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Attorneys for Interested Party Origami Capital

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiffs,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
LLC; AEQUITAS CAPITAL
MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENİK; BRIAN A.
OLIVER; and N. SCOTT GILLIS,

Defendants.

Case No. 3:16-cv-00438-PK

**MOTION FOR PAYMENT OF BREAK-UP
FEE TO ORIGAMI CAPITAL**

Expedited Hearing Requested

*Request for Oral Argument by Telephone
Conference*



CERTIFICATE OF COMPLIANCE WITH LR 7-1

In compliance with Local Rule 7-1, counsel for Origami Capital spoke to counsel for the Receiver on November 2, 2016, and conferred on this motion. Counsel for the Receiver advised that the Receiver will oppose this motion. Also on November 2, 2016, counsel for Origami Capital emailed counsel for the Receiver requesting the Receiver's position on a request for expedited consideration. Counsel for the Receiver advised that the Receiver opposes expedited consideration.

MOTION

Origami Opportunities Fund III, L.P. and Origami Opportunities Fund III Offshore Master, L.P. (collectively, "Origami") hereby move this Court for an order directing the Receiver to immediately pay Origami the break up fee it is entitled to pursuant to this Court's *Order Granting Receiver's Motion (1) for Approval of Letter of Intent, (2) for Approval of Bid Procedures, Break-up Fee, and Stalking Horse Bidder and (3) to Schedule Final Sale Hearing* [Dkt. 250] (the "Bid Procedures Order"), and respectfully state as follows:

1. On September 20, 2016, the Receiver filed his *Receiver's Motions for Orders: (1) Scheduling Hearing to Approve Purchase and Sale Agreement; (2) Approving Stalking Horse Bidder; (3) Approving Break-Up Fee; (4) Approving Bidding Procedures; and (5) Approving the Sale of Assets Free and Clear of all Liens, Claims, Encumbrances and Interests* [Dkt. No. 247] (together, the "Sale Motion").¹ Pursuant to the Sale Motion, the Receiver requested this Court's approval of the Receiver's sale of the CCM Interests (and related

¹ Capitalized terms used but not defined herein shall have the meaning given in the Sale Motion.

Property Agreements) to Origami for a purchase price of \$12,175,000, subject to higher and better bids by a proposed deadline of October 5, 2016.

2. On September 21, 2016, the Court entered the Bid Procedures Order which, *inter alia*, set a deadline for overbids of October 5, 2016 and approved a break-up fee to Origami of \$669,625: (i) an immediate payment for expense reimbursement on all diligence costs related to the Fund equal to three percent (3%) of the purchase price (\$365,250) plus (ii) an immediate break-fee payment equal to two and one-half percent (2.5%) of the purchase price (\$304,375), resulting in an aggregate combined expense reimbursement and break-fee equal to \$669,625 (the “Break-Up Fee”) (Dkt 250).

3. Origami agreed to accept the below market break-up fee that the Court approved in exchange for the Receiver agreeing to the October 5, 2016 deadline for competing bids, as closing the sale transaction as soon as practicable was of critical importance to Origami.²

4. Subsequent to the Court’s entry of the Bid Procedures Order, the Receiver requested, and Origami agreed, to an extension of the deadline for submitting competing bids from October 5, 2016 to October 11, 2016.

5. The Receiver received no bids, qualifying or otherwise, by the extended bid deadline of October 11, 2016.

6. Separately, with no advance notice to Origami, on October 11, 2016, Defendant Robert J. Jesenik moved the Court to continue the sale hearing. That same day, the Court entered an order continuing the sale hearing to October 26, 2016, which order provided, in part:

² During the negotiations with the Receiver, the Buyer had sought a higher break-up fee. The Break-Up Fee is below market for a transaction of this type. (*See* Sale Motion, ¶36).

“that the Final Hearing to Approve the Sale of CCM Interests will be continued until October 26, 2016 at 11:00 am so that the Receiver and any potential bidders may present competing bids to the Court for consideration”

(Dkt 266, p. 2).

7. Concerned that this provision could be interpreted as extending the agreed to bid deadline, Origami called the Receiver that same day for clarification. The Receiver agreed with Origami that the bid deadline should remain October 11, 2016. Accordingly, the Receiver’s counsel called chambers for clarification, but was told to appear at the October 26 hearing to address the issue.

8. On October 17, 2016, the Court entered an order (at Docket 269) further extending the final hearing on approval of the sale to October 27, 2016.

9. A few minutes prior to the start of the October 27, 2016 sale hearing, Cedar Springs submitted a proposed competing bid for the CCM Interests. The Receiver, contrary to his prior representations to Origami that he would support the deadline for qualified bids remaining October 11, 2016, deferred to the Court to make the decision whether the Cedar Springs’ bid met the bid deadline.

10. After the Receiver failed to actively support the bid procedures it negotiated with Origami, the Court ruled that the initial Cedar Springs overbid received 45 minutes prior to the hearing on October 27, 2016 was a qualified overbid. Thereafter, an Auction was held, and Cedar Springs emerged as the winning bidder for the CCM Interests at the purchase price of \$14,675,000.

11. There is no dispute that Origami is entitled to the Break-Up Fee. Furthermore, the Court’s October 30, 2016 order approving the sale authorizes the payment of the Break-Up Fee to Origami:

Page 4 – **MOTION FOR PAYMENT OF BREAK-UP FEE TO ORIGAMI CAPITAL**

“As a result of Purchaser prevailing at the auction, the Receiver is authorized to pay to Origami Capital, the stalking horse bidder, the Break Up Fee and Expense Reimbursement in the aggregate amount of six hundred sixty nine thousand six hundred twenty five dollars (\$669,625).”

(Dkt 283, ¶7.)

12. In addition, the Origami APA contemplated a closing no later than October 31, 2016. Competing bids were required to be on the same or better terms. The Receiver elected to accept a bid with a much later closing date. Origami should not bear the brunt of the Receiver's unilateral decision by being forced to wait a month beyond the contemplated closing date to receive the Break-Up Fee.

13. Receiver's counsel, in the hearing on October 27, 2016 highlighted the fact that Origami's participation in this process added significant value to the Receivership estate.

14. The Receivership estate currently holds millions of dollars; it has more than sufficient liquidity to pay the Break-Up Fee to Origami.

15. Given the significant value added by Origami, the undisputed entitlement of Origami to the Break-Up Fee, and the unusual manner in which the sale hearing unfolded, the Break-Up Fee should be paid to Origami promptly.

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16. Accordingly, Origami requests that this Court enter the attached order directing the Receiver to immediately pay Origami the Break-Up Fee in the amount of \$669,625.

DATED this 2st day of November, 2016.

Respectfully submitted,

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UNITED STATES DISTRICT COURT

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SECURITIES AND EXCHANGE
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ROBERT J. JESENİK; BRIAN A.
OLIVER; and N. SCOTT GILLIS,

Defendants.

Case No. 3:16-cv-00438-PK

**[PROPOSED] ORDER GRANTING
MOTION FOR PAYMENT OF BREAK-UP
FEE TO ORIGAMI CAPITAL**

Having considered the Motion (the “Motion”) of Origami Opportunities Fund III, L.P. and Origami Opportunities Fund III Offshore Master, L.P. (collectively, “Origami Capital”) for an order directing the Receiver to pay to Origami the break-up fee pursuant to this Court’s Order Granting Receiver’s Motion (1) for Approval of Letter of Intent, (2) for Approval of Bid Procedures, Break-up Fee, and Stalking Horse Bidder and (3) to Schedule Final Sale Hearing [Dkt. 250], and good cause appearing therefor, the Court hereby ORDERS as follows:

1. The Motion is granted in its entirety.
2. Good cause existing for the relief requested, it is hereby ordered that the Receiver is authorized and directed to make payment to Origami Capital Partners, LLC of the break-up fee in the amount of Six Hundred Sixty-Nine Thousand Six Hundred Twenty Five Dollars (\$669,625.00) within two (2) days after entry of this order.

DATED this ____ day of _____, 2016.

Hon. Paul Papak
United States Magistrate Judge

Submitted by:

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Page 2 – **ORDER GRANTING MOTION FOR PAYMENT OF BREAK-UP FEE TO
ORIGAMI CAPITAL**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION FOR PAYMENT OF BREAK-UP FEE TO ORIGAMI CAPITAL** was served on all ECF participants through the Court's Case Management/Electronic Case File system on the date set forth below.

DATED November 2, 2016

/s/ Stuart Wylen
Stuart Wylen, Paralegal and Legal Assistant