and a Director of Property Development. He is a member of the Property Council of Australia and the Australian Property Institute.

WAYNE MCIVOR

Lending Manager/Director, Credit Committee Member

Mr McIvor has been with Equitrust since 1991. He has worked in various positions in the property industry, including as a Director of Property Services, a Director of Property Management and a Director of Property Development. He is a member of the Property Council of Australia and the Australian Property Institute.

TIM JAMES

Director - Lending Credit Committee Member

Mr James has been with Equitrust since 1991. He has worked in various positions in the property industry, including as a Director of Property Services, a Director of Property Management and a Director of Property Development. He is a member of the Property Council of Australia and the Australian Property Institute.

ROSS JANETZKI

Director - Investments

Mr Janetzki has been with Equitrust since 1991. He has worked in various positions in the property industry, including as a Director of Property Services, a Director of Property Management and a Director of Property Development. He is a member of the Property Council of Australia and the Australian Property Institute.

SIDNEY SUPER

Chief Financial Officer

Mr Super has been with Equitrust since 1991. He has worked in various positions in the property industry, including as a Director of Property Services, a Director of Property Management and a Director of Property Development. He is a member of the Property Council of Australia and the Australian Property Institute.

THOMAS JOHN HANEY

Non-executive Director

Mr Haney has been with Equitrust since 1991. He has worked in various positions in the property industry, including as a Director of Property Services, a Director of Property Management and a Director of Property Development. He is a member of the Property Council of Australia and the Australian Property Institute.

9. specific risks of investing

An analysis of some of the specific risks of investing in the Fund are shown below:

9.1 Higher lending risk

Equititrust operates in a specific lending niche as an alternative to traditional bank lending or when these sources are unable to assist. In order to attract borrowers, Equititrust adopts loan criteria that are less strict than traditional banks. For instance:

- loans may be approved and settled in a shorter timeframe;
- borrowers' prior loan history may be less relevant;
- ability to service may not be demonstrated;
- for development loans, lesser or no pre-sales or pre-leasing may be required; and
- borrowers may not have a proven history.

Therefore the risks of providing loans to such borrowers may be higher than those accepted by traditional banks.

9.2 Asset lending / Serviceability

With all development loans the capacity to service and repay will be determined by the project itself and not by the borrower's particular financial position. Likewise with commercial loans, Equititrust does not require borrowers to demonstrate serviceability in the manner typical of traditional banks. Equititrust is relying on the value of the security asset and its rights to enforce against that asset as primary safeguards to ensure payment of interest and loan repayment.

9.3 Interest capitalisation

All development loans and some commercial loans undertaken by the Fund have capitalised interest. The interest is included in the loan facility and deducted progressively. Additionally, Equititrust can recapitalise interest at any time, should Equititrust consider it appropriate, either from the Fund or its own reserves. There is a risk that:

- at the time the loan is scheduled to be repaid these interest payments are not recoverable because of the changed economic circumstances of the borrower, the security property or other economic conditions;
- there are insufficient cash inflows to meet withdrawal requests.

Any capitalisation or recapitalisation of interest will only occur where Equititrust is satisfied the loan is recoverable and will not in any circumstances cause the loan-to-value ratio to exceed 80%.

9.4 Premium Fund

In some loan transactions the Equititrust Premium Fund or an Equititrust related party may lend additional funds to the borrower and hold a second mortgage over the security property. Equititrust believes that the additional advance by a related party does not itself increase the risk to investors in the Fund as this does not alter the exposure or priority of the Fund. However, the additional advance by the Equititrust Premium Fund (or related party) does increase the total financing exposure (debt gearing) of the borrower.

9.5 Loan default

Average loan default (loans greater than 90 days in arrears) for the last three-year period was 3.36%. Depicted below are the percentages for each year:

2004/05	5.28%
2005/06	4.05%
2006/07	2.77%
2007/08	1.65%

2008/09 to 31 December 2008 1.46 %.

We update the arrears position quarterly on our website (www.equititrust.com.au).

Equititrust considers that a level of arrears up to 9.5% of the Fund would present an acceptable risk and will not adversely affect or compromise the security of the Fund. In the event that the level of arrears materially exceed this percentage Equititrust will notify investors.

Defaults may occur for a range of reasons including changes in a company's or person's circumstance, death, changes in the general state of the Australian economy, conditions of the particular market in which the borrower's primary business operates and property market conditions.

9.6 Liquidity risk

Because the Fund's investments are from 12 to 18 months and investors have had the ability to invest in the Access investment and on a fixed 12-month term investment, there is a risk that the level of investors seeking to withdraw from the Fund would exceed the immediate level of available cash.

On 30 October 2008 Equititrust considered the level of withdrawal requests were such that it was prudent to defer paying withdrawals and move to a process of periodic withdrawal offers. Whilst the periodic withdrawal offer process remains there is a real risk that if an investor requires access to their investment, their investment will not be available. Equititrust is working to return the Fund to a normal operating status (processing and paying valid withdrawal requests within 60 days) but no assurance can be provided as to when this will occur.

9.7 Development and Construction Loans

The risks associated with development loans are generally greater due to factors beyond Equititrust's control, including the timing and completion of the development. To assist in mitigating these risks:

- All plans, specifications and building contracts are provided to an approved quantity surveyor or engineer who is instructed by Equititrust. The quantity surveyor/engineer approximates the costs to complete the development in order to ensure that the borrower has allowed appropriate development costs.
- Funds are advanced on a cost-to-complete basis. The quantity surveyor/engineer inspects the development at set stages of construction prior to further advances and certifies the cost of completing the development at each stage in writing

- The Lender shall possess the ability to request a return to the development of any amount and to allow recovery of the amount so recovered and recovery of the amount so recovered to complete the development. Lender trust should have sufficient funds to do so.
- If the lender is a third party, a tripartite agreement is executed between the borrower, the Lender and EquiTrust. This helps to ensure that the Lender is still accountable to EquiTrust in the event of a dispute between the lender and the borrower.
- We do not currently audit new valuations or revaluations during the course of a development loan, or during construction loans we may, but do not always, fund a new valuations valuation of that development as a review of the loan. We do have a new valuation extension or similar like a full and assessment of the current value of the security property.
- Lending Management invests in a V.I. discuss the progress of all development loans.
- To include our credit report, credit assessment, a new, "improved" credit, quality service and product evaluation.

9.8 Operating Risk

During the second half of the 2006 calendar year, and as a result of the ongoing high credit and liquidity crisis and its impact on the Australian property markets, the Lender experienced an increase in investment defaults resulting in EquiTrust deferring or progressing an approval of withdrawals and moving to a periodic withdrawal offer basis. The margins of 20% and 10% to 15% in early 2009 were reduced to 10% to 15% in the early 2009 period. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis.

9.9 Credit Lines

The capital of the Lender is provided by the Lender and the Lender is currently in a period of high credit and liquidity crisis. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis.

to meet a normal request for withdrawal of funds. The Lender will still have the Capital Management Investment, remains in the position of the Lender. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis. The Lender is currently in a period of high credit and liquidity crisis, and the Lender is currently in a period of high credit and liquidity crisis.

9.10 Distribution Risk

EquiTrust provides investors' income on a monthly or quarterly basis. The distribution is variable and the Lender does not warrant or represent investors will receive a certain level of distributions in any period. There is a risk that interest payments by borrowers are reduced to or by any income distribution to investors. In the event, investors do not receive the Benchmark Rate EquiTrust does not receive any distribution. The Lender does not provide a respect of the level of its distribution to investors.

9.11 General Investment Risks

These are general investment risks considered beyond the scope of this Trust.

Regulation Risks

Changes in the laws with respect to financial services and insurance, regulatory risks.

Macro Economic Risks

The general state of the Australian and international economies, such as changes in taxation, monetary policy, interest rates, the price of oil, gas, and other commodities, and currency, even a minor crisis may reduce the ability of some borrowers to meet their obligations.

Investment Management

There is a risk that changes in the management may result in EquiTrust not performing as well as the market's performance.

Inflation Risk

There is the risk that inflation may reduce the value of the assets.

Documentation Risk

There is a risk that security of documents may be affected by any delay, and some may.

10. summarised financial information

The summarised Income Statement & Balance Sheet below has been extracted from the audited Income Statement & Balance Sheet of the Fund for the financial year ended 30 June 2008. These figures should be read in conjunction with the full financial statements of the Fund, which include explanatory notes to the statements, which are available on request from Equititrust Limited. Also refer Section 9.8.

Income Statement

	2008	2007
	\$	\$
Revenue		
Interest income	55,623,726	48,666,220
Distributions received	-	1,469,198
Net investment income	55,623,726	50,135,418
Expenses		
Interest warranty fee	(21,072,761)	(19,595,565)
Profits from operating activities before finance costs	34,550,965	30,539,853
Finance Costs		
Interest expense	(10,007,608)	(6,606,511)
Distribution expense to investors	(24,543,357)	(23,933,342)
Total finance costs	(34,550,965)	(30,539,853)
Net profit	-	-

Balance Sheet

	2008	2007
	\$	\$
Assets		
Cash and cash equivalents	9,786,260	19,829,130
Loans and receivables:		
Interest and other receivables	3,867,784	2,740,452
Fixed interest securities - mortgage loans	394,957,425	366,209,953
Total assets	408,611,469	388,779,535
Liabilities		
Financial liabilities measured at amortised cost:		
Accounts payable	2,088,940	1,876,535
Distributions payable	3,346,603	3,791,032
Interest bearing liabilities	122,000,000	105,000,000
Deferred income	3,665,368	4,805,464
Total liabilities (excluding net assets attributable to investors)	131,100,911	115,473,031
Net assets attributable to investors - liability	277,510,458	273,306,404
Net assets	100	100
Equity	100	100

The summarised Income Statements & Balance Sheets below has been extracted from the audited Income Statements & Balance Sheets of Equititrust Limited and its controlled entities as at 30 June 2008. These figures should be read in conjunction with the full financial statements of Equititrust Limited, which include explanatory notes to the statements, which are available on request from Equititrust Limited. Also refer Section 9.8.

Income Statements	Consolidated		The Company	
	2008	2007	2008	2007
Total revenue	73,771,537	67,730,991	74,473,076	33,433,156
Profit before tax	19,819,290	17,437,632	19,310,763	12,205,910
Income tax expense	5,945,747	5,231,122	5,793,229	5,231,122
Net Profit attributable to equity holders of parent entity	13,873,604	12,205,910	13,517,534	12,205,910
Balance Sheets				
Current assets				
Cash and cash equivalents	14,110,563	26,198,840	1,619,071	2,626,324
Trade and other receivables	6,463,366	5,384,080	2,574,544	3,787,869
Mortgage loans	371,128,243	406,624,257	2,191,188	4,237,174
Investments	-	1,200,000	32,568,690	38,275,297
Total current assets	391,702,172	439,407,177	38,953,493	48,926,664
Non-current assets				
Trade and other receivables	6,298,668	5,080,944	6,298,668	5,080,944
Property, plant and equipment	239,426	88,521	239,426	88,521
Investments	-	-	50,000,000	-
Other investments	150,204	126,649	-	-
Mortgage loans	142,915,278	39,384,007	-	-
Deferred tax assets	317,371	541,983	1,183,201	1,255,254
Total non-current assets	149,920,947	45,222,104	57,721,295	6,424,719
Total assets	541,623,119	484,629,281	96,674,788	55,351,383
Current Liabilities				
Trade and other payables	16,753,623	15,066,030	9,714,877	3,871,583
Bank overdraft	3,820,000	-	3,820,000	-
Interest bearing loans and borrowings	137,508,000	105,000,000	15,508,000	-
Securitized unitholders' funds	286,625,212	313,670,072	-	-
Loan from related party	-	-	352,147	375,701
Capital warranty liability	-	-	2,886,098	2,377,569
Income tax payable	4,012,267	1,959,595	4,012,267	1,959,595
Employee benefits	525,867	465,360	525,867	465,360
Total current liabilities	449,244,969	436,161,057	36,819,256	9,049,808
Non-current liabilities				
Interest bearing loans and borrowings	30,000,000	-	-	-
Employee benefits	219,758	183,335	219,758	183,335
Total non-current liabilities	30,219,758	183,335	219,758	183,335
Total liabilities	479,464,727	436,344,392	37,039,014	9,233,143
Net assets	62,158,392	48,284,888	59,635,774	46,118,240
Equity				
Issued capital	4,097,385	4,097,385	4,097,385	4,097,385
Retained earnings	58,061,007	44,187,503	55,538,389	42,020,855
Total equity	62,158,392	48,284,888	59,635,774	46,118,240

11. Withdrawal of Units

Under normal operating conditions the Fund constitution allows Equititrust up to 180 days to pay any valid withdrawal requests. To protect the liquidity of the Fund the withdrawal period for all investors is 180 days and is in the following circumstances extended by a further 180 days:

- the Fund's cash reserves fall and remain below 5% of the total assets for ten consecutive business days; or
- if in any period of 90 days, Equititrust receives valid net withdrawal request forms equal to 10% or more of the Fund's issued units and, during the period of ten consecutive Days falling within the 90-day period, the Fund's cash reserves are less than 10% of the total assets; or
- Equititrust is not satisfied that sufficient cash reserves are available to pay the withdrawal amount on the appropriate date and to pay all actual and contingent liabilities of the Fund; or
- any other event or circumstances arise which Equititrust considers in its absolute discretion may be detrimental to the interests of investors.

Equititrust is not entitled to receive its management fees unless and until all distributions at the Benchmark Rate have been paid. This obligation does not apply to expenses of the Fund which Equititrust is entitled to recover (on a reimbursement basis) under the Fund constitution.

12. Inspection of Documents

Copies of the following documents are available for inspection during normal business hours at the office of Equititrust:

- the Fund trust deed; and
- the consents to the issue of this PDS.

The Fund was originally established by deed poll dated 9 August 1999, and has been amended from time to time. Any investor or adviser wishing to gain a full knowledge of the contents of the Fund trust deed is invited to inspect this document at the registered office of Equititrust during normal business hours. The Trust Deed sets out Equititrust's rights, responsibilities and duties as the responsible entity as well as that of investors. The Fund trust deed permits borrowings arranged by Equititrust to facilitate withdrawals by investors and for the purposes of the Fund. The compliance plan allows for borrowings up to 5% of the assets of the Fund without approval of the Board of Equititrust, with borrowings over 5% of the assets of the Fund requiring approval of the Board.

The units in the Fund are generally issued and redeemed as \$1.00 per unit unless Equititrust forms the view that the value of investments has fallen and the Capital Warranty Investment is insufficient to meet this shortfall. Equititrust has implemented a Unit Pricing Policy which provides that investments will be valued depending on the nature of the investment at either their cost (plus any accrued interest, fees

and charges) or at a lower amount if Equititrust, in consultation with the Fund auditor, forms the view the investment cannot be realised for its value and the Capital Warranty Investment is insufficient to meet the reduced value.

The issue price of a unit is determined by the current unit value of units in the Fund. Each investor receives an investment report detailing their investment.

Subject to the Corporations Act and to specific representations made by Equititrust, Equititrust is not liable to any person by reason of, for example, the Fund assets not yielding any specific return, any omissions, acts or default of any person and acting in good faith on the advice of any person.

Equititrust is indemnified out of the Fund property for all expenses, losses and liabilities arising in its capacity as responsible entity of the Fund, provided it has properly performed its duties.

The Fund is a disclosing entity for Corporations Act purposes and as such is subject to regular reporting and disclosure obligations. Copies of documents lodged with ASIC in relation to the Fund may be obtained from, or inspected at, an ASIC office.

- Investors have a right to obtain a copy of the following documents:
- (a) the annual and half year financial report for the Fund for the financial year ending 30 June 2008 and 31 December 2007, being the most recently lodged annual financial report with ASIC;
 - (b) any continuous disclosure notices given by the Fund after the lodgement of the annual report and before the date of the PDS.

In addition, section 1017B of the Corporations Act requires that Equititrust must advise investors of material changes to matters specified in this PDS or significant events that affect those matters.

Any changes in the Fund which are not materially adverse from an investor's perspective will be updated at www.equititrust.com.au copies of this information will be available free of charge by contacting Equititrust.

The income on investments distributed to investors is generally not taxed. It is Equititrust's intention to distribute all income in the year received. Income received by each investor will generally be taxable at the investor's own marginal tax rate. As each investor's taxation position is different, Equititrust recommends that each investor seeks professional advice prior to investing in the Fund. The taxation information contained in this PDS is of a general nature only. All tax liability rests with investors.

At the end of each financial year, Equititrust will provide investors with a taxation summary detailing the investments they have made and the income distributions made to their account during each financial year. Do not lodge your income tax return before receiving this information.

If an investor is a non-resident for tax purposes, they must provide their overseas address on the application form. As per Australian Tax Office regulations, withholding tax is deducted from all income distributed to these investors.

Your investment in the Fund may affect payments you receive from the Department of Veteran Affairs and / or Centrelink. Accordingly, and as government policy can change, we recommend you consult these bodies or your financial adviser. GST is not applicable when you invest or withdraw from the Fund. The Fund may incur GST in respect to various expenses and may not be entitled to related input tax credits. Taxation law is under constant review and change. The above information is accurate at the date of this PDS. Tax law is complex and each investor's circumstances may differ. We recommend that all investors seek professional tax advice on their investment.

12.7 Consents and disclaimer of responsibility

McCullough Robertson has given its written consent to being named in this PDS in the form and context in which it is named and has not withdrawn that consent prior to issue of this PDS. McCullough Robertson takes no responsibility for any statement in this PDS. McCullough Robertson has not caused or authorised the issue of this PDS.

KPMG has given its written consent to being named in this PDS in the form and context in which it is named and to the presentation in this PDS of extracts of audited financial statements as disclosed in Section 10 and has not withdrawn that consent prior to issue of this PDS. KPMG takes no responsibility for any statement or financial information in this PDS. KPMG has not caused or authorised the issue of this PDS.

12.8 Directors interests

Any director, officer or employee of Equititrust who may invest will only be permitted to do so on the same terms and conditions offered to other investors.

12.9 Labour standards, environmental, social or ethical considerations

Equititrust does not explicitly take into account labour standards, environmental, social or ethical considerations when making investment decisions.

12.10 Taxes and duty

Equititrust may also deduct any tax or duty incurred, and a reasonable amount for transaction and administration costs. As a result, the amount returned to the investor may be less than their original investment.

12.11 Capital Warranty Investment

The rights and restrictions of the Capital Warranty Investments are:

- (a) The holder of the Capital Warranty Investment will have the same rights to vote at meetings of members as any other member.
- (b) The holder of the Capital Warranty Investment has no entitlement to participate in any income distribution until the members have received their Benchmark Return.
- (c) The holder of the Capital Warranty Investment has the right to receive the distribution surplus to be shared between the holders of the Capital Warranty Investment in proportion to the number of Capital Warranty Investment units they hold when the distribution surplus is distributed.
- (d) the holders of the Capital Warranty Investment must maintain the minimum investment amount.
- (e) the Capital Warranty Investment units cannot be issued at an issue price which is less than the current issue price for interests which are not subordinated interests.
- (f) subject to paragraph (d) above, the redemption of the Capital Warranty Investment can only occur:
 - (i) with the consent of Equititrust; and
 - (ii) all valid withdrawal request forms have been processed and paid at a withdrawal price of not less than \$1.00 per unit; and
 - (iii) provided the redemption does not breach any existing facility agreement;
 - (iv) there being retained sufficient surplus in the Fund to meet any income warranty for the current month; and
 - (v) Equititrust has a reasonable belief that any income warranty will continue to be met.

In the event Equititrust is removed as responsible entity of the Fund (other than with its consent) the Capital Warranty Investment will (subject to any existing facility agreement) on its removal convert to an Access investment.

12.12 Winding up

In the winding up of the Fund the realisation of the assets of the Fund will be applied in the following priority:

- (a) must apply the assets of the Fund, or the proceeds of their realisation, to pay any liabilities (excluding liabilities to investors); then
- (b) pay to investors (excluding the Capital Warranty Investment investor) the sum equivalent to their issue price for their units;
- (c) pay to the Capital Warranty Investment investor the sum equivalent to their issue price for their Capital Warranty Investment units; and thereafter
- (d) distribute the remaining assets or the net proceeds to all investors in proportion to the number of interests of which they are the registered holder on the date of termination of the Fund.

Equititrust Privacy Policy

Mark McIvor, Wayne McIvor and Thomas John Haney, the directors of Equititrust have consented to and authorised the issue of this PDS.

13. Protecting personal information of investors

Protecting the personal information of investors and ensuring their privacy is important to Equititrust. Equititrust collects personal information so that it may provide investors with information about the products and services they request, as well as information on other products and services which Equititrust feels may be of interest.

In addition, in some cases, the law may also require Equititrust to collect personal information.

Equititrust may disclose personal information to other parties for certain purposes such as audits, mailing, market research and information technology support.

Equititrust may also seek expert help from time to time to help it improve its systems, products and services. An investor's personal information will be disclosed to these parties in such circumstances. However, it will not be shared with other third parties (except to related bodies for credential and risk management purposes).

An investor's personal information may also be used by Equititrust to administer, monitor and evaluate products and services, gather, aggregate and support statistical information, assist investors with any queries and take measures to detect and prevent fraud and other illegal activity. Equititrust may also be allowed or obliged to disclose information by law and to report on credit or risk management matters.

If investors use a financial adviser who recommended their investment in the Fund, then details of their investment may be provided to those financial advisers.

Equititrust aims to ensure that the personal information it retains about investors is accurate, complete and up-to-date. If investors provide Equititrust with incomplete or inaccurate information, Equititrust may not be able to provide those investors with the products and services they are seeking. If investors have concerns about the completeness or accuracy of the information Equititrust has about them or they would like to access or amend their information, they should call Equititrust on 1800 635 527.

To obtain a copy of the Equititrust privacy policy, investors can visit the Equititrust web site at www.equititrust.com.au. Investors will be taken to have agreed to the collection, use and disclosure of their personal information as set out above when they make an investment with Equititrust.

14. Application form

Application form

Please complete the application form contained at the back of this PDS. Send the completed form with a cheque made payable to:

'Equititrust Income Fund' to:
Equititrust Limited Funds Officer
reply Paid 8111
Gold Coast Mail Centre QLD 9726

Application money received without an application form or with an incorrect application form will be held by Equititrust in trust until a completed application form is received or until the correction is remedied.

By completing and signing the application form, you the investor:

- agree to be bound by the provisions of the Fund trust deed;
- acknowledge having read and understood this PDS; and
- authorise the use of the tax file number as provided on the application form in respect of your account.

Application form distribution

The application form may only be distributed attached to a current, complete and unaltered copy of the PDS. The application form included with this PDS contains a declaration that the investor has personally received the complete and unaltered PDS prior to completing the application form. Equititrust will not accept a completed application form if it has reason to believe that the applicant has not received a complete paper copy or electronic copy of this PDS or if it has reason to believe that the application form or electronic copy of this PDS has been altered or tampered with in any way. While Equititrust believes it is extremely unlikely the electronic version of this PDS will be tampered with or altered in any way, Equititrust cannot give any absolute assurance that this will not occur.

Any investor in doubt concerning the validity or integrity of an electronic copy of this PDS should immediately request a paper copy of this PDS directly from Equititrust.

Application form instructions

Please note the following instructions when signing the application form. These must be signed:

- by the applicant personally;
- by each applicant if the application is made jointly;
- trustees, trusts, superannuation funds etc must apply in the name or names of the trustee;
- applications on behalf of a company should be signed under common seal or in accordance with the company's constitution and provide an Australian Company Number; and
- a copy of the power of attorney document should accompany applications signed by power of attorney.

Account details should be double-checked for accuracy before signing. Equititrust accepts no responsibility for any loss that may occur as a result of incorrect or incomplete information provided to it by an investor.

Additionally, the following must be completed:

- the Identification Check form; and
- the Required Details for Trustee Investors form (if you are investing as a trustee). However, this form need not be completed if you are investing as trustee for a self-managed superannuation fund.

14.4 Tax file numbers

An investor is not obliged to quote a tax file number (TFN), however, tax may be taken out of the investor's distributed income if the TFN or relevant exemption is not noted. Taxation law and the Privacy Act regulate the disclosure of tax file numbers. An investor has the right to request the withholding of a tax file number at any time during their investment with Equititrust. If an investor has any questions regarding the disclosure of tax file numbers, please contact the Australian Taxation Office for assistance.

14.5 Investor Relations

Equititrust is committed to client relationship and providing service to our investors regarding any aspect of their investment. Members of the client services team are equipped with online computers and can attend to most investor enquiries instantly. Our computer records note investors current investment, past investments, income rate, transaction details and withdrawals. The client services team can be contacted during normal business hours on freecall 1800 635 527.



Application Form

1. INVESTMENT AMOUNT (MINIMUM APPLICATION \$10,000, ADDITIONAL INVESTMENTS \$5,000*)

\$ Option 1 - 12 month (Income monthly)

\$ Option 2 - 12 month (Income at maturity)

\$ Option 3 - 6 month (Income monthly)

\$ Option 4 - Access investment (Income monthly)

Important Please make cheque payable to Equititrust Income Fund (Please ensure correct spelling)

2. INVESTOR DETAILS

Are you an existing Investor in the EIF? No Yes - Client Number

If no, how did you hear about us. Please tick only one.

From an existing investor Newspaper *If yes which paper?*

Radio *If yes which station?* Bows / Golf *If yes which club?*

Television Website Yellow Pages Other

Private Investor 1

Title Given Names Surname Date of Birth

Private Investor 2 (if in joint names)

Title Given Names Surname Date of Birth

Company Investor or Trustee Investor on behalf of a Superannuation Fund

Full Registered Company Name or Full Name of Superannuation Fund (XYZ As Trustee For XYZ Superannuation Fund)

If you are an existing Investor and your details remain unchanged, go to Section Overleaf.

3. CONTACT DETAILS OF ALL SIGNATORIES

Full Name of Signatory No. 1 Preferred Salutation (Dear Jo or Dear Mr/s Jones)

Full Name of Signatory No. 2 Preferred Salutation (Dear Jo or Dear Mr/s Jones)

Postal Address for Correspondence

Day Time Contact Number Alternate Contact Number Email Address

4. TAX FILE NUMBER / EXEMPTION / ABN

Investor 1 TFN Investor 2 TFN

Companies & Trusts TFN

ABN

Application Form

5. RESIDENT STATUS

Are you an Australian Resident with an Australian TFN Yes No
Country of residency

6. PAYMENT DETAILS

Income payments will be deposited to the following bank account.

Account Name

Financial Institution

Branch

Branch (BSB) Number

Account Number

7. SIGNATORIES

For a joint account, indicate the number of signatories required to operate the account. Either Both
I/We:

- Have read the Product Disclosure Statement and agree to be bound by the terms and conditions of the EIF Constitution.
- Authorise Equititrust, its offers and agents, to complete or correct any error on this application form or any subsequent application form.

Signatures: A holder of a Power of Attorney confirms that it has not been revoked. Company applications must be stamped with the company seal and/or signed by all Directors. Applications for joint accounts must be signed by both investors.

Signature

Signature

Date

Date

/ /

/ /

Company Seal

Please make cheques payable to 'Equititrust Income Fund'

PDS 6/2/09

This application must not be circulated unless attached to or accompanied by a copy of the Product Disclosure Statement issued by Equititrust Limited ACN 061 383 944. Equititrust Limited reserves the right to correct, amend or refuse any application form where the details of the prevailing or applicable investment rate are incorrect or non current.

Application Form

1. INVESTMENT AMOUNT (MINIMUM APPLICATION \$10,000, ADDITIONAL INVESTMENTS \$5,000*)

\$ Option 1 - 12 month (Income monthly)

\$ Option 2 - 12 month (Income at maturity)

\$ Option 3 - 6 month (Income monthly)

\$ Option 4 - Access investment (Income monthly)

Important Please make cheque payable to Equitytrust Income Fund (Please ensure correct spelling)

2. INVESTOR DETAILS

Are you an existing Investor in the EIF? No Yes - Client Number

If no, how did you hear about us. Please tick only one.

From an existing investor Newspaper *If yes which paper?*

Radio *If yes which station?* Bowls / Golf *If yes which club?*

Television Website Yellow Pages Other

Private Investor 1

Title Given Names Surname Date of Birth

Private Investor 2 (if in joint names)

Title Given Names Surname Date of Birth

Company Investor or Trustee Investor on behalf of a Superannuation Fund

Full Registered Company Name or Full Name of Superannuation Fund (XYZ As Trustee For XYZ Superannuation Fund)

If you are an existing Investor and your details remain unchanged, go to Section overleaf.

3. CONTACT DETAILS OF ALL SIGNATORIES

Full Name of Signatory No. 1 Preferred Salutation (Dear Jo or Dear Mr/s Jones)

Full Name of Signatory No. 2 Preferred Salutation (Dear Jo or Dear Mr/s Jones)

Postal Address for Correspondence

Day Time Contact Number Alternate Contact Number Email Address

4. TAX FILE NUMBER / EXEMPTION / ABN

Investor 1 TFN Investor 2 TFN

Companies & Trusts TFN

ABN

Application Form

5. RESIDENT STATUS

Are you an Australian Resident with an Australian TFN Yes No
Country of residency

6. PAYMENT DETAILS

Income payments will be deposited to the following bank account.

Account Name

Financial Institution

Branch

Branch (BSB) Number

Account Number

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For a joint account, indicate the number of signatories required to operate the account. Either Both
I/We:

- Have read the Product Disclosure Statement and agree to be bound by the terms and conditions of the EIF Constitution.
- Authorise Equititrust, its offers and agents, to complete or correct any error on this application form or any subsequent application form.

Signatures: A holder of a Power of Attorney confirms that it has not been revoked. Company applications must be stamped with the company seal and/or signed by all Directors. Applications for joint accounts must be signed by both investors.

Signature

Signature

Date

Date

/ /

/ /

Company Seal

Please make cheques payable to 'Equititrust Income Fund'

PDS 6/2/09

This application must not be circulated unless attached to or accompanied by a copy of the Product Disclosure Statement issued by Equititrust Limited ACN 061 383 944. Equititrust Limited reserves the right to correct, amend or refuse any application form where the details of the prevailing or applicable investment rate are incorrect or non current.

Identification Check

Name of person being identified

To satisfy Governmental Identification requirements we are obliged to obtain a Certified Copy of one Primary Document OR two Secondary Documents. Original Certified Copies of the relevant documents must be attached and the 'Details of Document' section of this form completed. A list of persons authorised to certify your identification is attached.

Primary Documents

Please provide one of the following

Current Passport

Details of Document

Document Number

Place of Issue

Date of Issue

Expiry Date

Current Drivers Licence

Document Number

Place of Issue

Date of Issue

Expiry Date

Secondary Documents

If no Primary Documents available, please provide two of the following

Written reference signed by an officer from a financial body where you have been a customer for 12 months or more

Details of Document

Details of Authorising Person

Name

Occupation

Place of employment

Verification from a local government officer who has known you for 12 months or more

Details of Authorising Person

Name

Occupation

Place of employment

Birth Certificate

Place of Issue

Certificate No.

Current Credit Card

Issued by

Account No.

Expiry Date

Medicare Card

Issued by

Account No.

Expiry Date

Rates Notice / Telephone / Electricity / Water Bills

Issued by

Account No.

Expiry Date

Identification Check

An example of a correct certification can be seen below:

I hereby certify that this is a true and correct copy of the original document.

A Witness

(Signature of Authorised Person)

Mr Aiden Witness

(Name of authorised witness)

Chartered Accountant

(Title of authorised witness)

Required Details For Trustee Investors*

*You don't need to complete this form if you are investing via a self-managed superannuation fund.

Full name of the trust

Full business name (of any) of the trustee in respect of the trust

Type of trust (e.g. unit trust or discretionary trust)

Country in which the trust was established

If the trust is not a registered managed investment scheme, or an unregistered managed investment scheme that has only wholesale clients, or subject to oversight by the Commonwealth regulator, please provide the full name and address of each beneficiary of the trust:

If the trust is not a registered managed investment scheme, or an unregistered managed investment scheme that has only wholesale clients, or subject to oversight by the Commonwealth regulator, non-corporate trustees must complete the Identification Check Form for individuals.

The following person/s are authorised to certify your documents:

- 1 A person who is enrolled on the roll of the Supreme Court of a State or territory, or the High Court of Australia, as a legal practitioner (*however described*);
- 2 A judge of a court;
- 3 A magistrate;
- 4 A chief executive officer of a Commonwealth court;
- 5 A registrar or deputy registrar of a court;
- 6 A Justice of the Peace;
- 7 A notary public (for the purposes of the Statutory Declaration Regulations 1993);
- 8 A police officer;
- 9 An agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public;
- 10 A permanent employee of the Australian Postal Corporation with 2 or more years of continuous service who is employed in an office supplying postal services to the public;

- 11 An Australian consular officer or an Australian diplomatic officer (within the meaning of the Consular Fees Act 1955);
- 12 An officer with 2 or more continuous years of service with one or more financial institutions (for the purposes of the Statutory Declaration Regulations 1993);
- 13 A finance company officer with 2 or more continuous years of service with one or more finance companies (for the purposes of the Statutory Declaration Regulations 1993);
- 14 An officer with, or authorised representative of, a holder of an Australian financial services licence, having 2 or more continuous years of service with one or more licensees; and
- 15 A member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants with 2 or more years of continuous membership.

Identification Check

Name of person being identified

To satisfy Governmental Identification requirements we are obliged to obtain a Certified Copy of one Primary Document OR two Secondary Documents. Original Certified Copies of the relevant documents must be attached and the 'Details of Document' section of this form completed. A list of persons authorised to certify your identification is attached.

Primary Documents

Please provide one of the following

Current Passport

Details of Document

Document Number

Place of Issue

Date of Issue

Expiry Date

Current Drivers Licence

Document Number

Place of Issue

Date of Issue

Expiry Date

Secondary Documents

If no Primary Documents available, please provide two of the following

Written reference signed by an officer from a financial body where you have been a customer for 12 months or more

Details of Document

Details of Authorising Person

Name

Occupation

Place of employment

Verification from a local government officer who has known you for 12 months or more

Details of Authorising Person

Name

Occupation

Place of employment

Birth Certificate

Place of Issue

Certificate No.

Current Credit Card

Issued by

Account No.

Expiry Date

Medicare Card

Issued by

Account No.

Expiry Date

Rates Notice / Telephone / Electricity / Water Bills

Issued by

Account No.

Expiry Date

Identification Check

An example of a correct certification can be seen below:

I hereby certify that this is a true and correct copy of the original document.

A Witness

(Signature of Authorised Person)

Mr Aiden Witness

(Name of authorised witness)

Chartered Accountant

(Title of authorised witness)

Required Details For Trustee Investors*

*You don't need to complete this form if you are investing via a self-managed superannuation fund.

Full name of the trust

Full business name (of any) of the trustee in respect of the trust

Type of trust (e.g. unit trust or discretionary trust)

Country in which the trust was established

If the trust is not a registered managed investment scheme, or an unregistered managed investment scheme that has only wholesale clients, or subject to oversight by the Commonwealth regulator, please provide the full name and address of each beneficiary of the trust:

If the trust is not a registered managed investment scheme, or an unregistered managed investment scheme that has only wholesale clients, or subject to oversight by the Commonwealth regulator, non-corporate trustees must complete the Identification Check Form for individuals.

The following person/s are authorised to certify your documents:

- 1 A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (*however described*);
- 2 A judge of a court;
- 3 A magistrate;
- 4 A chief executive officer of a Commonwealth court;
- 5 A registrar or deputy registrar of a court;
- 6 A Justice of the Peace;
- 7 A notary public (for the purposes of the Statutory Declaration Regulations 1993);
- 8 A police officer;
- 9 An agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public;
- 10 A permanent employee of the Australian Postal Corporation with 2 or more years of continuous service who is employed in an office supplying postal services to the public;

- 11 An Australian consular officer or an Australian diplomatic officer (within the meaning of the Consular Fees Act 1955);
- 12 An officer with 2 or more continuous years of service with one or more financial institutions (for the purposes of the Statutory Declaration Regulations 1993);
- 13 A finance company officer with 2 or more continuous years of service with one or more finance companies (for the purposes of the Statutory Declaration Regulations 1993);
- 14 An officer with, or authorised representative of, a holder of an Australian financial services licence, having 2 or more continuous years of service with one or more licensees; and
- 15 A member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants with 2 or more years of continuous membership.

FORM FOR ADDITIONAL INVESTMENT

Full Name of Investor:	
Client Number:	
Investment Amount:	12 months paid monthly \$
	12 months paid at maturity \$
	6 months paid monthly \$
	Access investment paid monthly \$
Applicable Income Rate:	%

Signature

Signature

By lodging this subsequent application form the investor confirms and agrees to the warranties and authorities granted to Equititrust Limited under the PDS dated 6/2/09. Please attach cheque payable to Equititrust Income Fund to this form and return it to Equititrust Limited.

FORM FOR ADDITIONAL INVESTMENT

Full Name of Investor:	
Client Number:	
Investment Amount:	12 months paid monthly \$
	12 months paid at maturity \$
	6 months paid monthly \$
	Access investment paid monthly \$
Applicable Income Rate:	%

Signature

Signature

By lodging this subsequent application form the investor confirms and agrees to the warranties and authorities granted to Equititrust Limited under the PDS dated 6/2/09. Please attach cheque payable to Equititrust Income Fund to this form and return it to Equititrust Limited.

FORM FOR ADDITIONAL INVESTMENT

Full Name of Investor:	
Client Number:	
Investment Amount:	12 months paid monthly \$
	12 months paid at maturity \$
	6 months paid monthly \$
	Access investment paid monthly \$
Applicable Income Rate:	%

Signature

Signature

By lodging this subsequent application form the investor confirms and agrees to the warranties and authorities granted to Equititrust Limited under the PDS dated 6/2/09. Please attach cheque payable to Equititrust Income Fund to this form and return it to Equititrust Limited.

100.0



Access Investment Withdrawal Notice

INVESTOR DETAILS

Investor Name

Equitrust Client Number

Investment Number

Withdrawal Amount

Preferred Withdrawal Date

Reason for Withdrawal

Are you completely satisfied with our service?

Method of Payment

Deposit into account

Cheque

Payee:

Funds will be deposited into your previously nominated bank account.

To nominate an alternative account, please complete the following section:

Bank Account Name

Financial Institution

Branch (BSB) Number

Account Number

Signature

Date

Signature

Date

Notes

OFFICE USE ONLY

Final Interest

\$

Signature checked against PDS

Approved by

Date

Authorised by

Date