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MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT  
  
FOR THE DISTRICT OF OREGON  
  
PORTLAND DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

No. 3:16-cv-00438-PK

RECEIVER'S MOTION AUTHORIZING

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RECEIVERSHIP ENTITIES TO EXECUTE AND  
DELIVER SUCH DOCUMENTS AND TO TAKE  
ACTIONS AS NECESSARY TO EFFECTUATE THE  
INNOVATOR MANAGEMENT, LLC SALE

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Plaintiff,

v.

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

Defendants.

CERTAIN RECEIVERSHIP ENTITIES TO  
EXECUTE AND DELIVER SUCH  
DOCUMENTS AND TO TAKE ACTIONS  
AS NECESSARY TO EFFECTUATE THE  
INNOVATOR MANAGEMENT, LLC SALE

LR 7-1 CERTIFICATION

On April 12, 2017, the undersigned circulated to the approximately 56 counsel of record, via email, a version of this motion (and supporting declaration and proposed form of order) that is substantially the same as this filed version. The conferral requested that counsel respond by 12:00 noon (Pacific time) on April 19, 2017, as to whether their clients object or consent to the motion. As of the time of filing this motion the undersigned had received one consent and no objections.

MOTION

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) for each of Aequitas Management, LLC (“AM”), Aequitas Holdings, LLC (“AH”), Aequitas Management Oregon, LLC (“AAMO”) and AAM Fund Investment, LLC (“AAM”) (and collectively the “Aequitas Entities”), hereby moves (the “Motion”) this Court for the entry of an order authorizing the Receiver on behalf of the Aequitas Entities to execute and deliver such instruments and to take such other action or not take action on behalf of the Aequitas Entities as may be necessary or appropriate to effectuate the “Transactions” as that term is defined in the Asset Purchase Agreement dated as of April 6, 2017 (the “Agreement”). A copy of the Agreement is attached as

Exhibit 1 to the accompanying Declaration of Brad Foster (“Foster Decl.”).

This Motion is supported by the Declaration of Brad Foster, and the following memorandum.

**I. Procedural and Fact Background.**

1. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (the “Interim Receivership Order”). 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].<sup>1</sup> (Foster Decl., ¶ 2).

2. Pursuant to the Interim Receivership Order and the Final Receivership Order the Receiver has, among other things, undertaken to determine the nature, location and value of all Receivership Property. Receivership Property includes the Receivership Entity’s fifty percent (50%) interest in Innovator Holdings, LLC (“Parent”) which is the parent of Innovator Management, LLC (“Seller”). Parent and Seller have entered into the Agreement with Innovator Capital Management, LLC (“Buyer”) for the purchase and sale of certain of Seller’s assets. (Foster Decl., ¶ 3).

3. As set forth in the Agreement, the Aequitas Entities will receive Fifty thousand dollars (\$50,000) on account of the fifty percent (50%) interest they own in the Parent (and Seller). (Foster Decl., ¶ 4).

4. Seller is a 1940-Act investment advisory platform that is owned equally with Clifton Larson Allen (“CLA”). Seller has consistently lost money which has been funded solely by CLA. The Receiver is not aware of any business reason to continue ownership or advance

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<sup>1</sup> Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Final Receivership Order.

the Receivership's share of losses. The Receiver does not believe that the equity is worth more than \$50,000 and the contractual indemnities and releases provided in the Agreement. The Receiver understands that CLA is receiving no consideration on account of its equity interest. (Foster Decl., ¶ 5).

5. As detailed in the Agreement, the Buyer, Parent and Seller have requested the Receiver to obtain court approval for the Receiver's actions undertaken on behalf of the Aequitas Entities in order to complete the Transactions. (Foster Decl., ¶ 6).

6. Pursuant to the terms of the Agreement, except for one representation limited to the Receiver's knowledge, the liability for which is capped at the amount received, neither the Receiver nor any of the Aequitas Entities make any representations or warranties in the Agreement, nor provide any indemnities to the other parties, other than to seek this court approval. (Foster Decl., ¶ 7).

7. The negotiations over the terms of the Agreement were arm's-length. The Receiver and his representatives participated personally in those negotiations. The Receiver believes the parties have acted in good faith in connection with the negotiation process. (Foster Decl., ¶ 8).

8. Based on the above, the Receiver has determined, in the exercise of his business judgment, that the Agreement represents fair value for the Aequitas Entities' interest in the Parent and the Seller. (Foster Decl., ¶ 9).

9. To the best of the Receiver's knowledge, after diligent investigation, there are no Liens against the Aequitas Entities interest in the Parent or the Seller. (Foster Decl., ¶ 9).

10. Innovator Capital Management, LLC, has no known relation to the Receiver or the Aequitas Entities. (Foster Decl., ¶ 10).

## II. Points and Authorities.

11. Pursuant to the Final Receivership Order, the Receiver may sell assets “outside the ordinary course of business...only with Court approval after reasonable notice under the circumstances and an opportunity for interested parties to be heard.” (Final Receivership Order, ¶ 26). The Receiver is also authorized, without Court approval, to “compromise, abandon or otherwise dispose of any Receivership Property... in the ordinary course of business.” (*Id.*).

12. Here, the Receiver seeks authority to execute and deliver, on behalf of the Aequitas Entities, such instruments and to take such other action or not take action on behalf of the Aequitas Entities as may be necessary or appropriate to effectuate the “Transactions” as that term is defined in the Agreement.

13. Innovator Capital Management LLC has no known relation to the Receiver or the Aequitas Entities.

14. In the exercise of the Receiver’s business judgment, the \$50,000 payment to the Aequitas Entities represents fair value for the Receivership. In short, the Agreement is an arms’-length transaction, proposed in the sound exercise of the Receiver’s business judgment, in good faith and for fair value. The Agreement is in the best interests of the Aequitas Entities, and its creditors and investors.

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**III. Conclusion.**

For the foregoing reasons, the Motion should be approved and the Receiver authorized, on behalf of the Aequitas Entities, to execute and deliver such instruments and to take such other action or not take action on behalf of the Aequitas Entities as may be necessary or appropriate to effectuate the “Transactions” set forth in the Agreement.

Dated this 19th day of April, 2017.

Respectfully submitted,

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