



Receivership and property investments: Timbercorp Orchard Trust

Columnist: Giles Craig, Hamilton Securities executive director

One of the largest and most lingering impacts of the global financial crisis was the wide-scale freezing of some property and mortgage funds and the failure of some high-profile property companies, such as Fincorp, Timbercorp and Westpoint.

This current crisis has highlighted that our market is generally ill-equipped to deal with these issues. Typically many of these investors are retirees who are reliant on the income they expected, but are no longer receiving. For these investors there is an immense frustration that they cannot get their money back and they have little influence on the restructure of the underlying investments.

Additionally, anecdotal evidence suggests advisers are dramatically reducing their clients' exposure to property and mortgage funds. This compounds the problem as fund managers struggle to achieve equilibrium between redemptions and inflows. It is also a case of 'baby-bathwater', as advisers shy away from an entire sector, which really only saw failure of investments at the riskier end of the spectrum. As we know, it was the government guarantee on cash deposits that led to the run on investments (and the subsequent freezing of funds), rather than the fundamental failure of the investments themselves.

WHY RECEIVERSHIP FAILS INVESTORS

We see three problems with receivership. The most obvious is that it usually lasts a long time. HIH and Ansett have been in receivership for over seven years. A more extreme case is Cambridge Credit, a property developer that crashed in 1974. It took more than 30 years to make its final payment to its debenture holders. Receivership is also very expensive.

The most serious problem of receivership is that it usually destroys enormous value in the business – value that could and should benefit creditors if the process could be handled better. The best known way that value is destroyed is by a fire sale of assets, but the loss of confidence of suppliers, customers

and employees also destroys huge amounts of value in a business.

If creditors can collectively cooperate with management, these losses of value can be avoided. While such an outcome benefits creditors, it is rarely done because it is hard to organise creditors into a cohesive group. Cynics might also suggest that such cooperation would not enrich the receivers.

WHAT CAN BE DONE?

In theory, creditors have great power in receiverships. In practice, retail creditors usually have little power and receive little information. If there are many creditors, there may be no-one willing and qualified to lead the fight for the benefit of all. Hamilton Securities has been formed to perform this role because we believe it is time investors were given a louder voice in these difficult situations.

Hamilton Securities has recently launched an off-market takeover bid for the debentures in Timbercorp Orchard Trust. Timbercorp Orchard Trust is an associate of Timbercorp, which is now in liquidation. The trust entered receivership in October 2009. The receiver has not said when debenture holders will receive any money.

The debentures have a first mortgage over the trust's assets and, in theory, have a lot of power. In practice, the debenture holders currently have little power. Hamilton's bid is aimed at bridging that gap.

Hamilton Securities is offering 30 of its shares for each debenture held. The ratio of 30:1 is based on the last Australian Securities Exchange (ASX) sale price of \$30 for debentures and the \$1 at which Hamilton Securities' shares were recently issued.

We believe our offer delivers a number of benefits to investors, including:

- **Liquidity.** At present, investors cannot trade their debentures because they are suspended from trading on the ASX, and there is no indication when they might resume trading, if ever. The offer will provide debenture holders with

listed securities and an exit route from their investment at a price determined by the market.

- **Representation.** There is no strong single party with a commercial incentive to represent the interests of all debenture holders. There are 2200 debenture holders, none of whom owns more than 2 per cent.
- **Alignment.** The management team of Hamilton Securities can only make money from Hamilton if they add value to the debentures. The directors of Hamilton have the ability and incentive to fight for a better outcome for the debenture holders.
- **Continued ownership.** Assuming our bid is successful, debenture holders will have an indirect ownership of 96 per cent of the debentures after the bid. In effect, they are being asked to swap an illiquid asset with no representation for almost the same asset but in a liquid form with improved representation.
- **Loss realisation.** For most debenture holders, accepting Hamilton's offer will create a capital loss that may be used to offset capital gains on other securities. Hamilton has raised over \$500,000 in cash, which it aims to use as a fighting fund for maximising the returns from the debentures. Our directors have their own money invested and hence our interests will be closely aligned with those of the debenture holders.

HAMILTON'S PLANS FOR THE TRUST

The majority of debenture holders may have acquired their investment with a view to generating income. Unfortunately, we doubt the debentures will be capable of generating the income previously paid to debenture holders.

Our focus will be on preserving and enhancing the capital value of the debentures in the short term, representing the interests of debenture holders in all negotiations with other trust stakeholders and (subject to the receivers not selling a substantial portion of the trust's assets) restructuring the trust in the longer term. ◀

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