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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	No. 3:16-cv-00438-PK NOTICE OF FILING RECEIVER'S REPORT DATED JANUARY 31, 2017

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v.

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

Defendants.

Ronald F. Greenspan, the duly appointed Receiver of the entity defendants and 43 related entities, hereby files the attached Report of Ronald F. Greenspan, Receiver, dated January 31, 2017.

Dated this 10th day of February, 2017.

Respectfully submitted,

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RONALD GREENSPAN

COURT-APPOINTED RECEIVER OVER

AEQUITAS MANAGEMENT, LLC, AEQUITAS HOLDINGS, LLC, AEQUITAS CAPITAL MANAGEMENT, INC., AEQUITAS INVESTMENT MANAGEMENT, LLC AND CERTAIN RELATED ENTITIES

(the "Receivership Entity")

In re AEQUITAS MANAGEMENT, LLC, et al.

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

United States District Court

District of Oregon

Portland Division

Report

of

Ronald F. Greenspan, Receiver

January 31, 2017

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I. Introduction

During the course of an investigation into the business practices of Aequitas Management, LLC ("AM"); Aequitas Holdings, LLC ("AH"); Aequitas Commercial Finance, LLC ("ACF"); Aequitas Capital Management, Inc. ("ACM"); and Aequitas Investment Management, LLC ("AIM") (collectively "Entity Defendants"), as well as 43 subsidiaries and/or majority-owned affiliates (collectively "Receivership" or "Receivership Entity"), the Securities and Exchange Commission ("Commission" or "SEC") concluded that the appointment of a receiver was necessary and appropriate for the purposes of marshaling and preserving all assets of the Receivership Entity (the "Receivership Property"). Accordingly, on March 10, 2016, the Commission and the Entity Defendants filed a Proposed Stipulated Order Appointing Receiver (the "Proposed Receivership Order") [Dkt. 2-2].[1]

On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver (the "Interim Receivership Order"), Ronald Greenspan was appointed as Receiver for the Entity Defendants and 43 related entities on an interim basis. On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis (the "Final Receivership Order") [Dkt. 156].

In accordance with the Final Receivership Order, the Receiver is required to file a report (the "Receiver's Report") with the Court within thirty (30) days after the end of the first full calendar quarter occurring after entry of the Final Receivership Order (which

[1] All Dkt (or Docket) references are available at the Receiver's website - http://www.kccllc.net/aequitasreceivership

entry date was April 16, 2016, making the required reporting date October 31, 2016). Due to the complexity of this receivership and the Receiver's wish to keep the various constituencies apprised of progress being made, the Receiver filed a voluntary report and recommendations to the Court (the "Initial Report") for the first "stub quarter" ending June 30, 2016 on September 14, 2016 [Dkt. 246] and the first mandated quarterly report covering the period thru September 30, 2016 on November 10, 2016 [Dkt. 298].[2] This report (the "Report") represents the report and recommendations to the Court for the quarter ending December 31, 2016.

As is the case for the prior Receiver's Reports, the findings and recommendations of the Receiver contained in this Report should be considered preliminary and subject to change due to the volume of material and information acquired, the shortness of time, the complexity of matters analyzed and the need for additional information, verification and analyses. The Receiver may need to materially modify the findings and recommendations contained within this Report after further consideration.

II. Limitations of Report

The information contained herein has been prepared based upon financial and other data obtained from the Receivership Entity's books and records and provided to the Receiver and FTI Consulting, Inc. from the staff employed by the Receivership Entity as well as its contract staff and advisers, or from public sources.

The Receiver has not subjected the information contained herein to an audit in accordance with generally accepted auditing or attestation standards or the Statement on Standards for Prospective Financial Information issued by the American Institute of

[2] The Receiver filed his Second Receiver's Report on November 10, 2016 at Dkt. 298 (the "Second Report" and together with the Initial Report, the "Receiver's Reports").

Certified Public Accountants (the "AICPA"). Further, the work involved so far did not include a detailed review of any transactions, and cannot be expected to identify errors, irregularities or illegal acts, including fraud or defalcations that may exist. Also, most of the Receivership Entity's assets discussed herein are not readily tradable, have no public value indication, are illiquid, are often minority and/or other partial interests, and might be detrimentally affected by affiliation with Aequitas and uncertain consequences of past and future events involving Aequitas. Accordingly, the Receiver cannot express an opinion or any other form of assurance on, and assumes no responsibility for, the accuracy or correctness of the historical information or the completeness and achievability of the projected financial data, valuations, information and assessments upon which the following Report is rendered.

III. Case Background

A. Introduction

As the Initial Report set forth a summary of the complaint (the "SEC Complaint") against the Entity Defendants, as well as Robert J. Jesenik, Brian A. Oliver and N. Scott Gillis (collectively the "Individual Defendants"), the focus of this Report is to provide an update on various aspects of the Receivership. Additionally, the Final Receivership Order requires that certain items be addressed with the filing of this report. Pursuant to Section IV Stay of Litigation, paragraph 24 states the following:

> *The Receiver shall investigate the impact, if any, on the Receivership Estates of Ancillary Proceedings brought against registered investment advisers in which the Receivership Entity has an ownership interest. The Receiver shall include in the report and petition it must file with the Court pursuant to Paragraph 39 below, a recommendation to the Court as to whether Ancillary*

Proceedings brought against registered investment advisers in which the Receivership Entity has an ownership interest should remain subject to the stay of litigation. The Receiver shall also investigate the probable impact of discovery directed to the Receiver and the Receivership Entity in Ancillary Proceedings and those actions authorized in Paragraph 23. The Receiver shall include in the report and petition it must file pursuant to Paragraph 39 below, a recommendation to the Court as to a plan to govern all discovery directed to the Receiver and the Receivership Entity in Ancillary Proceedings and those actions authorized in Paragraph 23.

Each of the required topics will be addressed individually in the report.

B. Focus of the Activities to Date

The Receiver's primary focus remains on the stabilization of the Receivership Entity to preserve value and facilitate asset monetization. From the beginning of the Receivership through the quarter ended December 31, 2016, the Receiver has sold assets and collected receivables totaling approximately $142 million. Further, the receiver is in contract to sell its interest in CCM and other assets for $52 million together with an option to sell $76.9 million[3] in health care receivables owned by the Receivership[4] Operationally, employee headcount decreased from the beginning of the quarter to the end at a net 16 (from pre-receivership levels of 129 in December 2015).

C. Recommendation regarding Continuance of the Receivership

It remains the Receiver's recommendation that the Receivership be continued. The conditions under which the Receivership was imposed still exist. While much has been accomplished, there is still much more to do. Based on the lifecycle of a typical receivership, this Receivership is still in the first stage – the stabilization and

[3] Balance as of December 31, 2016.
[4] The sale of the Receivership's interests in CCM was approved on January 25, 2017. [Dkt. 362]

monetization of assets. The Receiver must continue to focus efforts on monetizing the remaining assets in a manner and timeline consistent with reasonably maximizing the value to the investors. As more progress is made in the stabilization and monetization of the assets, the Receiver anticipates being able to commence soon the investigation stage to (i) develop a historical factual understanding which will assist the Receiver to develop a proposed distribution plan and assist investors to evaluate such plan, and (ii) ferret out additional claims and causes of actions for the benefit of the investors. As the Receiver concludes the investigation stage, based on the investigation results, the Receiver may, with the approval of the Court, initiate the litigation stage, pursuing recovery from third parties for the benefit of the Receivership Entity. The final stage of the receivership is the development and execution of the distribution plan to be approved by the Court.

The various loan portfolios and numerous operating companies owned by the Receivership require daily management until they are monetized. The Receiver and his team fill the management gap left after the termination of the Individual Defendants and the departures of other management and staff. Absent that day-to-day, hands-on management, the Receivership Entity's, and, ultimately, the investors' value would languish.

Feedback from SEC staff and the Aequitas investors regarding our progress thus far has been overwhelmingly positive. The Receiver believes he has their support and encouragement to continue his efforts, and that they also support the continuation of the Receivership.

D. Impact on the Receivership Estates of Ancillary Proceedings Brought Against Registered Investment Advisers in which the Receivership Entity Has an Ownership Interest

Pursuant to the directive contained in paragraph 24 of the Order Appointing Receiver, the Receiver and certain of his professional team continue to assess the probable impact on the Receivership Estates if Ancillary Proceedings were to be brought against registered investment advisers in which the Receivership Entity has an ownership interest. In furtherance of the overarching goal of maximizing the recovery to investors and other creditors in general, as opposed to maximizing the recovery to a particular subset of investors, the Receiver recommends that the stay of litigation remain in place for a minimum of ninety additional days for the reasons explained below.

1. Private Advisory Group Membership

Private Advisory Group, LLC ("PAG") is one of two registered investment advisers ("RIA") in which the Receivership Entity holds an ownership interest.[5] Aspen Grove Equity Solutions, LLC ("Aspen Grove") is a member of PAG, holding 68.23% of the membership units. Aspen Grove is part of the Receivership Entity (No. 35 on Exhibit A of the Order Appointing Receiver). Its ownership interest in PAG constitutes Receivership Property, as that term is defined in the Order Appointing Receiver [Dkt. 156, 6.A.]. The other members of PAG are Bean Holdings, LLC, with 27.4% of the membership units, and Aaron Maurer, with 4.37% of the membership units. The members of Bean Holdings, LLC are Chris Bean, Doug Bean and Jon Bishopp.

[5] AIM was also filed as a registered investment advisor. The Receiver has withdrawn that registration.

2. Aspen Grove Membership

Aequitas Wealth Management, LLC, also part of the Receivership Entity, holds 60% of the membership units in Aspen Grove. The other members are Gary Price, Ron Robertson and Tim Feehan ("Aspen Grove Members").

3. Relevant Insurance Coverage

PAG has an "Investment Advisor Professional Liability Policy" with limits of liability of $5,000,000 issued by Liberty Surplus Lines Insurance ("Liberty"), in effect for the policy period running from November 25, 2015 to November 25, 2016 ("PAG IA Policy"). The PAG IA Policy provides Directors and Officers Coverage for Insured Persons, which includes PAG's directors, officers and independent contractors. It also provides Professional Liability Coverage, including for a "Securities Claim" against PAG itself.

These coverages are triggered by "Claims" first made during the policy period and asserting "Wrongful Acts" against Insured Persons and/or PAG. The Insureds have sixty (60) days after the policy expires to provide Liberty with notice of "Claims" first made during the policy period. A "Claim" is defined in the PAG IA Policy to include not only a formal lawsuit but also a simple written demand to an Insured, which would include both Insured Persons and PAG, for monetary or non-monetary relief.

"Claims" — which includes written demands first made prior to November 25, 2016 that seek monetary relief and which also assert "Wrongful Acts" — subject to the policy's exclusions, limits of liability and Liberty's right to assert rescission and/or violation of the prior knowledge provisions, likely trigger coverage under the PAG IA Policy.

As compared to many other "claims made" policies, the PAG IA Policy contains language which potentially could significantly limit coverage for "Claims" made

after the policy expires. Many, if not most, other "claims made" policies contain provisions that "Claims" asserting the same, related or interrelated "Wrongful Acts" are deemed to be a single "Claim" made at the time the first of the "Claims" is made. The practical impact of such provisions, when the first "Claim" is made during the policy period, is to provide coverage for those "Claims" filed after a policy expires as long as the post-expiration "Claims" assert the same, related or interrelated "Wrongful Acts". Accordingly, with such policies, post-expiration "Claims" as long as they assert the same, related or interrelated "Wrongful Acts" as those alleged in "Claims" made prior to a policy's expiration, relate back and are deemed filed during the policy period.

The PAG IA Policy issued by Liberty however contains language which can be interpreted as not allowing any post-expiration "Claims" to relate back and be deemed filed during the policy period. Specifically, the language contained in Section 8.4 of the PAG IA Policy can be interpreted in such a manner that "Claims" made after the policy period expires do not relate back and are not deemed timely made, even if those "Claims" allege the same, related or interrelated "Wrongful Acts" as those contained in a timely filed "Claim".

Similarly, the PAG IA Policy's "Notice of Circumstances" provision is also narrowly crafted. Many "Notice of Circumstances" provisions provide that if notice of facts, circumstances, "Wrongful Acts" or "Interrelated Wrongful Acts" is given prior to the expiration of the policy period, then "Claims" based upon, arising out of or involving such facts, circumstances, Wrongful Acts or Interrelated Wrongful Actions that are made after the policy expires are deemed made during the policy period, specifically at the time the "Notice of Circumstances" was given. Accordingly, under the PAG IA Policy, a "Claim" made after the policy expires, even if it arises out of "Interrelated Wrongful Acts" which is defined to mean "Wrongful Acts having as a common nexus any fact, circumstance,

situation, event, transaction [or] cause . . . .", does not relate back to a timely "Notice of Circumstances" if such "Claim" did not assert the same Wrongful Act or circumstance referenced in a timely "Notice of Circumstance."

Under the terms of the PAG IA Policy the most straight forward way to determine which "Claims" ultimately trigger coverage is to look to those "Claims" asserting Wrongful Acts against PAG and/or its directors, officers and independent contractors, that were first made prior to the policy's expiration on November 25, 2016. As reflected by the discussion in the preceding paragraphs, there could be significant disputes involving which, if any, "Claims" filed after the policy expires are deemed to have been made timely.

Finally, the PAG IA Policy contains Priority of Payment provisions that give priority to payments made to Insured Persons, if the Parent Organization, i.e. PAG, is not indemnifying or, as the case may be, advancing "Defense Costs" on their behalf. The PAG IA Policy is a wasting policy, which means that the $5 million limit of liability is eroded by the cost of defending claims against Insureds including attorney fees. As addressed below, actions filed in King County, Washington and the U.S. District Court for the Western District of Washington are already depleting the insurance coverage potentially available to mitigate the losses sustained by Aequitas investors.

Counsel for Chris Bean, Doug Bean, Bean Holdings, LLC, Aaron Maurer, Jon Bishopp and others associated with PAG (collectively referred to as the "PAG Related Parties") provided to the Receiver a reservation of rights letter issued by Liberty. The same counsel has submitted various notices of "claims" to Liberty. The Receiver determined that it is in the best interests of the Receivership Entity to have its insurance counsel, Stan Shure, assume direction of the efforts to maximize insurance proceeds available to mitigate losses to those who invested in Aequitas through PAG.

The PAG Related Parties have agreed to produce documentation of any additional insurance coverage, as well as corporate and personal financial statements and other evidence of assets, potentially available to indemnify for losses sustained by Aequitas investors. The PAG Related Parties will produce the documents prior to a mediation stemming from the Brown Suit that is anticipated to occur on March 1-2, 2017 (addressed below). Production and subsequent use of the documents will be governed by a confidentiality and non-disclosure agreement.

4. Indemnification Claims

PAG's Operating Agreement provides: The Company shall, to the fullest extent permitted by applicable law as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment), indemnify, hold harmless and release each Covered Person from and against all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings and actions, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, that may accrue to or be incurred by any Covered Person as a result of the Covered Person's activities associated with the Company ...

The term "Covered Person" is defined under the Operating Agreement to include members, officers and directors. The other members of PAG as well as the individual members of Bean Holdings LLC — Chris Bean, Doug Bean, Jon Bishopp and Aaron Maurer — have claimed entitlement to indemnification pursuant to the terms of the Operating Agreement. There is a $100,000 self-insured retention under the subject PAG IA Policy. If Liberty has not yet paid costs incurred in defending the pending actions, the other members of PAG have likely paid defense costs from the assets of PAG.

The Aspen Grove Operating Agreement contains an identical indemnification provision. The members of Aspen Grove, other than Aequitas Wealth Management, LLC, namely Gary Price, Ron Robertson and Tim Feehan, have similarly claimed entitlement to indemnification pursuant to the terms of the Aspen Grove Operating Agreement. However, given that Aspen Grove is part of the Receivership Entity, the claims are stayed at this time and may well be dealt with as part of the regular claims process and the ultimate distribution plan.

Additionally, Aequitas Capital Management, Inc. ("ACM") entered into an Investor Referral Agreement with RP Capital, LLC ("RPC") that includes an indemnification provision pursuant to which RPC and its directors, officers, employees, members and agents - namely Gary Price, Ron Robertson, Tim Feehan, Antonio Ramirez, Aaron Maurer, Joel Price and Bradley Larson ("RPC Related Parties") - claim entitlement to indemnification. Again, given ACM is part of the Receivership Entity, the claims are stayed at this time.

If the stay were lifted to allow claims against PAG, PAG Related Parties, RPC, RPC Related Parties as well as against the Aspen Grove Members, it is anticipated that those parties would immediately move to further lift the stay, to allow their indemnification claims and possibly other cross-claims against the Receivership Entity. Obviously, in the event PAG Related Parties and/or Aspen Grove Members were allowed to pursue indemnification or other cross-claims against the Receivership Entity, those claims would necessarily be defended by counsel to the Receiver and the Receivership Entity, thereby, unnecessarily depleting assets of the Receivership Entity which would otherwise later be available for distribution.

As addressed above, the PAG IA Policy contains Priority of Payment provisions that give priority to payment of defense costs in the event PAG is not indemnifying.

Consequently, every dollar of defense costs, whether paid from the PAG IA Policy limits or by PAG directly pursuant to indemnification obligations, is one less dollar available to mitigate losses sustained by Aequitas investors.

5. Pending Lawsuits and Claims

A. Brown Suit

On or about August 15, 2016, a number of former clients of PAG and RPC filed a complaint in the Superior Court of King County, Washington, against RPC, Gary Price, Ron Robertson, Doug Bean, Chris Bean, Bean Holdings LLC, Jon Bishopp, Aaron Maurer, Tim Feehan, Antonio Ramirez and others ("Brown Suit"). As noted above, all are insureds under the PAG IA Policy and/or indemnification claimants. The Receiver understands that the Brown Suit was tendered to Liberty, which subsequently issued a reservation of rights. Recently, the suit was amended to include additional investor plaintiffs. Additionally, plaintiffs' counsel provided notice of claims against SAS Capital Management, LLC (dba Summit Advisor Solutions), SAS Capital Partners, LLC, and affiliated individuals, demanding that the claims be tendered to the insurance carrier(s) for those parties.

As addressed in greater detail below, continuation of the stay of Ancillary Proceedings during the preceding ninety days resulted in considerable progress toward an orderly process to address claims against PAG, PAG Related Parties, RPC, RPC Related Parties and others that is designed to maximize recovery to investors and other creditors on an expedited basis. At the Receiver's urging the parties to the Brown Suit stayed that action and directed efforts toward the development of an expedited claims resolution process.

B. Farr Suit

On or about October 6, 2016, in contravention of the Order Appointing Receiver [Dkt. 156], a class action complaint was filed against PAG in the U. S. District Court for the Western District of Washington, ("Farr Suit"). The Receiver understands that Liberty has notice of the Farr Suit and has reserved its rights relating to that action. When the parties could not reach agreement regarding either dismissal without prejudice or entry of a notice of stay, the defendants filed a motion to dismiss which has not yet been ruled upon by the Court.

C. Enviso Suit

In May, 2016, Enviso Group, LLC filed a complaint in the Superior Court of San Diego County, California, against Aequitas Holdings, LLC, Aequitas Wealth Management, LLC, Robert Jesenik, Brian Oliver, Brian Rice, Andrew MacRitchie, PAG, Chris Bean, Aaron Maurer, Aspen Grove, Doug Bean, Gary Price, and Jon Bishopp ("Enviso Suit"). Again, the Receiver understands that Liberty has notice of the Enviso Suit and has reserved its rights relating to that action. In response to the Receiver's request, on or about June 16, 2016, Enviso filed a notice of stay of proceedings. Subsequently, Enviso filed a motion to lift the stay [Dkt. 327] which it later withdrew after discussions with Receiver counsel.

D. Additional Claims

The following are summaries of additional claims presented to Liberty:

- February 25, 2016 demand letter asserting causes of action on behalf of Kirk Clothier against PAG, Jon Bishopp and Chris Bean, arising from investments in Aequitas ("Clothier Matter").

- March 23, 2016 demand letter, asserting causes of action on behalf of Elizabeth Secan and other PAG clients, against PAG and certain directors and officers of PAG, arising from investments in Aequitas ("Secan Matter").

- A draft complaint prepared on behalf of a number of clients of PAG ("Rahnama Matter").

- April 4, 2016 demand letter, asserting causes of action on behalf of May Lui, Wah Lui, Boewa Management Company and the Emily J. Lui Trust against PAG, Chris Bean and Jon Bishopp, again arising from investments in Aequitas ("Lui Matter").

6. Legal Authority Governing the Scope and Duration of the Stay

Equity receiverships exist "to promote the orderly and efficient administration of the estate by the district court for the benefit of creditors[,]" including investors. *SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir. 1986)*. A receivership is appropriate where, for example, there is a need to "marshal and preserve assets from further misappropriation and dissipation" and "clarify the financial affairs of an entity for the benefit of investors." *SEC v. Schooler, No. 12-2164, 2012 U.S. Dist. LEXIS 188994, *11 (S.D. Cal. Nov. 30, 2012)*.

Under Ninth Circuit precedent, courts exercise substantial discretion to stay litigation after considering three factors:

"(1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim."

Id. at 1038 (quoting *SEC v. Wencke ("Wencke II"), 742 F.2d 1230, 1231 (9th Cir. 1984)*). The "interests of the receiver are very broad," reaching to the receivership

property as well as "protection of defrauded investors and considerations of judicial economy." *Id. at 1037.*

The Ninth Circuit has recognized the potential for collateral litigation to create "havoc" for a receiver — even four years into a receivership — and on that basis upheld the district court's continued imposition of a "blanket receivership stay." Id. at 1039 (district court properly stayed senior lienholders from foreclosing on properties where investors had junior interest in relation to notes received by receiver entity in its own name or names of investors). A continued "blanket receivership stay" was proper because lifting the stay "would result in a multiplicity of actions in different forums, and would increase litigation costs for all parties while diminishing the size of the receivership estate." *Universal Fin., 760 F.2d at 1038.*

7. The Receiver Recommends Continuing the Stay of Litigation Against PAG, PAG Related Parties and Aspen Grove Members for at Least Another Ninety Days

The Receiver's next Quarterly Status Report is due on or before April 30, 2017. The Receiver recommends that Ancillary Proceedings against PAG, PAG Related Parties and Aspen Grove Members remain subject to the stay of litigation for another ninety days, with the Receiver making further recommendations in the next Quarterly Status Report.

As noted above, at the urging of the Receiver, the parties to the Brown Suit have worked diligently and cooperatively to develop an orderly process to address claims against PAG, PAG Related Parties, RPC, RPC Related Parties and others that is designed to maximize recovery to investors and other creditors on an expedited basis. A mediation is scheduled on March 1-2, in Seattle where the Brown Suit was filed. The insurers have committed to attend and participate. The entity and individual defendants have pledged

to produce financial statements and other evidence of potentially available assets prior to the mediation. With the input of the Receiver, the parties to the Brown Suit are in the process of assessing how best to expand the scope of the mediation to include the claims of investors who are not currently parties to the lawsuit as well as others who have claims against the defendants. For example, Enviso has been invited to participate in the mediation.

As discussed in the following section, the Receiver has developed a plan for the consolidation of all existing eDiscovery databases into a single accessible database. The Receiver's recommendation was recently submitted for review by the SEC Staff. Once the process of consolidating the existing databases is complete, investors, PAG, PAG Related Parties, Aspen Grove Members and others will be able to readily access documents to support their claims and defenses. Continuation of the stay of litigation against PAG, PAG Related Parties and Aspen Grove Members for a minimum additional ninety days aligns with the first reasonable date that parties would be able to efficiently access documents of the Receivership Entity pursuant to the process recommended by the Receiver.

As addressed in the Receiver's prior Quarterly Status Report, one option to address claims against PAG, PAG Related Parties and Aspen Grove Members is to lift the stay to the extent of the available insurance proceeds. Another would be to lift the stay to not only the extent of the insurance proceeds but to allow for recovery from Bean Holdings LLC, Chris Bean, Doug Bean, Jon Bishopp, Aaron Maurer, other PAG employees and independent contractors, Gary Price, Ron Robertson and Tim Feehan. In either circumstance, indemnification and other cross-claims against the Receivership Entity could be dealt with through the Receivership claims process. However, the Receiver remains confident that neither approach would serve the best interests of all

similarly-situated investors. One subset of investors with claims against PAG should not recover disproportionately to similarly-situated investors who did not immediately retain counsel and file suit. As noted, the purpose of a Receivership is to benefit creditors generally, not those specific investors who first retain counsel and rush to file suit. *Hardy 803 F.*2d at 1038.

In the event that the stay of Ancillary Proceedings against PAG, PAG Related Parties and Aspen Grove Members remains in place for another ninety days, the parties to the Brown Suit and other stakeholders will likely complete a significant mediation which could ultimately lead to resolution of most, if not all, claims against at least the defendants to that action. An early, negotiated resolution of those claims is certainly preferable to full-course litigation which would significantly deplete or possibly completely exhaust relatively modest insurance policy limits potentially available to mitigate losses sustained by Aequitas investors.

For these many reasons, the Receiver recommends that the stay of Ancillary Proceedings against PAG, PAG Related Parties and Aspen Grove Members remain in place for another ninety days.

E. <u>Probable Impact of Discovery Directed to the Receiver and the Receivership Entity</u>

The Receiver has developed a plan to govern all discovery directed to the Receiver and the Receivership Entity in Ancillary Proceedings and those actions authorized in Paragraph 23. While there are multiple ways to deal with discovery requests, the Receiver seeks an approach that would (1) aid in the Receiver's investigation and (2) minimize cost for the Receivership and third-party litigants consistent with providing them full information.

The plan is currently under review and the Receiver expects to be kicking off the consolidation project within 30 days.

IV. Overview of the Receiver's Activities

A. Summary of Operations of the Receiver

1. Day-to-Day Management

With the termination of Aequitas management, the Receiver has needed to supervise the day-to-day operations of the various Receivership Entities. In addition to the daily management duties, the Receiver has focused on several key areas of his mandate, including the marshaling and preserving all assets for the benefit of the investors.

2. Bank Accounts

As discussed in the Initial Report, the Receiver has instituted an integrated on-line platform that facilitates banking, future claims processing and cash reporting for receivership cases. Cash basis reports including information for the current reporting period and case to date are attached as Exhibit B.

3. Staffing

a. Headcount Reduction

The Receiver continues with planned, targeted staffing reductions based on the needs of the enterprise. As of December 31, 2016, the Receivership Entity had 15 full-time employees and 1 part-time employee. The Receiver instituted an employee retention program, which provides for at least six-week notice to employees whose services are anticipated to no longer be required by the Receivership.

b. Contractors

In response to some staff attrition in addition to the planned reductions, the Receiver necessarily backfilled key accounting and technology positions with local

independent contractors (not affiliated with FTI). As of December 31, 2016, the Receivership employed four full-time equivalent accounting contractors and two part-time IT contractors.

4. Audit and Tax Preparation

In the ordinary course of business, the Receivership has many reporting and tax preparation responsibilities to investors and taxing authorities. With the resignation of Deloitte LLP as Aequitas' auditor and tax preparer, the Receiver was required to seek out and engage new professionals to fulfill those requirements.

a. Audit

The Receiver had engaged Burr Pilger Mayer ("BPM") to audit the 2015 financial statements for several Receivership entities where the Receiver believes an audit is likely to be helpful in connection with a sale or refinancing process. We concluded the audit for COF/CCM in December 2016 (satisfying a closing condition for the CCM sale) and the audit for CP LLC is ongoing.

b. Tax Preparer

The Receiver retained a tax specialist to assist legacy Aequitas staff in the preparation of tax and information returns, and to provide tax consulting services on an as-needed basis at the request of the Receiver. As of December 31, 2016, the Receiver filed 21 Federal plus 145 state tax returns. As of December 31, 2016, all required federal tax returns have been filed and there remain two state returns in process.[6] The retained tax professionals and Receivership employees are already working on the 2016 tax filings due in the first two quarters of 2017.

[6] The Massachusetts state return for ACM has not been filed pending resolution of a software glitch. Additionally, we are in the process of filing an amended Illinois state return for WRFF 1.

B. Tax Research

Numerous Aequitas investors have asked a number of questions about the tax implications of the investments held in Aequitas products and whether there are steps the Receiver can take to appropriately mitigate their tax consequences. The most common questions are about the minimum distributions required to be made from an IRA account as well as timing and amount of losses that may be claimed. Some IRS guidance is available and has generally been issued in response to significant investor loss cases in prior years such as Madoff. The Receiver cannot provide specific tax advice to investors. Information and references to IRS publications provided in this Report may be helpful to investors in determining the tax implications of their investments. The references cited herein are not an exhaustive list and other guidance may be applicable to an investor. Finally, IRS guidance and rulings may change at any time and could impact the information that follows in this section.

In all cases, investors are urged to consult their own tax advisors for guidance and counsel on the applicability and consequences of available IRS materials to their situation and the filing of current year returns, future years returns, and potentially amendments to prior year tax returns.

1. Valuation of Aequitas Investments Held in IRA Accounts

On November 14, 2016, United States Magistrate Judge Papak entered an Order Granting Receiver's Motion To Authorize Receiver To Estimate Value Of Promissory Notes For IRA Account Holders Upon Request [Dkt. 299] (the "Valuation Order") in connection with the Aequitas Receivership (Case # 3:16-cv-00438-PK in the United States District Court For The District Of Oregon, Portland Division).

Under the Valuation Order, the Receiver was authorized, but not required, to estimate the value of the unsecured subordinated promissory notes issued by Aequitas Commercial Finance LLC (the “Promissory Notes”) for any Investor who demonstrated to the Receiver that such Investor both (a) holds a Promissory Note in the Investor's Individual Retirement Account, and (b) is required to take a distribution from that Account (each, a "Promissory Note Value Estimate"). Any such Promissory Note Value Estimate provided to Investors may be accompanied by such disclaimers as the Receiver may deem necessary or appropriate and is made without recourse to or liability upon the Receiver.

As contemplated by the Valuation Order and consistent with that authorization, the Receiver has performed an analysis of potential investor recoveries following the monetization of Receivership assets. In determining the value estimate, the information relied upon by the Receiver has not been subjected to an audit in accordance with generally accepted auditing or attestation standards or the Statement on Standards for Prospective Financial Information issued by the AICPA. Further, the estimate was not based on a detailed review of any transactions, and cannot be expected to identify errors, irregularities or illegal acts, including fraud or defalcations that may exist. The assets analyzed are not readily tradable, have no public value indication, are illiquid, are often minority and/or other partial interests, and might be detrimentally affected by affiliation with Aequitas and uncertain consequences of past and future events involving Aequitas, the specific businesses involved, and the economy in general. Given the nature of the assets and the uncertainty inherent in the Receivership, the Receiver cautions that any estimates of value are subject to change

Based on the ostensible books and records of the Receivership and assuming the amounts and priorities reflected therein, the Receiver estimated recoveries by the

Private Note holders. Any change in the assumptions underlying these estimates would affect the likely recoveries of the Investors. In addition, there might be litigation and insurance recoveries by the Receiver but he believes they are too speculative and uncertain to estimate at this time. There are also potential litigation recoveries by Noteholders outside of the Receivership. Any investor meeting the criteria of the Valuation Order is advised to request a copy of the valuation letter via the Receivership's website. The Receiver understands that several note custodians (Equity Institutional/Equity Trust Company and Millennium Trust Company) have revised their valuations to be in-line with the Receiver's estimate.

All Promissory Note Value Estimates and information and assumptions related thereto issued by the Receiver pursuant to the Valuation Order are wholly without precedential value or presumed value in connection with any other aspect of this Receivership proceeding, including but not limited to claim amounts and priorities, security interests and any proposed distribution plan.

2. The SEC Complaint

As previously discussed, on March 10, 2016, the SEC filed a complaint against Aequitas and three named principals in the U.S. District Court for the District of Oregon. The complaint filed is a civil complaint and, to the Receiver's knowledge, no criminal complaint or information has been charged. Several states have initiated inquiries into the Aequitas matter but no criminal complaints have been filed to the best of the Receiver's knowledge. The type of complaint is a very important consideration in analyzing the applicability of certain IRS guidance to an Aequitas investor's situation.

3. IRS Rev. Rul. 2009-09 and Rev. Proc. 2009-20

A loss from criminal fraud or embezzlement in a transaction entered into for profit is deductible as a theft loss (IRC §165) not a capital loss. Theft losses from a

transaction entered into for profit avoid the itemized deduction limitations of other types of theft losses. The loss is deductible in the year discovered provided that the loss is not covered by a claim with a reasonable prospect of recovery. Qualification as a theft loss is a factual determination. The amount of loss is generally the amount invested less amounts withdrawn and reduced by claims with a reasonable prospect of recovery. Income reported to an investor, reinvested and previously included in taxable income increases the amount of loss. A theft loss may create or increase a net operating loss providing an opportunity for carryback. Carryback periods vary depending on the taxpayer.

Rev. Proc. 2009-20 provides an optional safe harbor to claim a theft loss when an investor has invested in an arrangement determined to be criminally fraudulent. The safe harbor allows an investor a uniform manner to determine theft losses when factual determinations are difficult. Specific criteria listed in the revenue procedure must be met in order to qualify for the safe harbor. Section 4.02 of Rev. Proc. 2009-20 contains the definition of Qualified Loss and requires (1) that the loss result from conduct that caused the loss where the lead figures or one of the lead figures is charged by indictment or information under state or federal law with commission of fraud, embezzlement or a similar crime that would meet the definition of theft for purposes of IRC Section 165. In Section 4.02(2) of Rev. Proc. 2009-20, the definition of Qualified Loss includes a loss resulting from conduct that caused the loss where a lead figure is the subject of a state or federal criminal complaint and either the complaint alleged an admission admitting the crime or a receiver or trustee was appointed.

In the Aequitas case, a receiver has been appointed but a state or federal criminal complaint has not been filed. A civil complaint has been filed. Because the SEC complaint is a civil complaint the requirements of Section 4.02(1) and/or 4.02(2) are

not met. This means that a loss claimed by an Aequitas investor in 2016 would not fall under the provisions of the safe harbor and the safe harbor could not be relied on to ensure the IRS would accept that 2016 is the correct year to claim the loss. IRS Rev. Proc. 2011-58 modified Section 4.02 of Rev. Proc. 2009-20. The material change was the addition of Section 4.03. Section 4.03 permits certain matters involving civil complaints to fall within the safe harbor; however, in those cases the "lead figure" who is the subject of the civil complaint must have died (in addition to other requirements of Rev. Proc. 2011-58). The additional safe harbor of Section 4.03 of Rev. Proc. 2011-58 is inapplicable at this time. If a criminal case is filed in the future (or if Section Rev. Proc. 2011-58 becomes applicable), an Aequitas loss may qualify for the safe harbor at that time.

4. IRS Program Manager Technical Advice 2013-03

If the safe harbor in Rev. Proc. 2009-20 is not available or an investor chooses not to use the safe harbor, IRS Program Manager Technical Advice 2013-03 ("PMTA 2013-03") may be instructive. Fair warning, PMTA 2013-03 cannot be used or cited as precedent. It is an internal IRS document that may give guidance on how the IRS would treat a similar matter. PMTA 2013-03 deals directly with the filing of amended returns for prior open tax years to exclude previously reported income if the income is determined to be phantom income. It concludes that filing of amended returns for open tax years is allowable and that phantom income reported (but not paid) in years that are closed should be added to basis and then deducted as a theft loss at the time the requirements for theft loss are met. PMTA 2013-03 also indicates that if, in an open tax year, the income reported was paid in cash (as was the case for many but not all Aequitas investors) the cash received may be reclassified as a return of capital in the earlier years. Finally, PMTA 2013-03 concludes that an investor must establish the

amount of income that was phantom income in prior years. The Receiver is not required to provide documentation to the investor but the investor must have some means to prove that income reported in open years was phantom income.[7]

5. Other Tax Matters

Form 1099s will be issued for payments made in 2016 to investors. Generally payments were suspended in 2016 but some payments were made in January/February of the year. This treatment is consistent with prior year reporting.

Form K-1s will be issued to investors who are equity members in:

- Aequitas Income Protection Fund LLC
- Aequitas Enhanced Income Fund LLC
- CCM Capital Opportunities Fund LP (fka Aequitas Capital Opportunities Fund LP)
- Aequitas ETC Founders Fund LLC
- Aequitas Hybrid Fund LLC
- Aequitas WRFF I LLC

Members of other Aequitas entities will receive tax reporting consistent with prior years.

C. <u>Development of Claims Process</u>

The Receiver has been working on the development of the claims process. So far, the Receiver has focused on two key areas: determining the Receivership Entities' data validation capabilities and working with existing external vendors to better understand their process and functionality as it relates to the solicitation of creditor/investor information, data management, and processing of future claims distributions.

The Receiver and his staff are currently determining the details of the claims validation capabilities of the Receivership Entities. The quality and content of data available in the general ledger of the Receivership Entities varies by entity and investment vehicle. Typically, each investment was recorded as a separate general

[7] Tax years are generally open for three years after the date of filing.

ledger account number. The Receiver hopes to leverage these general ledger entries to validate investor claims.

The Receivership Entities' ability to validate claims may be complicated by the role of aggregators of registered investment advisers. Several RIA aggregators entered into agreements with certain Receivership Entities in which the aggregators would request an investment tranche on a periodic basis (normally weekly). Each individual tranche represents investments from many investors; however, the Receivership Entities only recorded information at a tranche level, not an investor level. The Receiver and his counsel are determining how to handle claims associated with such investments.

The Receiver and his staff are working with the Receivership's two existing external vendors to determine how to best disseminate and solicit claims information and process the data. In the absence of an already agreed distribution plan, the Receiver must anticipate a variety of potential information that may need to be collected to validate creditor and investor claims and implement whatever distribution plan is ultimately approved. The Receiver and his staff are currently analyzing available information and working with the vendors to create a robust claims form and distribution system that will be capable of satisfying a potentially wide array of plans. The Receiver anticipates that the claims process will be rolled out in the coming months. Investors and creditors will be notified by U.S. Mail at their last known address, email when available, and posting of notice to the Receivership's website.

V. Assets/Interests Sold

A. EdPlus Holdings, LLC/Unigo Group sale

On June 21, 2016, the Receiver filed the Receiver's Motions for an Order (1) Authorizing Receivership Entities to Execute Instruments to Sell Extended Entity Assets,

and (2) Approving Compromise of Creditor Claim Against ACF [Dkt. 199]. As reflected in the motion and the Declaration of Ronald Greenspan filed in support of the motion [Dkt. 200], the consideration for the sale is $500,000 to be paid to EdPlus at closing (the "Initial Cash Proceeds"), $100,000 to be paid sixty days after the closing (based upon working capital true-up calculations), and an "earn out" based on the performance of EdPlus during the 12 months following the sale (the "Earnout") which may or may not result in additional payments of up to $12.9 million.

On June 28, 2016, the Court approved the motion, and entered the Order (1) Authorizing Receivership Entities to Execute Instruments to Sell Extended Entity Assets, and (2) Approving Compromise of Creditor Claim Against ACF [Dkt. 207] and the transaction closed on the same day. The Initial Cash Proceeds were used to repay debt owed by EdPlus including a portion of the $400,000 lent by certain Aequitas executives/investors and $100,000 lent to EdPlus by the Receivership Entity to cover EdPlus payroll during the sale process. An additional $100,000 was placed in escrow to fund a working capital adjustment reserve of which $52,699 was subsequently disbursed to the Receivership with an additional $10,347 held back pending resolution of a potential Dell Financial Services lease liability. Finally, the first reporting period for the quarterly statement of the Earnout closed September 30, 2016 and the initial statement for the quarter was received on December 15, 2016. The first quarterly statement did not indicate any positive EBITDA. If any funds are received on the Earnout, it is expected that they will be distributed (after costs) substantially to the Receivership Entity on account of its pre-Receivership loans to EdPlus.

B. Strategic Capital Alternatives/SCA Holdings

As discussed in the Initial Report, Strategic Capital Alternatives LLC, a Washington limited liability company ("SCA") and SCA Holdings LLC, a Washington

limited liability company ("SCAH") are each entities operating in the investment advisory industry. Although SCA and SCAH are not part of the Receivership Entity or Extended Entities, they have financial relationships with the Receivership Entity.

As previously reported, the Receiver agreed to sell the Receivership Entity's interests in SCA Holdings LLC for $815,000. Based on an agreement with the senior lender to Aequitas Corporate Lending ("ACL") and as provided by the Receivership Order, the proceeds from the sale of CCM's interest in SCA were segregated and remain subject to the lien of senior lender of ACL (to the extent it had a lien in the sold assets).

The Order Granting Receiver's Motion to (1) Accept Discounted Loan Payment, and (2) Sell Membership Interest in SCA Holdings LLC [Dkt 258] was entered by the Court on September 30, 2016. On October 31, 2016, the transaction was closed and the Receivership received the consideration in full satisfaction of the agreement.

C. Prior Sales Efforts

In addition to the most recent asset sales discussed above (and as reviewed in detail in the Initial Report), since the appointment of the Receiver, the Receivership has conducted a competitive sale process and sold two large Consumer Loan Portfolios realizing approximately $64.2 million in gross proceeds or $10.1 million in proceeds, net of the payment to the Comvest Lenders in satisfaction of the Comvest Loans; plus an additional $9.2 million of collections that had been previously retained by Comvest Lenders that were released to the Receivership. The Receivership Entity has also sold, through competitive bidding, certain office equipment and furniture (the "OEF") located at the Entity Defendants' business premises at 5300 SW Meadows Road, Suite 400, Lake Oswego, Oregon, realizing over $50,000 in net proceeds.

D. Ongoing Sales Efforts

The Receiver continues to prepare assets for sale and actively market other assets. Significant resources have been expended to support the ongoing sale process and due diligence of potential buyers of CCM's assets, including the Receivership Entity's interest therein.

1. CCM (fka Aequitas Capital Opportunities Fund)

CCM is a $102 million fund formed to make control and minority investments in small to middle-market financial services companies. Affiliates of Aequitas Capital Opportunities GP, LLC (the General Partner and together with its affiliates, "Aequitas") committed $69.6 million to COF via the contribution of equity in five companies operating in the healthcare, education, and financial services/technology industries. Aequitas contributed equity in a sixth company to CCM after its formation and CCM has made direct investments in two additional companies.

As detailed in Previous Reports, the Receiver's marketing efforts related to the CCM Interests dates back to April 2016. Multiple parties conducted due diligence and two – Origami Capital Partners and FTV Capital entered into letter of intent acquisition agreements with the Receiver prior to September. The Origami agreement provided for it to buy the Receivership's interests in CCM after removing therefrom CCM's ownership interests in CarePayment Technologies, Inc. (the "Stub Portfolio"). Such agreement was subject to overbid pursuant to a sales procedure order entered by the Court.

On October 27, 2016, CSC filed pleadings with the Court submitting its bid for the Stub Portfolio.[8] At the hearing that subsequently took place the same day, the Court determined that CSC had submitted an Alternative Qualifying Bid. At an ensuing live auction, CSC submitted a

[8] The Stub Portfolio was defined as the CCM interests in the remaining portfolio companies with the exception of CarePayment Technologies, Inc.

winning bid for the Stub Portfolio for total of $14,675,000 and received the right to exclusively negotiate a stalking horse offer for the balance of the CCM portfolio (CCM's interest in Care Payment Technologies, Inc.). The Court entered an Order Granting Receiver's Motion to Sell Personal Property Free and Clear of Liens, Interests, Claims and Encumbrances (the "Stub Portfolio Sale Order") to CSC. [Dkt. 283].

Pursuant to the Agreement of Purchase and Sale approved by the Stub Portfolio Sale Order, the initial closing deadline was November 30, 2016, unless extended by the parties. That deadline was extended by mutual agreement to December 7, 2016. The closing deadline was made subject to further extension if the Receiver and Cedar Springs agreed to include CarePayment in the transaction. Those negotiations were fruitful and resulted in an executed Purchase and Sale Agreement by December 7, 2016 under the following terms:

(a) Property to be Sold: Property (as defined in the Purchase and Sale Agreement), including all of the CCM Interests (including CCM's interests in CarePayment) and the Notes.

(b) Owners of the CCM Interests:

Receivership Entity	Percentage Ownership in CCM
Aequitas Commercial Finance, LLC	51.90%
Aequitas Private Client, LLC	12.50%
Aequitas Holdings, LLC	3.64%
Aequitas Capital Opportunities GP, LLC	1.00%
Total:	**69.04%**

(c) Purchase Price: $52,000,000, in cash at closing, as set forth in the Purchase and Sale Agreement.

(d) Principal Conditions to Buyer's Obligation to Close: The conditions to the Buyer's obligation to close the Sale are set forth in Section 9 of the Purchase and Sale

Agreement.

(e) Buyer: Cedar Springs Special Opportunities IV, LP, and CSC Spec Opps IV GP, LLC, or one or more of their affiliates.

(f) Buyer's Relation to Receivership Entity or Receiver: None.

(g) Higher and Better Offers. The Purchase and Sale Agreement was subject to the submission by third parties of higher or better offers as set forth in the Bid Procedures Order.

(h) Closing Deadline: The earlier of (i) January 18, 2017, or (ii) seven (7) business days following the date of entry of the Final Sale Order, except if the Final Sale Order is entered prior to January 18, 2017, and there is an appeal or request for reconsideration, the Closing Deadline will be on the earlier of (x) three (3) business days following the date that the Final Sale Order is not subject to modification or reversal on appeal or (y) February 1, 2017.

(i) The Stalking Horse Bidder's offer is not subject to any finance or due diligence conditions.

(j) Limited representations and warranties, with standard covenants, indemnities and closing conditions for the purchase and assumption of the Property.

Following a seven day conferral period, on December 16, 2016, the Receiver filed 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 (the "CCM Sale Motion") [Dkt. 323]. Judge Papak signed the proposed order (the "CCM Sale Order") on December 28, 2016 setting the time for qualified overbids for January 11, 2017 at Noon Pacific, the deadline to file objections on January 18, 2017 (the "Objection Deadline") and a Final Hearing date to approve the CCM Sale, including a sale to a Successful Bidder, for January 20, 2017.

The Receivership has had continuous activity by interested parties since the marketing of the CCM Interests commenced in late spring and that activity had intensified since our first stalking horse transaction with Origami in November. The sale to CSC and change in general partner has been approved overwhelmingly by the limited partners.

The period for overbids expired on January 11, 2017 with no interested party submitting a qualified overbid. The Receiver did receive a non-binding, unfunded, "indicative offer" from Compass Partners International II, LP ("Compass") which did not meet the criteria of a qualified overbid as defined by the CCM Sale Order---and the "indicative offer" specifically stated that the prospective buyer needed an additional 45 days to finish its due diligence and determine whether it would commit to purchase the interests. Accordingly, the Receiver moved forward to the final sale hearing on January 20, 2017 to seek approval of the CSC sale.

2. Objections to the sale

a. Compass Partners International II, LP ("Compass")

On January 18, Compass submitted an additional letter to the Receiver and filed a Limited Objection [Dkt. 350] which were both a similar request and raised no additional issues. Simply put, Compass failed to submit a Qualified Alternative Bid by the Bid Deadline. The January 11 and 18 letters expressed nothing more.

The Receiver could not grant Compass' request for additional time. First, there was an existing Court order providing for the bid procedures, which the Receiver could not unilaterally change. Second, the largest of these assets has been marketed since approximately September 2015 and by the Receiver since shortly after his appointment. Many parties have expressed an interest in purchasing them during this time, and there was nothing unique about Compass' wholly contingent, non-enforceable interest. In fact,

the Receivership Entity had been in contract twice previously (with FTV and with Origami) and after due diligence meaningfully reduced their bids. Even CSC meaningfully reduced its bid after conducting due diligence. There was no reason to believe that Compass (which purports to offer significantly more money for the CCM Interests) would be different than any of the other prospective purchasers. Additionally, CSC very well might have declined to proceed with the transaction if the sale process was extended beyond the then current contractual deadline, jeopardizing the Receivership Entity ever receiving the $52 million cash CSC was obligated to pay for CCM and the follow-on sale of the $70 million receivables portfolio.

On January 20, 2017 - following arguments from both sides - Judge Papak agreed that Compass failed to comply with the requirements of submitting a qualified overbid and concluded that the Receiver had more than adequately marketed the assets. Judge Papak approved the sale to CSC and has entered a Final Sale Order. Documents necessary to effect the closing and transfer of the Receivership's interests are being negotiated.

b. Terrell Group Management ("TGM")

On January 18, 2017, TGM filed a Limited Objection to the CCM Sale [Dkt 349]. TGM claims a first priority security interest against substantially all of the assets of Aequitas Corporate Lending, LLC ("ACL"), which TGM contends collateralize a loan made by TGM with a balance of approximately $7.7 million (the "ACL Loan"). One of ACL's assets is its loan to CPYT, with a balance receivable of approximately $3.5 million (the "CPYT Loan"). CSC is purchasing the loan from the Receivership for an amount equal to its principal plus accrued interest (about $3.9 million).

Because the Receiver has not begun his formal investigation into the validity of TGM's claims, it is premature, and potentially prejudicial to the Receivership Entity, to

disburse the loan sale proceeds to TGM at the closing of the Sale. TGM's claim, if ultimately determined to be valid, is protected because the order approving the Sale provides that TGM's lien attaches to the loan sale proceeds to the same extent, validity and priority as its liens are finally determined to attach to the loan receivable itself.

As additional protection for TGM, the Receiver agreed to hold the loan sale proceeds in a segregated non-interest bearing account (in the current economic environment, the Receiver's demand accounts do not bear interest). Although such funds would otherwise remain available for use by the Receiver pursuant to the terms of the Final Receivership Order, the Receiver agreed not to use those funds except after either (a) obtaining TGM's consent, or (b) securing approval by the Court following notice and an opportunity for TGM to object.

c. Weider Health and Fitness and Bruce Forman

On January 18, 2017, Weider Health and Fitness and Bruce Forman (referred to collectively as "Weider/Forman") filed a (i) Limited Objection to the CCM Sale And (ii) Request For Adequate Protection [Dkt 344]. Weider/Forman alleges that they lent money to CarePayment Holdings, LLC ("CPH"). The Weider/Forman loans purport to bear interest currently at the 25% per annum default rate and to be secured by a lien on the assets of CPH, including CPH's equity interests in its subsidiaries, CarePayment, LLC ("CP LLC"), and CP Funding I Holdings ("CP FIH"). CP FIH owns 100% of the equity of CP Funding I Trust ("CP FIT"). CP LLC and CP FIT own valuable healthcare related accounts receivable (the "Receivables Portfolios") that were generated as part of the CarePayment platform of services and companies. Weider/Forman does NOT have a security interest in the Receivables Portfolios or any asset owned by CP LLC, CP FIH or CP FIT. CPH, CP LLC and CP FIT are not entities owned by CCM and no interests in any such entities are being sold as part of the CCM Sale. Rather, as part of the sale to CCM, CarePayment is

obtaining a six month option to acquire the health care receivables owned by CP LLC and CP FIT. The parties expect the option will be exercised. The purchase price will be determined based on a formula and the amount of health care receivables outstanding at the time of exercise. The purchase price is expected to be in excess of $60 million.

The Receiver had previously negotiated a compromise and settlement of the Weider/Forman loan to be satisfied upon the monetization of the health care receivables (after repayment of the senior secured debt). The Receiver believed the compromise was a fair deal for all parties and such compromise was not objected to by the SEC and approved by the Investor Advisory Committee. In the 4th Quarter the Receiver was advised that Weider/Forman had changed legal counsel. New counsel engaged in an extensive dialog with Receiver's counsel and made substantial informational requests, all of which requests the Receiver complied with so far as relevant. Shortly before the filing of the Objection, counsel for Weider/Forman advised the Receiver that his clients no longer intended to participate in the settlement and would be objecting to the asset sale.

In its objection to the sale, Weider/Forman demanded preferential treatment in the form of immediate repayment of its purported loan from the proceeds of the CCM Sale, notwithstanding the fact that the sale does not involve the sale of any of their purported collateral, or segregation of funds for that purpose. In an attempt to garner leverage over the Receiver's attempts to monetize its assets for the benefit of all creditors and investors, Weider/Forman asserted that their loan documents grant them "sole discretion" to veto the CCM Sale since the sale involves an option to purchase the assets owned by CP LLC and CP FIT, whose stock they contend was pledged to them. The Receiver does not believe there is any basis in the law that allows Weider/Forman to

hold this Receivership and its assets hostage so they can step ahead of all other investors.

First, the CCM Sale does not include a sale of any of Weider/Forman's collateral. And even if and when CarePayment exercises its option, post-closing, to purchase the Receivables Portfolios owned by CP LLC and CP FIT, the assets being purchased are not collateral alleged to be held by Weider/Forman (they allegedly have a security interest in the stock of the companies (or parent company) which own the receivables). Weider/Forman based their objection to the sale on the provision of the purported security agreement which purports to grant them approval rights on the disposition of the receivables portfolios. No receivership could efficiently monetize its assets for the benefit of defrauded investors if all contractual restrictions were enforceable such that favored parties could extract disproportionate value from the Receivership in exchange for waiving such restrictions. According, the Receivership Order allows the Receiver to dispose of its assets free and clear of liens claims and encumbrances.

In the Initial Report, the Receiver, provided information regarding the anticipated monetization of the CP LLC and CP FIT receivables portfolios pursuant to a loan from Goldman Sachs (which loan was not consummated). As specifically stated in that Report, **based on the facts known to the Receiver at that time**, the Weider/Forman Loans **appeared** to be substantially over-collateralized and validly perfected.[9] Also, as reported at that time, Weider/Forman had agreed to a payoff of $8.5 million in full satisfaction of the $10.5 million principal balance of the note and the then accrued interest balance of approximately $800 thousand.

New information has come to light and what "appeared" to be the situation is not in fact the case. Weider/Forman's subsequent rejection of the agreed upon settlement

[9] To reach this initial determination, Receiver's counsel reviewed loan documents, security agreements and promissory notes as well as conducted a search for appropriate and applicable UCC-1 financing statements.

terms frees the Receiver to assert the Receivership Entity's full legal rights. In conjunction with its rejection of the Weider/Forman opposition to the sale, the Court agreed to hold a hearing to determine whether any amount should be set aside with a substitute lien (which lien would only exist to the same right and extent as their lien on the collateral, if any). The Court further stated that such hearing is strictly to determine if a set aside should be required and the amount thereof and will not establish the amount and priority of any claim by Weider/Forman, which can expect such issues to be resolved as part of the Receivership claims administration process. The Receiver now has compelling evidence, including a declaration filed by Mr. Forman, that Weider/Forman did not in fact loan to CP Holdings LLC $6 million of the $10.5 million they claim. Other defenses likely exist to the balance of the obligation. If correct, there would be no basis to segregate proceeds in that amount from the loan sales (as and when they occur) since they would not have a legally cognizable loan and security interest. Further, the Receiver might have grounds to pursue repayment by Weider and Forman of payments made to them pre-Receivership, which rights are expressly reserved.

To provide time for the Court and the Receiver to evaluate these new facts and to protect what interests Weider/Forman may ultimately have (if any), in the event CPYT exercises the option to purchase the Receivables Portfolios, the Receiver agreed that all of the proceeds (after the payment of senior debt that is secured by those receivables) will be held in a segregated, non-interest bearing account under the same terms as set forth above for the TGM proceeds until the Court rules how much, if any, should so be retained.

3. WindowRock Feeder Fund ("WRFF 1")

WRFF 1, through its affiliates, holds a management contract entitling the Receivership Entity to a management fee of 75 basis points annually on invested capital (approximately $21.8 million) by the investors in the Window Rock Residential Recovery Fund.[10] The Receiver has negotiated a restructuring of the Receivership Entity's interest in WRFF 1 which will generate payment of $164 thousand plus any accrued, but unpaid fees as compensation for the Receivership interest.[11] The parties are negotiating the transaction documents.

4. ACC Holdings 5 (Luxembourg Bonds)

The Receivership Entity is involved in a complex trust structure (the "Lux Investment") related to several series of bonds offered on the Luxembourg Stock Exchange (the "Bonds") to non-U.S. investors. The issuer of such bonds is Aequitas Income Opportunities S.A. (the "Issuer"), which is not part of the Receivership Entity. Issuer is an independent company that is owned by a Dutch Stichting (foundation) and managed by a Board of Directors.[12]

The Issuer purchased limited partnership interests in Aequitas International Opportunities LP, a Cayman Islands limited partnership ("Cayman") which is one of the "Extended Entities" under the Final Receivership Order. Cayman is the holder of certificates of beneficial interest ("CBI") in ACCH5 (part of the Receivership Entity), which is wholly-owned by AH (also part of the Receivership Entity). ACCH5 established a series

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[10] http://windowrock.com/

[11] As of September 31, 2016, the purchase price would be $164,000 + (one year of fees or $21,839,176 * .75%) = 327,793.82.

[12] Consisting of Mr. Andrew MacRitchie, Mr. Elvin Montes and Ms. Laetitia Antoine. Mr. MacRitchie was formerly an officer of the Receivership Entity and owns a minority membership interest in Aequitas Management LLC ("AM"). The other directors do not have any past relationships with the Receivership Entity.

of Grantor Trusts that purchased and currently holds certain C+ and F+ Freedom loan portfolios.

On November 17, 2016, the Receiver received a proposal (the "Lux Proposal") from counsel representing the Issuer to acquire certain rights and terminate certain obligations of the Receivership Entity in certain entities in which Lux has invested and that are controlled by the Receivership Entity, including Cayman and certain related entities. The Lux Proposal suggests that:

(1) AIH withdraw as the general partner of Cayman in return for a redemption of AIH's general partnership interest for a purchase price equal to $17,460 (AIH's original capital contribution)[13];

(2) ACF resign as the grantor of the ACC Trust and the principal balance of the ACF Loans (as described below) would be reduced by an amount equal to the accrued, but unpaid management fees payable to ACF in respect of calendar year 2016;

(3) AEI would continue to own its convertible preferred equity certificates ("CPEC") issued in connection with the Lux Investment Structure.

Lux raised capital primarily through issuance of bonds listed on the Luxembourg Stock Exchange (the "Bonds"). In addition, Aequitas Enhanced Income Fund LLC ("AEI") advanced approximately $1.6 million to provide first loss coverage to the Lux Structure and in return received CPECs in an equal amount.

[13] The balance shown on the books and records in account AIH Investment in AIO (Cayman) 10275-00-000-16900 is $59,309.97.

Lux invested $15.6 million (the "Lux Funds") of the net proceeds from the Bond and CPEC offerings to purchase four classes of limited partnership interests ("LP Interests") in Cayman. Aequitas International Holdings, LLC ("AIH"), one of the Receivership Entities, serves as the general partner of Cayman.

Cayman in turn used $11.8 million of the Lux Funds to purchase certificates of beneficial interest ("CBIs") in ACC Funding Series Trust 2015-5, a Delaware statutory trust (the "ACC Trust"), which is a bankruptcy remote special purpose entity established to hold the consumer debt that was acquired with the Lux Funds.

Pending the origination of additional Consumer Loans for purchase by Cayman through the ACC Trust, the Receivership Entity borrowed the cash portion of the Lux Funds held by Cayman to make temporary loans to ACF. At the time of the Receivership, the remaining loans had an aggregate principal balance of $3.8 million that bear interest at the rate of 6% per annum. One loan was due and payable as of December 31, 2015, the other as of January 14, 2016 (the "ACF Loans"). The last interest payment on these loans made by ACF was on December 29, 2015.

Subsequent to the commencement of the Receivership, the Receiver has suspended any distributions of funds (the "Lux Cash") from the Series Trusts to Cayman except to pay expenses of the Lux Structure. The Lux Cash is being collected and held in a segregated bank account and as of December 31, 2016 the aggregated total was approximately $5.7 million.

Lux asserts that such Lux Funds and associated Lux Cash should not be considered part of the Receivership Estate or subject to claims of the creditors of the Receivership Entity and should be remitted to Cayman for distribution to its limited partners without delay. Further, Lux maintains the Lux Cash has been generated by Consumer Loans owned by the Trust Series as to which Cayman contends it owns 100%

of the beneficial interests. Lux also asserts Cayman was the only investor through these trusts - i.e., there was no other direct investors and the assets were segregated and not comingled with any other Receivership assets.

However, the Receiver believes that at least $2.3 million of allegedly defrauded investor funds was expended to establish the scheme. The transaction, as proposed, provides no recovery of those funds. Based on the economics, the Receiver cannot support a transaction that will release a significant source of recovery while receiving virtually nothing in return.

VI. Communications to Interested Parties

A. Ongoing Communication with Investors/Counsel

To facilitate regular communication regarding significant opportunities, challenges and actions, the Receiver formed the Investor Advisory Committee (the "IAC") which consists of 49 investors and advisers. Participation was solicited based on size of the investor or investment advisor and also with an eye toward ensuring that all of the significant constituencies would be represented. The latest in-person meeting of the IAC was held on November 2, 2016 and a telephonic meeting was held on December 21, 2016. In addition, the Receiver held four telephonic meetings[14] open to all CCM limited partners in conjunction with the CCM Sale.

B. SEC and Other Governmental Agencies

1. SEC

As previously discussed, on March 10, 2016, the SEC filed a complaint in this Court alleging that certain Aequitas executives and five entities had violated various federal securities laws. On June 6, 2016, the SEC and the Receiver, acting on behalf of

[14] December 9, 14, 16 and 21.

the Aequitas Entity Defendants, filed a consent judgment with the Court, which resolved the claims set forth in the SEC Complaint against the Entity Defendants only, without admitting or denying the numerous allegations. We continue to interact and cooperate with the SEC, as required by the consent judgement, but there is nothing new to report as of now.

2. CSF and CFPB, and State Attorneys General

The Receiver continues to spend a substantial amount of time and energy responding to requests for information from the various government agencies and also continuing his discussions with them on the best way to provide student borrowers with meaningful debt relief, while simultaneously preserving value for the benefit of Receivership Entity investors.

More specifically, the Receiver continues to discuss with the CFPB the appropriate documentation to effectuate the relief previously agreed to in concept. The Receiver has also taken an active role in bringing state attorneys general into direct contact with the CFPB, and engaging in discussions with state attorneys general himself, in an effort to ensure the final resolution satisfies a broad group of constituents and limits future claims against the Receivership Entity. The Receiver and a lead group of states attorneys general to date are substantially apart on their proposals to resolve the situation.

VII. Lender Relationships

A. The Direct Lending Income Fund, LP ("DLIF") Financing

CP LLC continues to receive financing from the Direct Lending Income Fund, LP (DLIF), the entity which purchased Bank of America's credit facility on March 16th, 2016. CP LLC is the main financing facility for health care receivables originated and serviced

by the CarePayment platform, with all new account originations flowing through this facility. The continued operation of CP LLC's borrowing facility is essential to the operation of CPYT's origination and servicing platform.

The combined efforts of CPYT, DLIF and the Receivership allowed CP LLC to successfully increase the cap on the facility from $35 million to $45 million as of early October 2016, giving CP LLC the necessary financing to continue operations and portfolio growth, thereby maintaining CPYT's going-concern value. The Receivership was also able to maintain an 85% advance rate on the cost basis of the portfolio as well as maintain pre-default interest rates on the portfolio (on which DLIF has currently opted to defer payment). As of December 31, 2016, the total loan in the DLI facility had been expanded from its pre-Receivership size of $18.1 million to $38.5 million (and receivables securing the facility increased from $38.3 million to $60.7 million). Based on current funding projections, the $45 million facility is expected to allow funding and originations to continue through the beginning of 2017.

B. <u>The Wells Fargo Financing</u>

The Receivership has continued to work with Wells Fargo, a secured lender to the Exhibit B entity CP Funding 1 Trust (CPFIT). As of December 31st, 2016, the CP FIT portfolio has been reduced by 48.2% of its pre-Receivership size, and the loan from Wells Fargo has been paid down by $15.8 million, through the weekly waterfall payment structure. Under the amended Receivables Loan Agreement, on August 24th, 2016, the Wells Fargo credit facility began to sweep all cash flow as enhanced principal amortization.

Through discussions with Wells Fargo management, the Receiver proposed further amendments to the Receivables Loan Agreement that provide greater flexibility to better allow the portfolio to continue to liquidate stably. These changes include, but

are not limited to, the ability to continue originating a small number of "subsequent sale" accounts, a stable Maximum Effective Advance Rate, and extended timelines to cure deficiencies (if any were to occur) in the portfolio.

These changes were mutually agreed upon with the understanding that CP FIT would operate under these revised provisions until October 31st, at which time the amendment would be revisited. Subsequent to October 31, Wells Fargo has elected not to formally modify the loan and both parties have been operating as if these provisions are still in effect.

VIII. Assets in the Possession, Custody and Control of the Receivership Estate

A. Cash and Cash Equivalents

The Receiver has possession of cash balances of approximately $38.8 million as of December 31, 2016. Over the period from March 16, 2016 to December 31, 2016, the overall cash balance of the Receivership Entity increased by approximately $23 million and has remained virtually flat since September 30, 2016.

Attached as Exhibit B to this Report is the Report of Cash Receipts and Disbursements in the form of the Standardized Fund Accounting Reports as prescribed by the SEC. The reports, together with the accompanying footnotes and detailed schedules, provide an accounting of the Receivership Entity's cash activities through December 31, 2016.

B. Notes Receivable

For notes receivable from non-Receivership entities, the Receiver and staff continue to pursue collection and will continue to provide progress updates. As of December 31, 2016, there were approximately $7.3 million of third party notes

receivable principal amount outstanding and delinquent. On November 4, 2016, the Receiver filed a Motion (1) To Lift Stay For Limited Purpose, And (2) For Authority To Initiate Litigation [Dkt 288] to commence litigation if necessary to collect on certain of these notes receivable. The Court granted the Receiver's motion and entered the Order Granting Receiver's Motion (1) To Lift Stay For Limited Purpose, And (2) For Authority To Initiate Litigation Against Certain Obligors To The Receivership Entity that same day [Dkt 292]. The Receiver and his attorneys prepared pleadings to pursue collections and very recently reached a negotiated, pre-litigation resolution with one of the obligated parties.

C. Receivership Insurance

1. Background

The Aequitas Entities had a $15,000,000 tower of Directors & Officers and Professional Liability coverage that was initially in effect for the policy period of July 1, 2014 to July 1, 2015, and was subsequently extended for an additional four months to November 1, 2015 (hereinafter, the "2014/2015 Policies".) The $15,000,000 of combined limits of liability of the 2014/2015 Policies were from three separate policies consisting of a $5,000,000 primary policy issued by Caitlin Insurance, a $5,000,000 first-level excess policy issued by Lloyd's of London, and a $5,000,000 second-level excess policy issued by Starr Indemnity.

Upon the expiration of the 2014/2015 Policies, the Aequitas Entities purchased another $15 million tower of Directors & Officers and Professional Liability coverage that was in effect for the policy period of November 1, 2015 to November 1, 2016 (hereinafter, the "2015/2016 Policies".) The $15,000,000 combined limits of liability of the 2015/2016 Policies was from three separate policies consisting of a $5,000,000 primary policy issued by Lloyd's of London (Forge Underwriting), a $5,000,000 first-level excess policy issued by Lloyd's of London, and a $5,000,000 second-level excess policy

issued by Starr Indemnity. The terms of the coverage provided by the 2015/2016 Policies are, with some minor exceptions, the same as the 2014/2015 Policies they replaced.

Both the 2014/2015 Policies and 2015/2016 Policies are “claims made” policies triggered by **Claims**[15] first made during the policy period. In certain instances, a **Claim** made *after* the policy period expires is deemed a single **Claim** *first made during* the policy period if such post-policy **Claim** arises out of, is based upon, or is attributable to, the same **Wrongful Act** or **Interrelated Wrongful Acts**[16] asserted: (i) in a prior **Claim** first made during the policy period; or (ii) the same **Wrongful Act** or **Interrelated Wrongful Act** which the insurer had received notice of during the policy period pursuant to a Notice of Potential Claim.

A **Wrongful Ac**t for **Insured Persons** refers to the act, error, omission, misleading statement, misstatement, neglect or breach of duty in their capacity as an officer, director or manager of an insured entity, including in rendering or failing to render Asset Management Services. For **Insured Organizations**, such as the Aequitas Entities, a **Wrongful Ac**t refers to an act, error, omission, misleading statement, misstatement, neglect or breach of duty in providing **Asset Management Services** or, *inter alia,* the **Insured Organization’s** capacity as a **Controlling Person** and as a purchaser or seller of a **Portfolio Company**.

For both **Insured Persons** and **Insured Organizations**, covered **Wrongful Acts** include those occurring in connection with the sale of securities, whether debt or equity,

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[15] Words that are **bolded** are defined within the subject policies.

[16] The term **Interrelated Wrongful Acts** is defined in the two sets of policies to mean “. . . **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.”

but *only* if the securities are exempt from regulation under the Securities Act of 1933. Finally, **Claims** made against the Aequitas Entities by governmental organizations are excluded but are covered if made against **Insured Persons**.

2. Notice of Claims and Potential Claims Given Under the 2015/2016 Policies

With the expiration of the 2015/2016 Policies occurring as of November 1, 2016, the Receiver determined that it was necessary to provide the carriers who had issued the 2015/2016 Policies with notices that would satisfy the condition precedent, *e.g.*, trigger of coverage for these policies, to wit: **Claims** first made during their policy period. Accordingly, a significant amount of time was spent by the Receivership Entity, by and under the direction of certain of its professionals, in identifying, analyzing, and then preparing the notices to the insurers who had issued the 2015/2016 Polices of: (i) **Claims** that were first made against the Aequitas Entities, the Receiver and/or the Receivership Entity during the 2015/2016 policy year; and (ii) determining, through the analysis of various pleadings against the Aequitas Entities' former professionals and internal investigation, the existence of actual or alleged **Wrongful Acts** attributable to the Aequitas Entities and/or their former management that were ***not*** part of the **Claims** made during the 2015/2016 policy year or **Claims** and/or potential **Claims** for which notice was given under the 2014/2015 Policies. The matters for which notice was given under the 2014/2015 Policies included the SEC Investigation, which later turned into the currently pending SEC Litigation, and the CFPB Investigation of the Aequitas Entities involving its relationship with Corinthian Colleges, including its purchase and management of loans originated by Corinthian Colleges.

The notices sent out to the insurers for the 2015/2016 Policies (in particular, the Notices of Potential Claims) identified, *inter alia*, the Receivership Entity, as successor to

the Aequitas Entities, and those who qualify as **Insured Persons** (including former members of management) and **Advisory Board Members**, as potential targets of the future **Claims** of which it gave notice. For the Notices of Potential Claims, Investors were of course referenced as possible claimants. The Receiver, whose **Claims** against the Aequitas Entities former management are allowed under the 2015/2016 Policies pursuant to an express exception to the Insured v. Insured Exclusion, was also identified as a possible claimant.

Whether **Claims** brought by Investors or the Receiver after the expiration of the 2015/2016 Policies relate back and trigger coverage under the 2015/2016 Policies, the 2014/2015 Policies, or both sets of policies, will in large part be determined based upon the interpretation of the Interrelated Claims provisions found in both the 2014/2015 Policies and the 2015/2016 Policies. These Interrelated Claims provisions provide:

> "All **Claims** arising from, based upon, or attributable to the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** first made on the earlier date that:
>
> A. any such **Claim** was first made, even if such date is before the Policy Period;
>
> B. proper notice of such **Wrongful Act** or **Interrelated Wrongful Act** was given to the Insurer pursuant to Section . . . ; or
>
> C. notice of such **Wrongful Act** or any **Interrelated Wrongful Act** was given under any prior directors and officers, management, or similar insurance policy."

How this provision will be interpreted and applied for each **Claim** made after the expiration of the 2015/2016 Policies cannot be determined at this time. Whether such post-expiration **Claims** made against the Receivership Entity (as the successor of the Aequitas Entities) or Aequitas' former management relate back to the 2014/2015 Policies, the 2015/2016 Policies, or both sets of policies, depends upon a variety of

factors, including the form in which each **Claim** is made and the specific assertions made therein.

3. The Receiver's Attempts to Obtain Renewal Coverage and Not to Purchase an Extended Reporting Period for the 2015/2016 Policies

The carriers providing the 2015/2016 Policies declined to renew their policies. The Receiver also determined, after inquiry, that he could not cost-effectively obtain any new "Directors and Officers" or "Professional Liability" insurance coverage for the Aequitas Entities' or its former management's historic activities.

Separately, the Receiver undertook an analysis, with significant input from his professionals, to determine whether to spend approximately $1,000,000 to purchase an "Extended Reporting Period" for the three 2015/2016 Policies. An "Extended Reporting Period", such as the ones here, provides an extended period of one-year (12 month) in which a claim can be first made and will be treated as timely after the policies were originally set to expire. The purchase of an "Extended Reporting Period" does not, however, provide an insured with any "fresh" (*i.e.*, new) limits of liability for the $1,000,000 in premiums that are charged, above and beyond the expiring policies' combined $15,000,000 limits.

The Receiver ultimately determined not to purchase an "Extended Reporting Period" for the expiring 2015/2016 Policies, taking into consideration a variety of factors, including but not limited to: (i) the breadth and scope of the Notice of Potential Claims that were provided for the 2015/2016 Policies, whose purpose were to preserve coverage under the 2015/2016 Policies for post-expiration **Claims** predicated upon **Wrongful Acts** that were not made in prior Claims; (ii) the approximate $1,000,000 premium for an "Extended Report Period"; and (iii) the fact that the purchase of an "Extended Reporting Period" would not provide the Receivership Entity with any

additional (new) insurance assets available to respond to the Receiver's or the Investors' **Claims**.

4. Payments made on behalf of the defense of the Individual Defendants

Under the Court's May 23, 2016[17] order granting limited relief from the stay to permit limited payment of defense costs for the Individual Defendants under the Receivership's D&O policy, the Individual Defendants are required to submit to the Receiver on a quarterly basis, commencing within 90 days of the entry of the order, a report reflecting the aggregate amount of Defense Costs paid by the Insurer on behalf of the Executives during the prior quarter. The Receiver was informed by counsel for XL Catlin that the total of those payments to date as of September 30, 2016 was $1,060,072.47.

D. Private Advisory Group - Professional Liability Insurance Issues

Private Advisory Group, LLC ("PAG") is an Investment Advisor, sixty-eight percent (68%) of which is owned by Aspen Grove Equity Solutions, LLC ("AGES"). AGES is part of the Receivership Entity (appearing on Exhibit A of the Order Appointing Receiver). PAG was formed in July 2014.

Many of PAG's clients invested in Aequitas securities, both equity and debt, and sustained significant losses because of Aequitas' insolvency. PAG's clients have filed a number of suits against PAG and sent PAG correspondence demanding return of the monies lost – both of which constitute "Claims" under the Liberty Policy – asserting that PAG, its management, and various individuals or affiliated entities are liable for the Aequitas-related losses and seeking recovery from PAG of those losses. The claims made against PAG and/or its management assert that PAG, *et.al*., failed to disclose various items to its clients, including Aequitas' ownership interest in PAG through AGES.

[17] Stipulation and Order Granting Relief from Receivership Order to Permit Limited Payment of Defense Costs [Dckt. 185]

PAG has notified its Professional Liability insurer, Liberty Surplus Insurance Services ("Liberty"), of the **Claims**, a term which is defined to include lawsuits brought against it, its management, and affiliated individuals. The subject Liberty Policy is a "claims made" and "reported" policy with a $5,000,000 aggregate limit, and an additional $5,000,000 aggregate limit of liability applying to any **Insured Persons** under the Liberty Policy who qualify as an "Independent Director", defined to mean any director or trustee who is not an "interested person" with respect to PAG "within the meaning of Section 2(a)(19) of the Investment Company Act of 1940." The Liberty Policy was in effect for the policy period November 25, 2015 to November 25, 2016. Pursuant to its terms, the Liberty Policy's limits of liability are reduced by **Defense Costs**, in excess of the policy's $100,000 retention, incurred in defense of covered **Claims**.

PAG, with the assistance of professionals retained by the Receivership Entity, has provided Liberty with timely notice of **Claims** made against PAG and its management. The damages sought from PAG and members of its management in these **Claims** collectively exceed $100,000,000. In addition to providing Liberty with notice of the **Claims** so far made against PAG and related individuals, PAG has also provided Liberty – prior to the expiration of the subject Liberty Policy on November 25, 2016 – with notice of potential claims, here called "Notices of Circumstances and Wrongful Acts". The purpose of providing Liberty with "Notices of Circumstances and Wrongful Acts" is to preserve coverage under the Liberty Policy for any post-expiration **Claims** brought against PAG based upon or arising out circumstances or wrongful conduct not articulated in **Claims** previously made against PAG.

PAG, with the assistance of professionals retained by the Receivership Entity, has also analyzed the Reservation of Rights correspondence from Liberty, dated March 3, 2016, and from Liberty's counsel, dated October 19, 2016. Liberty's primary coverage

defense(s) involve assertions that Liberty has the right to rescind its policy as to PAG and some or all of the Insured Persons based upon material misrepresentations and omissions made by PAG in a "No Known Loss" letter dated December 9, 2014, and in stating in response to a question in the policy's September 14, 2015 application that it did not have any knowledge of facts or circumstances that might give rise to a claim under the proposed policy.

Liberty, per its October 19, 2016 Reservation of Rights, is conducting an investigation in connection with its rescission defenses, asked PAG to provide information and/or documentation responsive to certain questions it had posed. PAG has responded to the questions posed by Liberty's counsel, in Liberty's October 19, 2016 correspondence, and it also has agreed to produce responsive documents (subject to a confidentiality agreement).

PAG sought new Professional Liability insurance, through its insurance broker, to replace the expiring 2015/2016 Liberty Policy. Only Liberty, however, was willing to offer a policy, albeit one with significantly increased premiums and additional exclusions as compared to its expiring 2015/2016 Policy. PAG, rather than operating without professional liability insurance, accepted Liberty's offer and purchased professional liability for Liberty for the new November 25, 2016 to November 25, 2017 policy year.

IX. Asset Recovery – Anticipated Assets not yet in the Possession of the Receivership Entity

The Receiver is actively working and negotiating with Next Motorcycle, LLC in order to secure approximately 46 motorcycle assets (or obtain the funds due from the sale of said assets) which are currently not in the possession of the Receivership Entity. The sale of these assets may yield approximately $115,000 in gross proceeds.

X. Accrued Professional Fees

As previously discussed, the Receiver has retained several key professionals to assist him in managing the various Aequitas entities, dealing with inquiries/ investigations from governmental agencies and prosecuting his mandate as the Receiver.

The amounts are preliminary and subject to adjustment based on the interim and final fee applications. Detailed time records and supporting documents are being supplied to the Commission and fee applications will be filed with the Court for Court approval prior to the payment. All professionals, including the Receiver, are working at a discount to their standard rates.

Aequitas Receivership

Professional Fees & Expenses by Entity (from October 1 through December 31, 2016)

Entity	Fees ($)	Percentage	Expenses ($)	Percentage	Total ($)	Percentage
Receiver	310,777	13.0%	3,168	2.4%	313,945	12.5%
FTI Consulting	889,625	37.2%	44,927	34.6%	934,552	37.1%
Pepper Hamilton	262,228	11.0%	78,315	60.3%	340,542	13.5%
Schwabe, Williamson & Wyatt	763,465	32.0%	3,252	2.5%	766,718	30.4%
Morrison Foerster	86,230	3.6%	203	0.2%	86,433	3.4%
Law Office of Stanley H. Shure	76,183	3.2%	-	0.0%	76,183	3.0%
Akin Gump [1]	-	0.0%	-	0.0%	-	0.0%
Ater Wynne [1]	-	0.0%	-	0.0%	-	0.0%
Total:	**2,388,509**	**100%**	**129,865**	**100%**	**2,518,374**	**100%**

[1] Akin Gump and Ater Wynne did not incur fees or expenses during the billing period.

XI. Receivership Claimants

In the Initial Report, the Receiver provided a summary compilation of claimants. The summary reflected the Aequitas entities where claimants invested/loaned funds. It does not reflect any subsequent inter-company investments/loans by the Aequitas

entities. There have been no changes in the claimants since the last report. In the next several months a claim form will be mailed to all investors (and creditors) and posted on the Receivership website. The claim form, when published and after approval by the SEC and the Court, will be detailed and contain instructions. Assuming the records permit an efficient method for the Receiver to populate claim forms for known claimants, it is the Receiver's intention to provide completed forms to the investor claimants to simplify the claim process, where feasible and practical. Moreover, if the claimant agrees with such amounts, the form will be deemed automatically submitted and the claimant will need to take no further action with respect to submitting a claim.

XII. Receiver's Plan

At this time, the Receiver is in the process of actively recovering, stabilizing and monetizing assets; it is impossible to provide a definitive timeline for the completion of the other phases of the Receivership – culminating in a Court-approved distribution to investors. This Receivership is complex and it may take considerable time until distributions to investors can be made.