

**Troy D. Greenfield**, OSB #892534  
 Email: tgreenfield@schwabe.com  
**Joel A. Parker**, OSB #001633  
 Email: jparker@schwabe.com  
**Jeffrey S. Eden**, OSB #851903  
 Email: jeden@schwabe.com  
 Schwabe, Williamson & Wyatt, P.C.  
 Pacwest Center  
 1211 SW 5th Ave., Suite 1900  
 Portland, OR 97204  
 Telephone: 503.222.9981  
 Facsimile: 503.796.2900

**Ivan B. Knauer** (Admitted *Pro Hac Vice*)  
 Email: knaueri@pepperlaw.com  
**Brian M. Nichilo** (Admitted *Pro Hac Vice*)  
 Email: nichilob@pepperlaw.com  
 Pepper Hamilton, LLP  
 600 14<sup>th</sup> Street, NW, Suite 500  
 Washington, DC 20005  
 Telephone: 202. 220.1219  
 Facsimile: 202. 220.1665

Attorneys for Receiver for Defendants  
 AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS,  
 LLC; AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS  
 CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT  
 MANAGEMENT, LLC

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

SECURITIES AND EXCHANGE  
 COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;  
 AEQUITAS HOLDINGS, LLC;

No. 3:16-cv-00438-PK

DECLARATION OF BRAD FOSTER IN  
 SUPPORT OF RECEIVER'S MOTION  
 AUTHORIZING CERTAIN RECEIVERSHIP  
 ENTITIES TO EXECUTE AND DELIVER  
 SUCH DOCUMENTS AND TO TAKE  
 ACTIONS AS NECESSARY TO EFFECTUATE  
 THE INNOVATOR MANAGEMENT, LLC  
 SALE



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

Defendants.

I, Brad Foster, declare as follows:

1. I am a Managing Director, Corporate Finance, at FTI Consulting, Inc. (“FTI”).

FTI was retained by Ronald Greenspan, the duly appointed receiver (“Receiver”) for the Receivership Entity.<sup>1</sup> Pursuant to the Order Authorizing Brad Foster and Larissa Gotguelf to Act on Behalf of the Receiver [Dkt. 245], I make this declaration in support of the Receiver’s Motion Authorizing Certain Receivership Entities to Execute and Deliver Such Documents and to Take Actions as Necessary to Effectuate the Innovator Management, LLC Sale (the “Motion”).

2. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Ronald Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (“Interim Receivership Order”). [Dkt. 30]. On April 14, 2016, pursuant to the Final Receivership Order, Ronald Greenspan was appointed as Receiver of the Receivership Entity on a final basis. The Receivership Entity includes Aequitas Management, LLC (“AM”), Aequitas Holdings, LLC (“AH”), Aequitas Management Oregon, LLC (“AAMO”) and AAM Fund Investment, LLC (“AAM”) (and collectively the “Aequitas Entities”)

3. Pursuant to the Interim Receivership Order and the Final Receivership Order FTI has assisted the Receiver to, among other things, 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

---

<sup>1</sup> Capitalized terms not otherwise defined in this declaration shall have the meanings ascribed to them in the Order Appointing Receiver entered on April 14, 2016 (Dkt. 156) (the “Final Receivership Order”).

Management, LLC (“Seller”). Parent and Seller have entered into an Asset Purchase Agreement with Innovator Capital Management, LLC (“Buyer”) for the purchase and sale of certain of Seller’s assets (the “Agreement”). A true and correct copy of the Agreement is attached hereto as Exhibit 1.

4. 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), certain contractual indemnities and certain releases from the Seller, Parent and Buyer.

5. Seller is a 1940-Act investment advisory platform that is owned equally with Clifton Larson Allen Wealth Advisers, LLC (“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 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.

6. 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.

7. 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.

8. The negotiations over the terms of the Agreement were arm's-length. The Receiver and his representatives participated personally in those negotiations. I believe that the parties have at all times acted in good faith in connection with the negotiation process.

9. 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.

10. 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.

11. Except as disclosed above, Innovator Capital Management, LLC, has no known relation to the Receiver or the Receivership Entity.

**I declare under penalty of perjury under the laws of the state of Oregon that the foregoing statements and those contained in the attached exhibits, are true and correct to the best of my knowledge, information and belief.**

Dated this 19<sup>th</sup> day of April, 2017.

/s/ Brad Foster

Brad Foster, Managing Director, Corporate Finance  
FTI Consulting, Inc.  
On behalf of the Receiver Ronald F. Greenspan

# Exhibit 1

*Execution Version*

**ASSET PURCHASE AGREEMENT**

**DATED AS OF APRIL 6, 2017**

**BY AND AMONG**

**INNOVATOR CAPITAL MANAGEMENT, LLC,**

**INNOVATOR MANAGEMENT LLC, AND**

**INNOVATOR HOLDINGS, LLC**

# TABLE OF CONTENTS

	Page
ARTICLE I CERTAIN DEFINITIONS .....	2
1.01 Certain Definitions.....	2
1.02 Terms Generally .....	9
ARTICLE II SALE AND PURCHASE OF ACQUIRED ASSETS .....	9
2.01 Acquisition of Purchased Assets.....	9
2.02 Excluded Assets.....	10
2.03 Assumption of Liabilities .....	10
2.04 Excluded Liabilities .....	10
2.05 Purchase Price .....	10
2.06 [Reserved].....	11
2.07 Closing.....	11
2.08 Withholding.....	11
ARTICLE III REPRESENTATIONS AND WARRANTIES .....	11
3.01 Seller Disclosure Memorandum.....	11
3.02 Representations and Warranties regarding Seller .....	12
3.03 Representations and Warranties regarding Buyer.....	21
3.04 Representations and Warranties regarding Receiver .....	22
3.05 Supplements to Seller Disclosure Memorandum.....	22
ARTICLE IV COVENANTS .....	23
4.01 Approvals .....	23
4.02 Oregon Court Approval.....	23
4.03 Exemptive Order.....	23
4.04 Confidentiality .....	23
4.05 Nonsolicitation.....	24
4.06 Tax Matters .....	25
4.07 Client Consents.....	25
4.08 Fund Shareholder Approval.....	26
4.09 Fund Proxy Materials .....	26
4.10 Access; Information .....	26
4.11 Acquisitions.....	26
4.12 Actions Pending Closing .....	27
ARTICLE V CONDITIONS TO CONSUMMATION OF THE TRANSACTIONS.....	27
5.01 Conditions to Consummate the Transactions .....	27
ARTICLE VI INDEMNIFICATION .....	29
6.01 Indemnification by the Seller Parties.....	29
6.02 Indemnification by Buyer .....	30
6.03 Method of Asserting Claims .....	30

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
6.04 Adjustments .....	32
6.05 Limitations .....	32
6.06 Payments .....	32
6.07 Remedies .....	33
6.08 Release and Indemnity to Receiver .....	33
 ARTICLE VII TERMINATION .....	 33
7.01 Termination .....	33
7.02 Effect of Termination and Abandonment .....	34
 ARTICLE VIII MISCELLANEOUS .....	 35
8.01 Amendments and Waivers .....	35
8.02 Counterparts .....	35
8.03 Governing Law .....	35
8.04 Consent to Jurisdiction; Waiver of Jury Trial .....	35
8.05 Assignments, Successors and No Third-Party Rights .....	36
8.06 Expenses .....	36
8.07 Notices .....	36
8.08 Entire Understanding; No Third-Party Beneficiaries .....	38
8.09 Interpretation; Effect .....	38
8.10 Enforcement of Agreement .....	38
 EXHIBITS AND SCHEDULES	
EXHIBIT A – Wire Instructions	
EXHIBIT B – Purchase Price Allocation	
EXHIBIT C – Sale Order	
EXHIBIT D – Intellectual Property Assignment	
DISCLOSURE – Seller Disclosure Memorandum	
MEMORANDUM	
Schedule 2.01 – Purchased Assets	
Schedule 2.02 – Excluded Assets	
Schedule 2.03 – Assumed Liabilities	



## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT**, dated as of April 6, 2017 (this “**Agreement**”), is made by and among **Innovator Capital Management, LLC**, a Delaware limited liability company (“**Buyer**”), **Innovator Management LLC**, a Delaware limited liability company (the “**Seller**”), and **Innovator Holdings, LLC**, a Delaware limited liability company (“**Parent**”) (Parent and Seller, together the “**Seller Parties**”).

### RECITALS

**WHEREAS**, on March 10, 2016, the Securities and Exchange Commission filed an action captioned *SEC v. Aequitas Management, LLC et al.* (Case No. 3:16-cv-00438-PK) alleging defendants violated the federal securities laws (the “**Action**”).

**WHEREAS**, on April 14, 2016, the United States District Court for the District of Oregon (the “**Oregon Court**”) entered a Final Order Appointing Receiver (the “**Final Receiver Order**”), appointing Ronald Greenspan as receiver (the “**Receiver**”) for the entity defendants named in the Action, and certain of their subsidiaries, and/or majority-owned affiliates.

**WHEREAS**, **AAM Fund Investments LLC**, a Delaware limited liability company (“**AAM**”) owns fifty percent (50%) of Parent and Aequitas Management, LLC, a Delaware limited liability company (“**AM**”) is the indirect sole owner of AAM through Aequitas Asset Management Oregon, LLC (“**AAMO**”), an Oregon limited liability company and Aequitas Holdings, LLC (“**Aequitas Holdings**”), an Oregon limited liability company, and each of AAM, AM, AAMO and Aequitas Holdings (collectively, the “**Aequitas Entities**”) are subject to the powers of the Receiver, as set forth in the Final Receiver Order, together with certain other entities identified in the Final Receiver Order as a Receivership Entity (the “**Receivership Entities**”).

**WHEREAS**, **CliftonLarsonAllen Wealth Advisors, LLC** (“**CLA**”) owns fifty percent (50%) of the Parent of the Seller;

**WHEREAS**, on the terms and subject to the conditions set forth herein at the Closing, Buyer shall acquire specified assets of Seller relating to its investment advisory business, including the advisory agreements with the Academy Funds Trust (“**Trust**”) and its series thereunder, and all other assets used or useful in the operation of the investment advisory business owned by Seller (collectively, the “**Business**”), as provided for in Section 2 of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants of the Parties hereto as hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

## ARTICLE I

### CERTAIN DEFINITIONS

1.01 Certain Definitions. The following terms are used in this Agreement with the meanings set forth below:

“**AAM**” has the meaning set forth in the recitals.

“**AAMO**” has the meaning set forth in the recitals.

“**Account**” or “**Client Account**” means each account of a Client (as defined herein) managed or advised by Seller.

“**Action**” has the meaning set forth in the recitals.

“**Advisers Act**” means the Investment Advisers Act of 1940, as amended, and the SEC’s rules and regulations promulgated thereunder.

“**Advisory Agreement**” means each Contract relating to the provision of investment management/advisory services by Seller to any Person, including any subadvisory or similar agreement.

“**Aequitas Entities**” has the meaning set forth in the recitals.

“**Aequitas Holdings**” has the meaning set forth in the recitals.

“**Affiliate**” means, with respect to a Person, any Person directly or indirectly controlling, controlled by or under common control with such specified Person and any officer, director, partner or employee of such Person. For the purposes of this definition, “control” when used with respect to a Person, means the power to exercise a controlling influence over the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have correlative meanings to the foregoing.

“**Agreement**” means this Agreement and the Schedules and Exhibits hereto, as these may be amended or modified from time to time in accordance with this Agreement.

“**AM**” has the meaning set forth in the recitals.

“**Assets under Management**” means the amount of assets under management by Seller.

“**Assumed Contracts**” has the meaning set forth in Section 2.01 of this Agreement.

“**Assumed Liabilities**” has the meaning set forth in Section 2.03 of this Agreement.

“**Business**” has the meaning set forth in the recitals of this Agreement.

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which banks in the State of Illinois are generally closed for regular banking business.

**“Buyer”** has the meaning set forth in the preamble.

**“Buyer Indemnified Party”** and **“Buyer Indemnified Parties”** have the meanings set forth in Section 6.01 of this Agreement.

**“Buyer Losses”** has the meaning set forth in Section 6.01(b) of this Agreement.

**“Buyer Material Adverse Effect”** means any event, change or occurrence that, individually or together with any other event, change or occurrence, has a material adverse effect on the Business after the Closing Date.

**“Cash Consideration”** has the meaning set forth in Section 2.05(a).

**“Class B Units”** has the meaning set forth in Section 2.05(a).

**“CLA”** has the meaning set forth in the recitals.

**“Claims”** has the meaning set forth in Section 6.08.

**“Client”** means a Person whose Account is managed/advised by Seller with respect to the Business.

**“Closing”** has the meaning set forth in Section 2.07.

**“Closing Date”** has the meaning set forth in Section 2.07.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the United States Department of the Treasury’s rules and regulations thereunder.

**“Confidential Information”** has the meaning set forth in Section 4.04(a) of this Agreement.

**“Consent”** means any consent, approval, authorization, clearance, exemption, waiver or similar affirmation by any Person pursuant to any Contract, Law, Order or Permit, except the Fund Consents and any consent with respect to the assignment of Advisory Agreements or Sub-Advisory Agreement.

**“Constituent Documents”** means, with respect to any corporation, its articles or certificate of incorporation, charter and by-laws; with respect to any partnership, its articles or certificate of partnership and partnership agreement; with respect to any limited liability company, its articles or certificate of formation and limited liability company or operating agreement; with respect to any trust, its declaration or agreement of trust; and, with respect to each other Person, its comparable governing instruments or documents.

**“Contract”** means, with respect to any Person, any agreement, indenture, undertaking, debt instrument, contract, guarantee, loan, note, mortgage, arrangement, license, lease or other

commitment, whether written or oral, to which such Person or any of its Subsidiaries is a party or by which any of them is bound or to which any of their assets or properties is subject which by its terms will involve consideration in excess of \$10,000 during any consecutive twelve (12) month period commencing on or after the Closing and during the term of any such contract.

“**Direct Claim**” has the meaning set forth in Section 6.03(b).

“**DOL**” means the United States Department of Labor.

“**Employment Offer Letter**” means the employment offer letter between Michael Gries and the Buyer dated as of the Closing Date.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Escrow Account**” has the meaning set forth in Section 2.05(b).

“**Escrow Agent**” has the meaning set forth in Section 2.05(b).

“**Escrow Agreement**” has the meaning set forth in Section 2.05(b).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the SEC’s rules and regulations thereunder.

“**Excluded Assets**” has the meaning set forth in Section 2.02.

“**Excluded Liabilities**” has the meaning set forth in Section 2.04.

“**Exemptive Order**” shall mean any exemptive Order issued by the SEC necessary for the Buyer to continue the operations of the Funds in a manner substantially similar to the operations of the Funds immediately prior to the Closing Date.

“**Final Receiver Order**” has the meaning set forth in the recitals.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**Fund**” means each series of the Trust, a registered Investment Company under the Investment Company Act.

“**Fund Agreement**” means, with respect to any Fund, the governing or organizational documents for such Fund.

“**Fund Consent**” means, with respect to a Client that is a Fund, that (A) in accordance with Rule 15a-4 under the Investment Company Act, the Board of Trustees of the Fund has approved an interim Advisory Agreement and an interim Sub-Advisory Agreement, as applicable, on terms substantially identical (and identical with respect to fee rates) to the terms of the Advisory Agreement and Sub-Advisory Agreement, as applicable, with such Fund existing on the date hereof, that has a duration of not less than 150 days following the Closing Date, and such Fund has entered into such interim Advisory Agreement and interim Sub-Advisory Agreement with the Buyer and each Sub-Adviser, as applicable, along with an expense

reimbursement agreement for each Fund, and (B) in accordance with Section 15 of the Investment Company Act, the Board of Trustees of the Fund has approved a new Advisory Agreement (the “**New Fund Advisory Agreement**”) and a new Sub-Advisory Agreement (the “**New Fund Sub-Advisory Agreement**”) to be in effect as of, and subject to, the applicable Fund Shareholder Approval with respect thereto, on terms substantially identical (and identical with respect to fee rates) to the terms of the Advisory Agreement and Sub-Advisory Agreement, as applicable, with such Fund existing on the date hereof.

“**Fund Financial Statements**” has the meaning set forth in Section 3.02(r).

“**Fund Liability**” has the meaning set forth in Section 2.03.

“**Fundamental Representations**” has the meaning set forth in Section 6.05(a).

“**GAAP**” shall mean U.S. generally accepted accounting principles.

“**Governmental Authority**” means the SEC, the IRS, the Federal Trade Commission, the United States Department of Justice, the Commodities Futures Trading Commission, the DOL, the Court, any court, administrative agency or commission or other federal, foreign, state or local governmental authority, agency, department or instrumentality and any court, tribunal or arbitrator of competent jurisdiction and FINRA, and any other “self-regulatory organization” as such term is used in the Exchange Act.

“**Indemnified Party**” has the meaning set forth in Section 6.03.

“**Indemnifying Party**” has the meaning set forth in Section 6.03.

“**Intellectual Property**” has the meaning set forth in Section 3.02(u).

“**Intellectual Property Rights**” means any and all rights whether registered or unregistered, which may exist or be created under the laws of any jurisdiction: (a) that are associated with works of authorship, including exclusive exploitation rights, copyrights, rights in databases, and moral rights; (b) consisting of patents, utility models, industrial property rights, rights to apply for patents, patent disclosures, together with all reissues, continuations, continuations-in-part, divisional, revisions, extensions, and re-examinations thereof; (c) for the protection of trade secrets and rights arising under unfair competition laws; (d) rights to use internet domain names; (e) protecting trademarks, service marks, and trade names, and similar rights, including all goodwill and reputation associated therewith and the rights to protect such goodwill and reputation (including rights to sue for passing off or unfair competition), and all applications, registrations, rights to apply for registrations and rights of renewal in connection therewith; and (f) rights in or relating to registrations, renewals, extensions, combinations, and applications for, any of the rights referred to in clauses (a) through (e) above.

“**Investment Company Act**” means the Investment Company Act of 1940, as amended, and the SEC’s rules and regulations promulgated thereunder.

“**IRS**” means the Internal Revenue Service, and any successor thereto.

**“Law”** means any code, law (including common law), ordinance, regulation, reporting or licensing requirement, rule or statute applicable to a Person or its assets, liabilities or business, including those promulgated, interpreted or enforced by any Governmental Authority.

**“Liability”** shall mean any direct or indirect, primary or secondary liability, indebtedness, obligation, penalty, Tax, cost or expense (including costs of investigation, collection and defense), claim, deficiency, guaranty or endorsement of or by any Person (other than endorsements of notes, bills, checks and drafts presented for collection or deposit in the ordinary course of business) of any type, whether known or unknown, accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured, or otherwise.

**“Licensed Intellectual Property”** has the meaning set forth in Section 3.02(u).

**“Lien”** means any charge, mortgage, pledge, security interest, hypothecation, claim, lien or encumbrance.

**“Litigation”** means any action, cause of action, claim, demand, suit, proceeding, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, regulatory or otherwise, in law or in equity, by or before any court, tribunal, arbitrator or other Governmental Authority.

**“LLC Agreement”** has the meaning set forth in Section 2.05(b).

**“Loss”** or **“Losses”** means all damages, dues, penalties, fines, costs, amounts paid in settlement, Liabilities, obligations, Taxes, Liens, losses, expenses and fees, including, without limitation, court costs and reasonable attorneys’ fees and expenses.

**“New Fund Advisory Agreement”** has the meaning set forth in the definition of Fund Consent.

**“New Fund Sub-Advisory Agreement”** has the meaning set forth in the definition of Fund Consent.

**“Nonsolicitation Period”** has the meaning set forth in Section 4.05(a).

**“Order”** means any administrative decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling or writ of any federal, state, local or foreign or other court, arbitrator, tribunal or Governmental Authority.

**“Oregon Court”** has the meaning set forth in the recitals.

**“Owned Intellectual Property”** has the meaning set forth in Section 3.02(u).

**“Parent”** has the meaning set forth in the preamble.

**“Parties”** means, collectively, Seller Parties and Buyer, and **“Party”** means any one of them.

**“Permit”** means any federal, state, local and foreign governmental approval, order, authorization, certificate, consent, relief, easement, filing, franchise, license, notice, permit, registration or right to which any Person is a party or that is or may be binding upon or inure to the benefit of any Person or its securities, assets or business.

**“Person”** means any natural person or any legal, commercial or governmental entity, including association, bank, business trust, corporation, group acting in concert partnership, joint-stock company, joint venture, limited liability company or partnership trust, or unincorporated organization.

**“Previously Disclosed”** means, with respect to any representation, warranty or covenant of any Seller Party, information set forth in a paragraph of the Seller Disclosure Memorandum corresponding to the section and paragraph of this Agreement in which such representation, warranty or covenant is made, in each case if and only to the extent that such representation, warranty or covenant provides by its terms for qualification by such Previously Disclosed information.

**“Proxy”** has the meaning set forth in Section 4.08.

**“Purchased Assets”** has the meaning set forth in Section 2.01.

**“Purchase Price”** has the meaning set forth in Section 2.05(a).

**“Purchase Price Allocation”** has the meaning set forth in Section 2.05(c) of this Agreement.

**“Receiver”** has the meaning set forth in the recitals.

**“Receivership Entities”** has the meaning set forth in the recitals.

**“Related Party”** means (i) any Affiliate of Seller, including, without limitation, its members, (ii) any director, officer or employee of Seller or any Person identified in the foregoing clause (i), and (iii) any spouse, sibling, ancestor or lineal descendant of any natural Person identified in any one of the foregoing clauses.

**“Representatives”** means, with respect to any Person, such Person’s directors, officers, agents, advisors and employees and such Person’s legal, accounting, financial or other advisors.

**“Sale Motion”** means the motion or motions of the Aequitas Entities seeking approval and entry of the Sale Order.

**“Sale Order”** means an order or orders of the Oregon Court reasonably satisfactory to Buyer, Seller and the Aequitas Entities and in substantially the form attached hereto as Exhibit C, which order(s) and any exhibits referenced therein (i) may be amended in any nonmaterial respect before any hearing seeking entry thereof to the extent necessary to effectuate or implement the intent and provisions hereof, and (ii) shall authorize the Receiver 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 in accordance with the terms and conditions of this Agreement.

**“SEC”** means the Securities and Exchange Commission.

**“Securities Act”** means the Securities Act of 1933, as amended, and the SEC’s rules and regulations thereunder.

**“Securities Laws”** means the Securities Act, the Exchange Act, the Advisers Act, the Investment Company Act and any applicable state or foreign securities laws, and the respective rules and regulations promulgated thereunder by any Governmental Authority.

**“Seller”** has the meaning set forth in the preamble.

**“Seller Acquisition Proposal”** has the meaning set forth in Section 4.11.

**“Seller Disclosure Memorandum”** has the meaning set forth in Section 3.01.

**“Seller Financial Statements”** has the meaning set forth in Section 3.02(d).

**“Seller Indemnified Party”** and **“Seller Indemnified Parties”** have the meaning set forth in Section 6.02 of this Agreement.

**“Seller Losses”** has the meaning set forth in Section 6.02.

**“Seller Material Adverse Effect”** means any event, change or occurrence that, individually or together with any other event, change or occurrence, has a material adverse effect on (i) the Business, or (ii) the ability of Seller to perform its obligations under this Agreement or any Transaction Document.

**“Seller Parties”** has the meaning set forth in the preamble.

**“Seller’s Knowledge”** or **“Knowledge”** means any fact, event, occurrence or other matter actually known to the Seller and Parent following due inquiry. For the avoidance of doubt, the knowledge of the Aequitas Entities is not part of the Seller’s Knowledge.

**“Sub-Adviser”** means each of McKinley Capital Management, LLC and Penserra Capital Management, LLC.

**“Sub-Advisory Agreement”** means each Contract relating to the provision of investment sub-advisory services between the Seller and a Sub-Adviser with respect to a Fund.

**“Tax”** and **“Taxes”** means all federal, state, local or foreign taxes, charges, fees, levies or other assessments, however denominated, including, without limitation, all net income, gross income, gross receipts, gains, sales, use, ad valorem, goods and services, capital, production, transfer, franchise, windfall profits, license, escheat, unclaimed property, withholding, payroll, employment, disability, employer health, excise, estimated, severance, stamp, occupation, property, environmental, unemployment or other taxes, custom duties, fees, assessments or



charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority, in each case, whether or not disputed.

“**Tax Returns**” means any return, amended return or other report (including elections, declarations, disclosures, attachments, schedules, estimates and information returns) filed or required to be filed with respect to any Tax.

“**Transaction Documents**” means this Agreement and any other documents, agreements or instruments providing for any of the Transactions, provided that Transaction Documents shall not include the Consulting Agreement.

“**Transaction Expenses**” means, with respect to any Party, all expenses, costs and fees (including all expenses, costs and fees of attorneys, auditors, investment bankers and financial advisors, all finders’ or brokers’ fees and all financial commitment fees) in connection with this Agreement and the Transactions, including the preparation, execution and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby shall be consummated.

“**Transactions**” means the transactions contemplated by this Agreement.

“**Trust**” has the meaning set forth in the recitals.

“**Trustee Nominee**” has the meaning set forth in Section 4.08.

“**Wire Instructions**” has the meaning set forth in Section 2.05(b).

1.02 Terms Generally. The terms defined in this Agreement include both the plural and the singular and all genders. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. The words “including” and “include” and other words of similar import shall be deemed to be followed by the phrase “without limitation” and shall not be limited by any enumeration or otherwise.

## ARTICLE II

### SALE AND PURCHASE OF ACQUIRED ASSETS

2.01 Acquisition of Purchased Assets. Upon the terms and subject to the conditions contained in this Agreement, and on the basis of the representations, warranties and covenants set forth herein, at the Closing, Buyer shall purchase from Seller, and Seller agrees to sell, transfer, convey and deliver to Buyer, all of the Seller’s right, title and interest in and to the Intellectual Property Rights owned or licensed by the Seller and related to the Business and assets identified and set forth on Schedule 2.01 attached hereto (the “**Purchased Assets**”) free and clear of any Liens, which shall include, without limitation, all rights existing under the Contracts set forth on Schedule 2.01 (“**Assumed Contracts**”).

2.02 Excluded Assets. Notwithstanding the foregoing, all of Seller’s right, title and interest in and to all properties, assets, rights and interests of every kind and nature, other than

the Purchased Assets, owned by Seller as of the Closing and set forth on Schedule 2.02 (the “**Excluded Assets**”) shall remain the property of Seller after the Closing.

2.03 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall assume (a) the executory obligations under the Assumed Contracts but excluding any Liability, whenever asserted, arising from a breach to the extent such breach occurred prior to Closing, and (b) the liabilities specifically set forth on Schedule 2.03 hereof, which Schedule 2.03 shall include any expense payable or incurred by Seller related to the Funds as set forth on Schedule 2.03 (the “**Fund Liability**”) (collectively, the “**Assumed Liabilities**”).

2.04 Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall not assume or in any way be liable for any Liabilities of Seller other than the Assumed Liabilities (the “**Excluded Liabilities**”). For greater clarity, the Excluded Liabilities shall include, without limitation, any and all Liabilities (i) for amounts owned to Cedar Capital, LLC under the distribution agreement with the Seller, (ii) any earn-out payments due to Academy Asset Management LLC from Seller, (iii) of each Seller Party (and such Seller Party’s respective Affiliates) with respect to Taxes (or the nonpayment thereof) for any taxable period, (iv) for Taxes (or the nonpayment thereof) for any taxable period or ratable portion thereof ending on or prior to the Closing Date imposed on or arising in connection with one or more of the Purchased Assets (including the operation or ownership thereof) or the Business, (v) for Transfer Taxes (or the nonpayment thereof), and (vi) imposed on Buyer (or any of its Affiliates) arising from successor or transferee liability (whether imposed by applicable Law, Contract or otherwise) in respect of any items or Taxes described in the foregoing clauses (iii) through (v).

#### 2.05 Purchase Price.

(a) Purchase Price. In addition to the assumption of the Assumed Liabilities (which shall include the amounts paid under clause (ii) of this subsection), the aggregate purchase price (the “**Purchase Price**”) shall be an amount equal to: (i) Three Hundred Fifty Thousand Dollars (\$350,000) (the “**Cash Consideration**”); plus (ii) 3,000 Class B Units (as defined in the LLC Agreement) of the Buyer (“**Class B Units**”).

(b) Payment of Purchase Price. At the Closing, the Purchase Price shall be paid as follows: the Cash Consideration shall be deposited with The PrivateBank and Trust Company, a national banking association, as escrow agent (the “**Escrow Agent**”), to be held in an escrow account (the “**Escrow Account**”) pursuant to the terms of the escrow agreement in form and substance mutually agreed upon by Buyer, Seller and the Escrow Agent prior to the Closing (the “**Escrow Agreement**”). Following the later to occur of (i) approval of the Proxy by the Funds’ shareholders or (ii) the issuance of Exemptive Order, the amounts in the Escrow Account shall be released and paid to the Seller by wire transfer to such account or accounts designated on Exhibit A hereto (the “**Wire Instructions**”); provided, that each Person entitled to payment as set forth on Exhibit A shall have provided a valid, duly executed IRS Form W-9 to Buyer and the Escrow Agent. At the Closing, the Class B Units to be received by Seller shall be held in escrow by the Buyer’s counsel and distributed to Seller or its designee following the later to occur of (i) approval of the Proxy by the Funds’ shareholders or (ii) the issuance of Exemptive

Order and the Seller or its designee's execution of an agreement to be bound to the LLC Agreement. The Class B Units shall be subject to all restrictions, terms and conditions set forth in that certain Limited Liability Company Agreement of Buyer dated as of March 13, 2017 (the "**LLC Agreement**").

(c) Purchase Price Allocation. The Parties shall agree to allocate the Purchase Price among the Purchased Assets as set forth on Exhibit B, which shall be delivered by Buyer to Seller within 180 calendar days after the Closing and shall be attached hereto as Exhibit B (the "**Purchase Price Allocation**"). Each of the Parties hereto agrees to file all Tax Returns (including IRS Form 8594) and make all other necessary filings consistent with the Purchase Price Allocation, as adjusted pursuant to the preceding sentence. Each of the Parties to this Agreement hereby agrees to take no position inconsistent with the Purchase Price Allocation on any Tax Return or in any audit or judicial or administrative proceedings before the Internal Revenue Service or any other Governmental Authority responsible for the imposition or collection of any Tax or court of law (except to the extent otherwise required by a final, "determination" within the meaning of section 1313 of the Code). For federal income tax purposes, any Cash Consideration paid other than to Seller under Section 2.05(b) shall be treated as having been paid first to Seller.

2.06 [Reserved].

2.07 Closing. Subject to the terms and conditions of this Agreement, the transactions contemplated by this Agreement shall be consummated (the "**Closing**") on April [•], 2017 at 10:00 a.m., local time, at the offices of Vedder Price P.C., 222 N LaSalle St., Suite 2600, Chicago, IL 60601 or on such earlier or later date if the Parties so agree after all of the conditions set forth in Article V have first been fulfilled or waived (the date of such Closing being referred to herein as the "**Closing Date**").

2.08 Withholding. Notwithstanding any other provision of this Agreement, Buyer (and each of its Affiliates) shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as are required to be deducted and withheld under applicable Law. Any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

3.01 Seller Disclosure Memorandum. On or prior to the date hereof, Seller has delivered to Buyer a memorandum (the "**Seller Disclosure Memorandum**") setting forth those items that are indicated as Previously Disclosed or are specifically identified in this Article III as sections of such Seller Disclosure Memorandum containing the exceptions to the representations and warranties, and other information required by this Agreement.

3.02 Representations and Warranties regarding Seller. Seller and Parent, jointly and severally, represent and warrant to Buyer as of the date hereof and as of the Closing Date (except

for any representation and warranty that by its terms is made only as of the specific date, in which case as of such date):

(a) Organization and Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its organization. Seller has all requisite power and authority to (a) own, lease and use the Purchased Assets as presently owned, leased and used, (b) conduct the Business as presently conducted (including in any and all states where the Business presently is conducted except where the failure to be so authorized or qualified does not and could not, individually or in the aggregate together with all other changes, events and effects that have occurred prior to the date of determination have a material adverse effect on (i) the rights of Buyer under this Agreement and the ability of the Buyer to operate its business immediately after the Closing in substantially the same manner as conducted prior to Closing, (ii) the business, operations, workforce, affairs, properties, assets, liabilities or condition (financial or otherwise) of the Company or (iii) the ability of Seller to consummate the transactions contemplated by this Agreement or to perform its obligations under this Agreement), (c) execute and deliver this Agreement and the documents contemplated hereby, and (d) perform and comply with all of the terms, covenants and conditions to be performed and complied with by Seller hereunder and thereunder.

(b) Authority. The execution, delivery and performance by Seller of this Agreement and each of the documents contemplated hereby to which Seller is a party have been duly authorized by all necessary action on the part of Seller, and no other action on the part of any Seller is required in connection therewith. This Agreement and each of the other documents contemplated hereby to which Seller is a party have been duly executed and delivered by Seller and constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with their respective terms.

(c) Governmental Filings. No Consents, Permits or Orders of, or filings or registrations with, any Governmental Authority or with any third party are required to be made or obtained by any Seller Party in connection with the execution, delivery or performance by any Seller Party of this Agreement or to consummate the Transactions, except for (i) the Oregon Court approval for the Receiver to proceed with the Transactions in accordance with the Sale Order; and (ii) the Consents Previously Disclosed.

(d) Financial Reports; No Material Adverse Effect. Seller has previously delivered its unaudited financial statements as of and for the fiscal years ended December 31, 2013, 2014 and 2015 and its unaudited financial statements as of and for the period ended December 31, 2016 (collectively, the “**Seller Financial Statements**”). Except as set forth in the Seller Disclosure Memorandum, each of the balance sheets contained in the Seller Financial Statements (including the related notes and schedules thereto) fairly presents the financial position of Seller as of its date, and each of the statements of income and changes in stockholders’ equity and cash flows or equivalent statements contained in the Seller Financial Statements (including any related notes and schedules thereto) fairly presents the results of operations, changes in stockholders’ equity and cash flows, as the case may be, of Seller for the periods to which they relate, in each case in accordance with GAAP consistently applied during the periods involved, except that the Seller Financial Statements lack footnotes required by

GAAP, subject, in the case of interim statements, to normal, recurring year-end audit adjustments.

(e) Liabilities. Except as Previously Disclosed, Seller has no Liabilities of any nature, whether due or to become due, relating to the Business.

(f) Litigation. Except as Previously Disclosed and except for the Action, there is no Litigation pending (or, to the Seller's Knowledge, threatened) against any Sub-Adviser or Seller Party, relating to the Business.

(g) Fund Litigation Matters. Except as Previously Disclosed, there is no litigation or legal action, suit, proceeding or, to the Seller's Knowledge, investigation at law or in equity pending or, to the Seller's Knowledge, threatened in any court or before or by any governmental agency or instrumentality, department, commission, board, bureau or agency, or before any arbitrator, by or against any of the Funds, or, to the Seller's Knowledge, any officer or trustee thereof relating to the activities of the Funds. There are no judgments, injunctions, Orders or other judicial or administrative mandates outstanding against any of the Funds or, to the Seller's Knowledge, any officer or director thereof relating to the activities of or affecting the Funds. To Seller's Knowledge, the Funds have not received any written or e-mail communication from any shareholder or representative thereof regarding any (A) threatened litigation or (B) specific proposal for inclusion the Proxy (as defined below).

(h) Fund Disclosure Controls; Internal Controls Over Financial Reporting. To the Seller's Knowledge, each Fund has adopted and maintained disclosure controls and procedures, as defined in Rule 30a-3(c) under the Investment Company Act, and internal control over financial reporting, as defined in Rule 30a-3(d) under the Investment Company Act. To the Seller's Knowledge, such disclosure controls and procedures are, in all material respects, designed to ensure that information required to be disclosed by a Fund on Form N-CSR and Form N-Q is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. To the Seller's Knowledge, such internal controls over financial reporting are, in all material respects, designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Fund Financial Statements.

(i) Regulatory Matters.

(i) Except for the Action, none of the Seller Parties nor any employee, officer, director, solicitor or Affiliate of Seller is a party or is subject to any Order, decree, enforcement action, agreement, memorandum of understanding or similar arrangement with, or a commitment letter or similar submission to, or extraordinary supervisory letter from, any Governmental Authority, relating to the Business.

(ii) Except for the Action, none of the Seller Parties has been advised by any Governmental Authority that such Governmental Authority is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such Order, decree, enforcement action, memorandum of understanding, commitment letter, supervisory letter or similar submission, relating to the Business.



(iii) To Seller's Knowledge, none of the Funds has been enjoined, indicted or convicted or made the subject of any disciplinary proceedings, consents, decrees, Orders or other administrative orders on account of any violation of the Securities Laws, and, to Seller's Knowledge, there is no reasonable basis for any such action.

(j) Compliance with Laws.

(i) Except as Previously Disclosed, (A) Seller is not or has not been in conflict with or in violation or breach of or default under (and there exists no event that, with notice or passage of time or both, would constitute a material conflict, violation, breach or default with, of or under) (x) any Law applicable to the Business, or (y) any provision of the Constituent Documents of Seller relating to the Business, and (B) Seller has not received any notice and has no Knowledge of any claim alleging any such material conflict, violation, breach or default.

(ii) To Seller's Knowledge, Seller has all Permits and Consents of, and has made all filings, applications and registrations with, all Governmental Authorities that are required in order to permit it to own or lease its properties and to conduct its business as presently conducted, and all such Permits and Consents are in full force and effect and no suspension, limitation or cancellation of any of them is pending, or, to the Seller's Knowledge, threatened, except for such Permits and Consents that (A) are not material to the Business and (B) are not transferable or will terminate by operation of any Securities Law as a result of the Transactions.

(iii) Except as Previously Disclosed, Seller has not received any notification or communication from any Governmental Authority (A) asserting that any Seller Party or employee, officer, director, solicitor or Affiliate of Seller is not in compliance with any of the Laws which such Governmental Authority enforces or (B) threatening to revoke, limit or suspend any Permit or Consent (nor do any grounds for any of the foregoing exist).

(iv) Except as Previously Disclosed, to Seller's Knowledge each Fund has been, and its Fund Agreement have been, operated in compliance in all material respects with applicable Law and its respective investment objectives, policies and restrictions, as set forth in the applicable offering documents for such Fund. In addition, to Seller's Knowledge all material notifications to Governmental Authorities and other bodies required by applicable Laws have been made to permit such activities as are carried out by the Funds and all material authorizations, licenses, consents and approvals required by applicable Laws have been obtained in relation to the Funds.

(v) Both the Seller and to Seller's Knowledge each Fund has adopted written compliance policies and procedures pursuant to the Advisers Act and Investment Company Act, as applicable, and the Seller's chief compliance officer and to Seller's Knowledge the Fund's chief compliance officer have conducted annual reviews as required under such regulations and have determined in each review period since the Seller's formation that the compliance policies and procedures for the Seller and each

Fund and the Fund's service providers have been reasonably designed to prevent violations of the Securities Laws. Since Seller's formation, there have been no material compliance matters (as such term is defined in Rule 38a-1(e)(2) under the Investment Company Act) with respect to the Seller or to Seller's Knowledge any Fund.

(k) Assets under Management.

(i) As to each Client, there has been in full force and effect an Advisory Agreement at all times pursuant to which the Seller was performing investment advisory services for such Client.

(ii) Since November 28, 2011, the Seller's only Clients for whom it performed investment advisory services are the Funds. In addition, Seller has not provided any investment advisory services to any Client which is (A) an employee benefit plan, as defined in section 3(3) of ERISA that is subject to Title I of ERISA, (B) a Person acting on behalf of such a plan, or (C) an entity whose assets include the assets of such a plan, within the meaning of ERISA and applicable regulations.

(iii) As to each Client, the Seller has identified any sub-adviser who has been retained by Seller to provide services to such Client.

(iv) Seller has delivered copies to Buyer and Previously Disclosed all Advisory Agreements and Sub-Advisory Agreements, (together with any other Contracts, agreements, arrangements or understandings pursuant to which Seller or any Sub-Adviser provides investment management services, whether or not Seller is a party to such agreements or documents), setting forth the following:

(A) the name of the Fund under such Advisory Agreement and the identification and a brief description of any other Contracts or agreements relating to the investment management/advisory services provided to such Client by Seller;

(B) the amount of Assets under Management with respect to each such Advisory Agreement as of the month end as of December 31, 2016 and the nature of the investment management/advisory services provided (i.e., discretionary or nondiscretionary);

(C) the manner of Consent required for the assignment by Seller of each such Advisory Agreement and Sub-Advisory Agreement, as applicable.

(v) Except as Previously Disclosed, there are no Contracts, agreements, arrangements or understandings pursuant to which Seller has undertaken or agreed to cap, waive, offset, reimburse or otherwise reduce any or all fees or charges payable by any of the Clients.

(vi) Except as Previously Disclosed, no Client or Sub-Adviser of Seller has expressed to Seller an intention to terminate or reduce its investment relationship

with Seller, or adjust the fee schedule with respect to any Advisory Agreement or Sub-Advisory Agreement.

(vii) No controversy or disagreement exists between Seller and any Client of Seller that has had or could reasonably be expected to have a Seller Material Adverse Effect.

(viii) Except as Previously Disclosed, no exemptive Orders, “no-action” letters or similar exemptions or regulatory relief have been obtained, nor are any requests pending therefor, with respect to Seller or any officer, director or employee of Seller in connection with the Business or any Client of Seller in connection with the provision of investment management/advisory services to such Client by Seller.

(ix) Except as Previously Disclosed, Seller does not have custody (as such term is defined in the Advisers Act) of assets in the Client Accounts and is in compliance with the provisions of the “Custody Rule” of the Advisers Act with respect to the Business.

(l) Insurance Matters.

(i) The Seller has in full force and effect such insurance and fidelity bonds as may be required by the Advisers Act, ERISA or other applicable Law and directors’ and officers’ and error and omissions insurance, and the Seller is not in default under any such insurance policies. Buyer has been provided access to true, correct and complete copies of all insurance policies (or a summary thereof) pertaining to the operation of the Seller, and all premiums that are due and payable on the insurance policies have been paid. No claims have been made by the Seller with respect to the insurance policies.

(ii) To Seller’s Knowledge, each Fund has in full force and effect such insurance and fidelity bonds as may be required by the Investment Company Act and directors’ and officers’ and error and omissions insurance, and the Funds are not in default under any such insurance policies. Buyer has been provided access to true, correct and complete copies of all insurance policies (or a summary thereof) pertaining to the operation of the Funds, and all premiums that are due and payable on the insurance policies have been paid. No claims have been made by the Funds with respect to the insurance policies.

(m) Contracts; Defaults. Except as Previously Disclosed, Seller has no Contracts relating to the Business and Seller has provided to Buyer true and complete copies of each such written Contract Previously Disclosed. All Assumed Contracts to which Seller is a party are legal, valid, binding, in full force and effect and enforceable against Seller, as the case may be, and, to Seller Parties’ Knowledge, each other party thereto. Except as Previously Disclosed, there does not exist under any Assumed Contract to which Seller is a party any violation, breach or event of default, or event or condition that, after notice or lapse of time or both, would constitute a violation, breach or event of default thereunder, on the part of Seller, or, to the Knowledge of Seller, of any other Person. Except as Previously Disclosed, no Assumed



Contract to which Seller is a party contains any change in control or other terms or conditions that will become applicable or inapplicable as a result of the consummation of the transactions contemplated by this Agreement.

(n) Labor and Employee Matters. None of the Seller Parties has received notice that any employee or agent including, without limitation, any management employee, or group of any of Seller's employees or agents, has any plans to terminate employment with Seller. To the Knowledge of the Seller Parties, none of the employees of Seller are subject to any noncompete, nonsolicitation, nondisclosure, confidentiality, employment, consulting or similar Contracts with any third party relating to, affecting or in conflict with the Seller's Business and related activities thereto. Section 3.03(n) of the Seller Disclosure Memorandum contains a correct and complete list of all persons who are employees of Seller as of the date hereof, including any employee who is on leave of absence of any nature, and sets forth for each such individual the following: (i) name, (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits and vacation or other paid time off provided to each such individual as of the date hereof.

(o) No Brokers. Except as Previously Disclosed, no action has been taken by any Seller Party that would give rise to any valid claim against any Party for a brokerage commission, finder's fee or other like payment with respect to the Transactions contemplated by this Agreement.

(p) Tax Matters. (i) All Tax Returns required to have been filed by or with respect to Seller have been duly and timely filed or with respect to 2016 tax returns extended and will be timely filed by the extended due date, and all such Tax Returns are correct and complete in all material respects; (ii) all Taxes that are due and payable by or with respect to Seller (regardless of whether shown to be due on the Tax Returns referred to in clause (i)) and/or any Purchased Asset, in each case, have been timely paid in full; (iii) no issues have been raised by the IRS or any other relevant taxing authority in connection with the examination of a Tax Return or a Tax, which could be expected to result in a proposed deficiency for any period; (iv) no waivers of statutes of limitation have been given by or requested with respect to any Taxes of Seller or for the assessment or collection of any Tax in respect of a Purchased Asset; and (v) all Taxes that Seller is obligated to withhold from amounts owing to any employee, creditor, independent contractor or third party have been withheld and paid over to the proper Governmental Authority in a timely manner, to the extent due and payable.

(q) Fund Tax Matters. To the Seller's Knowledge, all federal and other tax returns and tax reports of the Funds required by Law to have been filed by the Funds (taking into account any extensions for filing) have been filed and were correct in all material respects, and all federal and other taxes shown as due or required to be shown as due on said returns and reports have been paid or provisions have been made for the payment thereof, and to Seller's knowledge, no such return is currently under audit and no assessment has been asserted with respect to such returns.

(r) Fund Financial Statements. To the Seller's Knowledge, copies of all reports of the Funds on Form N-SAR and Form N-CSR, together with any and all exhibits

annexed thereto since inception, have been filed with the SEC (collectively, in the form filed with the SEC, the “**Fund Financial Statements**”) and, at the time of filing, complied in all material respects with the form requirements applicable to such Fund Financial Statements. The information contained in the Fund Financial Statements, as of their respective filing date (or in the case of a registration statement or proxy statement, its respective effectiveness date or issue date), did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make any material statement made therein, in light of the circumstances under which they were made, not misleading. To the Seller’s Knowledge, the Fund Financial Statements, including, without limitation, the statement of assets and liabilities, the statement of operations and the statement of changes in net assets, and the notes thereto set forth in any such annual or semi-annual report, fairly present the financial position of the Funds as at the dates of such statements and the results of its operations for the periods covered thereby in accordance with GAAP (solely with respect to annual reports) consistently applied (except as noted therein). There are no outstanding written comments from any governmental or regulatory authority with respect to the Fund Financial Statements which are unresolved.

(s) Books and Records. The books and records of Seller with respect to the Business have been properly and accurately maintained in all material respects in compliance with applicable Laws, including Securities Laws, and there are no material inaccuracies or discrepancies of any kind contained or reflected therein, and they fairly present the Purchased Assets and performance of each Account. The valuations of the assets and Liabilities of each Account have been supplied by sources that Seller believes are reliable and accurate, and accurately reflect the fair market values of such assets and Liabilities as of the dates thereof.

(t) Business; Registrations.

(i) Seller is and has, since commencement of its investment advisory business operations, been engaged solely in the business of providing investment management/advisory.

(ii) Seller is and has, since commencement of its investment advisory business operations, been duly registered as an investment adviser under the Advisers Act. Seller has made notice filings as an investment adviser in all jurisdictions where such filings are required in order to conduct its business.

(iii) Seller is in material compliance with all federal and state Laws requiring registration, licensing or qualification as an investment adviser. Seller has delivered to Buyer true and complete copies of its most recent Form ADV, as amended to date, and has made available copies of all state filings, likewise as amended to date. The information contained in such filings was true and complete in all material respects at the time of filing and Seller has made all material amendments to such forms as it is required to make under any applicable Laws. The information contained in Seller’s most recent Form ADV, as amended to date, is true and complete in all material respects on the date hereof and as of the Closing Date.

(iv) To Seller's Knowledge, each Fund has been duly organized, is validly existing and, with respect to entities in jurisdictions that recognize the concept of "good standing," is in good standing under the Laws of the jurisdiction of its organization and has the requisite power and authority to own its properties and to carry on its business as currently conducted, and is qualified to do business in each jurisdiction where it is required to be so qualified under applicable Law, except for such jurisdiction where the failure to be so qualified would not have a Seller Material Adverse Effect.

(v) To Seller's Knowledge, all of the outstanding shares of each Fund are validly issued, and during the past six (6) years none of such shares have been issued in material violation of any applicable Laws, Fund Agreement or other offering documents related to such Fund. To Seller's Knowledge, the books and records of each Fund accurately indicate, in all material respects, the net asset value of each record holder of such Fund. Seller has made available to Buyer true and correct copies of each Fund Agreement as in effect as of the date hereof and as of the Closing Date.

(vi) During the past six (6) years there have been no material errors in the net asset value of any Fund.

(vii) Both the Seller and to Seller's Knowledge the Trust have adopted a code of ethics that is in effect and there has been no material violation of such code of ethics since Seller's formation, copies of which Buyer has received.

(viii) Except as Previously Disclosed with respect to Aequitas, Seller nor any person "associated" (as defined under the Advisers Act) with Seller has been convicted of any crime or is or has engaged in any conduct that would be a basis for (A) denial, suspension or revocation of registration of an investment adviser under section 203(e) of the Advisers Act or Rule 206(4)-4(b) thereunder, or ineligibility to serve as an associated person of an investment adviser or (B) being ineligible to serve as an investment adviser to any Person pursuant to section 9(a) or 9(b) of the Investment Company Act. At no time since Seller's inception has Seller been a "commodity pool operator" or "commodity trading adviser" within the meaning of the Commodity Exchange Act of 1936, as amended. Except as Previously Disclosed, none of Seller or its officers and employees is registered as a commodity trading adviser, a commodity pool operator, a futures commission merchant, a counseling officer, an insurance agent, a sales person with the SEC, the Commodity Futures Trading Commission, the National Futures Association, the FINRA or the securities commission of any state or any self-regulatory body. Except as Previously Disclosed, no Person other than a full-time employee of Seller renders investment management/advisory services to or on behalf of Clients of Seller or solicits Clients with respect to the provision of investment management services by Seller.

(u) Technology and Intellectual Property. Seller has Previously Disclosed all copyrights, patents, computer software, trademarks, logos, service marks, trade names, service names, Internet domain names and applications and registrations therefor of the Business owned or licensed by Seller (collectively, the "**Intellectual Property**"), and has identified whether each such item of Intellectual Property is owned (the "**Owned Intellectual Property**") or licensed

(the “**Licensed Intellectual Property**”). Except as Previously Disclosed, Seller has (i) the right to use each item of the Owned Intellectual Property, free and clear of any royalty or other similar payment obligations, claims of infringement or other Lien of any kind; and (ii) the right to use the Licensed Intellectual Property, which right is free and clear of claims of infringement or alleged infringement or other Lien of any kind, except for costs, charges, fees or other payments required under the terms of the licenses, contracts or agreements governing the Licensed Intellectual Property.

(v) No Conflicts. Neither the execution and delivery of this Agreement by the Seller Parties, nor the consummation by the Seller Parties of the Transactions, will:

(i) except as Previously Disclosed, require any filing with, or Consent of, any Governmental Authority having jurisdiction over the Business or Purchased Assets;

(ii) violate any Law or any Order applicable to any of the Business and Purchased Assets;

(iii) violate any provision of any Seller’s Constituent Documents applicable to the Business; or

(iv) result in a breach of, or constitute a default under or an event that, with the passage of time or the giving of notice, or both, would constitute a default under, give rise to a right of termination, cancellation, or acceleration of, create any entitlement of any third party to any material payment or benefit under, require the Consent other than Client Consents of any third party to, or result in the creation of any Lien on the assets of Seller under, (A) the provisions of Seller’s Constituent Documents, or (B) any material Contract by which Seller is bound other than Advisory Agreements or Sub-Advisory Agreements, or (C) any Law or Order applicable to the Business or Purchased Assets.

(w) Adherence to Investment Policies and Restrictions. Seller has operated or managed each Client Account in compliance in all material respects with its respective objectives, policies and restrictions.

(x) Assets. Seller has good, valid and marketable title to, or in the case of leased property has a good and valid leasehold interest in, all Purchased Assets, free and clear of all Liens. The Purchased Assets will be sufficient to allow for the conduct of the Business immediately following the Closing Date in the same manner as currently conducted by Seller. Seller has Previously Disclosed a list of all tangible assets that identifies the location of such assets. Seller’s machinery, equipment and other tangible assets used in the operation of its business are in reasonable working order and operating condition.

(y) Related-Party Transactions. Except as Previously Disclosed, with respect to the Business, Seller is not a party to any Contract with any Related Party, and no Related Party (i) owns, directly or indirectly, and whether on an individual, joint or other basis, any interest in (A) any Purchased Asset, or (B) any Person that is a supplier, customer or competitor of the Business, (ii) serves as an officer, director or employee of any Person that is a service provider,

supplier, customer or competitor of the Business, or (iii) has received any loans from or is otherwise a debtor of, or made any loans to or is otherwise a creditor of, the Business.

(z) Disclosure. This Agreement and the Transaction Documents, and each certificate or other instrument or document furnished pursuant to this Agreement or any Transaction Document by or on behalf of Seller or any Seller Party to Buyer or any agent or Representative of Buyer, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated herein or therein or necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

(aa) No Other Representations and Warranties. Except for the representations and warranties contained in this Section 3.02, neither Seller nor any other person (including the Receiver or any Receivership Entity) has made or makes any other express, implied, statutory or otherwise representation or warranty, either written or oral, on behalf of either Seller Party or their affiliates, including any representation or warranty as to the accuracy or completeness of any information regarding the Purchased Assets or the Transactions furnished or made available to Buyer and any information, documents or material delivered to Buyer, or in any other form in expectation of the Transactions or as to the future revenue, profitability or success of the Purchased Assets, or any representation or warranty arising from statute or otherwise in law. Such information made available to Buyer was provided to Buyer as a convenience, and shall not create or give rise to any liability of or against any Seller and its affiliates; and any reliance on or use of the same shall be at Buyer's sole risk.

(bb) Disclaimer. Except as otherwise expressly set forth in this Section 3.02, the Transactions and the Purchased Assets shall be without any express, implied, statutory or other warranty or representation as to the condition, quantity, quality, fitness for particular purpose, freedom from vices or defects, conformity to models or merchantability of any of the Purchased Assets, and without any other express, implied, statutory, contractual or other warranty or representation whatsoever. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 3.02, THIS TRANSACTIONS, THE AGREEMENT AND THE PURCHASED ASSETS ARE SOLD AS IS WHERE IS AND WITH ALL FAULTS.

3.03 Representations and Warranties regarding Buyer. Buyer hereby represents and warrants to Seller as follows, both as of the date hereof and as of the Closing Date (except for any representation and warranty that by its terms is made only as of a specific date, in which case as of such date):

(a) Organization and Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has all requisite limited liability company power and authority to (a) execute and deliver this Agreement and the documents contemplated hereby, and (b) perform and comply with all of the terms, covenants and conditions to be performed and complied with by Buyer hereunder and thereunder.

(b) Power. Buyer has or has requested all Permits and Consents of, and have made or will make all filings, applications and registrations with, all Governmental Authorities

that are required to complete the transactions contemplated by this Agreement, and all such Permits and Consents are in full force and effect and no suspension, limitation or cancellation of any of them is pending, or, to its knowledge, threatened.

(c) Authority. The execution, delivery and performance by Buyer of this Agreement and each of the documents contemplated hereby to which Buyer is a party have been duly authorized by all necessary limited liability company action on the part of Seller, and no other action on the part of Buyer is required in connection therewith. This Agreement and each of the other documents contemplated hereby to which Buyer is a party have been duly executed and delivered by Buyer and constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or similar laws affecting creditors' rights or by general equity principals.

(d) No Conflicts. Neither the execution and delivery of this Agreement by Buyer, nor the consummation by Buyer of the Transactions, will

(i) require any filing with, or Consent of, any Governmental Authority having jurisdiction over any of the businesses or assets of either Buyer;

(ii) violate any Law or any Order applicable to either of Buyer or any of their respective properties and assets;

(iii) violate any provision of Buyer's Constituent Documents; or

(iv) result in a breach of, or constitute a default under or an event that, with the passage of time or the giving of notice, or both, would constitute a default under, give rise to a right of termination, cancellation, or acceleration of, create any entitlement of any third party to any material payment or benefit under, require the Consent of any third party to, or result in the creation of any Lien on the assets of Buyer under, (A) the provisions of either of Buyer's respective Constituent Documents, or (B) any material Contract by which either Buyer is bound, or (C) any Law or Order to which either Buyer is subject or by which either Buyer's respective assets are bound, or (D) any Law or Order to which either Buyer is subject.

(e) No Brokers. No broker, finder or financial adviser has acted directly or indirectly as such for, or is entitled to any compensation from, Buyer in connection with this Agreement or the Transactions.

3.04 Representations and Warranties regarding Receiver. Receiver represents and warrants to Buyer that as of the Closing Date it has no actual knowledge of any Claims against the Purchased Assets. Any liability of Receiver to Buyer for a breach of this Section 3.04 by Receiver shall be limited to Receiver's allocation of the Purchase Price paid pursuant to the Agreement.

3.05 Supplements to Seller Disclosure Memorandum. From time to time prior to the Closing, Seller shall promptly supplement or amend the Seller Disclosure Memorandum with respect to any matter, condition or occurrence hereafter arising which, if existing or occurring at



the date of this Agreement, would have been required to be set forth or described in the Seller Disclosure Memorandum; provided, that Buyer shall have the right to terminate this Agreement pursuant to Section 7.01(e); provided, further, however, if Buyer does not terminate this Agreement pursuant to Section 7.01(e) and the Closing occurs, any supplement or amendment to the Seller Disclosure Memorandum delivered pursuant to this Section 3.05 shall be deemed to modify the representations and warranties set forth in Article III.

## ARTICLE IV

### COVENANTS

4.01 Approvals. Each of the Parties shall take, in accordance with applicable Law and all applicable provisions of its Constituent Documents, if any, all action necessary in connection with the approval and adoption of this Agreement and the other Transaction Documents for consummation of the Transactions as promptly as practicable.

4.02 Oregon Court Approval. This Agreement, the sale of the Purchased Assets and the Transactions are subject to the approval by the Oregon Court authorizing the Receiver 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 in accordance with the terms and conditions of this Agreement. The Receiver will file with the Oregon Court a Sale Motion seeking entry of the Sale Order. The Receiver will promptly take all such actions as are necessary or appropriate to obtain entry of the Sale Order, including furnishing affidavits or other documents or information necessary for approval by the Oregon Court.

4.03 Exemptive Order. Seller will take all actions necessary to provide reasonable assistance to Buyer in obtaining any Exemptive Orders.

4.04 Confidentiality.

(a) Except with respect to the Sale Motion and Sale Order, each of the Seller Parties acknowledges and agrees that all confidential information and all physical embodiments thereof that relate to the Purchased Assets or Assumed Liabilities (the “**Confidential Information**”) are confidential and proprietary to, and are and will be the sole and exclusive property of Buyer. At all times after the date of this Agreement, each of the Seller Parties will hold such Confidential Information in trust and strictest confidence, and will not, directly or indirectly, use, reproduce, disclose the Confidential Information other than to Buyer and its Representatives except as required by Law or Order or other tax and governmental filings required by Law. At the Closing, each of the Seller Parties will deliver to Buyer all Confidential Information (and all embodiments thereof) in original format then in the Seller Parties’ custody, control or possession and destroy or delete any duplicates or other electronic versions of such original information.

(b) In the event of the breach of any provisions of this Section 4.04, Buyer, in addition and supplemental to other rights and remedies existing in its favor, may apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive or

other relief (without the posting of bond or other security) in order to enforce or prevent any violations of the provisions hereof.

(c) Notwithstanding anything contained herein to the contrary, after the date of this Agreement, Buyer may upon approval of Seller, which shall not be unreasonably restricted, issue such press releases or make such other public statements regarding this Agreement or the Transactions as Buyer may, in its reasonable discretion, decide to issue or make.

(d) Notwithstanding anything contained herein to the contrary, this Section 4.04 does not apply to the Aequitas Entities, the Receiver or the Receivership Entities.

#### 4.05 Nonsolicitation.

(a) To preserve the value of the Purchased Assets and the Confidential Information, each of the Seller Parties agrees that, for a period of three (3) years after the Closing Date (the “**Nonsolicitation Period**”), it shall not, directly or indirectly (i) solicit for employment or hire any current or future employee, agent or independent contractor of Buyer or any of its respective Affiliates who are associated with the Business as of the Closing Date, (ii) solicit any Client to purchase from any source other than Buyer or any of their respective Affiliates any product or service similar to that sold or offered by any of them during the twelve (12) month period prior to the Closing Date relating to the Business and which could be supplied by any of them; or (iii) encourage any supplier, customer, Client, licensor, licensee, agent, representative or other Person to terminate or alter its business relationship associated with the Business.

(b) If, at the time of enforcement of this Section 4.05, a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the Parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area.

(c) The Parties recognize and affirm that, in the event of a breach by any of the Seller Parties of any of the provisions of this Section 4.05, money damages would be inadequate and Buyer would not have any adequate remedy at law. Accordingly, the Parties agree that Buyer shall have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and the Seller Parties’ obligations under this Section 4.05 by an action or actions for specific performance, injunction and/or other equitable relief against the Seller Parties without posting any bond or security to enforce or prevent any violations, whether anticipatory, continuing or future, of the provisions of this Section 4.05, including, without limitation, the extension of the Nonsolicitation Period by a period equal to (i) the length of the violation of this Section 4.05 plus (ii) the length of any court proceedings necessary to stop such violation. In the event of a breach or violation by any Seller Party of any of the provisions of this Section 4.05, the running of the Nonsolicitation Period, but not of such Seller Party’s obligations under this Section 4.05, shall be tolled during the period during which the occurrence of any such breach or violation is investigated and during the continuance of any such breach or violation. Each of the Seller Parties agrees that the restrictions contained in this Section 4.05 are reasonable in all respects and are necessary to protect the goodwill of Buyer or their respective Affiliates.



(d) Notwithstanding anything contained herein to the contrary, this Section 4.05 does not apply to the Aequitas Entities, the Receiver or the Receivership Entities.

4.06 Tax Matters. (a) Seller will pay all Taxes that are required to be paid in respect of any transfer, sales, use, recording, value-added or similar Taxes that may be imposed by reason of the sale, assignment, transfer and delivery of the Purchased Assets (“**Transfer Taxes**”) pursuant to this Agreement or any other Constituent Document. Seller will timely file all Tax Returns required to be filed in connection with the payment of such Transfer Taxes. Buyer will reasonably cooperate in the preparation and filing of any Tax Returns related to such Transfer Taxes. Seller shall provide Buyer with copies of all such Tax Returns for review and comment at least ten (10) days prior to the filing thereof and consider any changes reasonably requested by Buyer to such Tax Returns before filing such returns.

(b) For purposes of this Agreement, except as otherwise expressly provided in this Agreement, in the case any real property or personal property taxes or similar taxes (not based on sales, use, income, profit or gains) relating to the Purchased Assets (“**Asset Taxes**”) for a taxable period that includes but does not end on the Closing Date, the amount of such Asset Taxes shall be apportioned between the Seller Parties (on the one hand) and Buyer (on the other hand) by multiplying the amount of such Asset Taxes for the entire period by a fraction, the numerator of which is the number of calendar days in the portion of the period ending on and including the Closing Date in the case of determining the Seller Parties’ portion of such Asset Taxes (or, in the case of determining Buyer’s portion of such Asset Taxes, the number of calendar days in the portion beginning after the Closing Date of such period), and the denominator of which is the number of calendar days in the entire period.

(c) The “standard” procedure of IRS Revenue Procedure 2004-53 (2004-2 C.B. 320) shall be used by Buyer and Seller (and their respective Affiliates) in respect of any transferred employees.

(d) The Seller Parties shall provide Buyer with such cooperation and information as Buyer may reasonably request in connection with the preparation and filing of any Tax Return or in connection with any audit or other proceeding in respect of Taxes of the Business or any Purchased Asset for periods on or before the Closing Date or that straddle the Closing Date.

(e) The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Law of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of the Seller Parties to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Law of any jurisdiction shall be treated as Excluded Liabilities.

4.07 Client Consents. Notwithstanding anything contained herein to the contrary, Buyer may contact and discuss the Transactions with any Sub-Adviser, suppliers of Seller, prospective Client or Client in connection with the Purchased Assets or Assumed Liabilities upon prior written consent of the Seller Parties, which shall not unreasonably be denied.

4.08 Fund Shareholder Approval. Seller Parties shall, as promptly as reasonably practicable after the applicable Fund Board of Trustee's approval of the New Fund Advisory Agreement and New Fund Sub-Advisory Agreement (and continuing after the Closing Date), use commercially reasonable efforts to obtain the approval of the shareholders of each Fund pursuant to the provisions of the Investment Company Act applicable thereto of the applicable New Fund Advisory Agreement and New Fund Sub-Advisory Agreement (in each such case, a "**Fund Shareholder Approval**"), including such efforts to (i) cause the Board of Trustees of each Fund to call a meeting of the shareholders of such Fund to be held as promptly as reasonably practicable following the Closing Date for the purpose of voting upon proposals to approve (in the requisite manner) any new Board of Trustee nominees ("**Trustee Nominee**") proposed by the Buyer as well as the New Fund Advisory Agreement and New Fund Sub-Advisory Agreement, as applicable (the "**Proxy**"); (ii) prepare and file (or causing to be prepared and filed) with the SEC and all other applicable Governmental Authority, as promptly as reasonably practicable following the Closing Date, all Proxy solicitation materials required to be distributed to the shareholders of such Fund with respect to the actions recommended for shareholder approval by the Board of Trustees of each such Fund and mailing (or causing to be mailed) such Proxy solicitation materials as promptly as reasonably practicable after clearance thereof by the SEC (if applicable); and (iii) cause the Board of Trustees of each Fund to submit, as promptly as practicable following the mailing of the Proxy materials, to the shareholders of such Fund for a vote at a shareholders meeting the proposals described in clause (i) above.

4.09 Fund Proxy Materials. Seller agrees that the information provided by it in writing specifically for inclusion in the proxy materials to be furnished to the shareholders of any Fund (other than information that is or will be provided by or on behalf of the Buyer or any other third party specifically for inclusion in such proxy materials) will not contain, as of the date of such proxy materials, any untrue statement of a material fact, or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

4.10 Access; Information. Seller agrees that, upon reasonable notice and subject to applicable Laws relating to the exchange of information, Seller shall afford Buyer and its officers, employees and Representatives, such access during normal business hours throughout the period prior to Closing to the books, records (including, without limitation, Tax Returns and work papers of independent auditors), properties, personnel and to such other information of Seller as Buyer may reasonably request and, during such period, each shall furnish promptly to Buyer (i) a copy of each material report, schedule and other document filed by it pursuant to the requirements of federal or state securities or banking laws, and (ii) all other information concerning the business, properties and personnel of it as Buyer and its Representatives may reasonably request.

4.11 Acquisitions. None of the Seller Parties, nor any of their directors, officers or Representatives, shall, and the Seller Parties shall direct and use all reasonable best efforts to cause their Representatives not to, initiate, solicit or encourage, directly or indirectly, any inquiries or the making of any proposal or offer with respect to a merger, consolidation or similar transaction involving, or any purchase or sale of all or any significant portion of the assets or any ownership interests of, Seller (any such proposal or offer being hereinafter referred to as a "**Seller Acquisition Proposal**") or engage in any negotiations concerning, or provide any

confidential information or data to, or have any discussions with, any Person relating to a Seller Acquisition Proposal, or otherwise facilitate any effort or attempt to make or implement a Seller Acquisition Proposal. The Seller Parties shall immediately cease and cause to be terminated any activities, discussions or negotiations conducted prior to the date of this Agreement with any Parties other than Buyer with respect to any of the foregoing and shall use its reasonable best efforts to enforce any confidentiality or similar agreement relating to a Seller Acquisition Proposal. Seller shall promptly (and in any event within twenty-four (24) hours) notify Buyer of the receipt by any Seller Party of any Seller Acquisition Proposal and the substance thereof (including the identity of the Person making such Seller Acquisition Proposal), and of the receipt of any subsequent communications in respect thereof and their substance.

4.12 Actions Pending Closing. From the date hereof until the Closing, without the prior written consent of Buyer, the Seller Parties shall cause Seller to, and to the extent applicable, Seller shall (a) operate its Business with respect to the Purchased Assets as presently operated and only in the ordinary course of business and consistent with past practice; (b) use commercially reasonable efforts to preserve the value of its Business and the Purchased Assets; (c) not sell, assign, lease or otherwise transfer or dispose of any of the Purchased Assets; (d) pay or collect all Taxes required to be paid or collected and file all Tax Returns required to be filed with respect to the Purchased Assets; (e) not take any action (i) which would materially adversely affect its ability to consummate the Transactions, or (ii) that is intended or is reasonably likely to result in (A) any of its representations and warranties set forth in this Agreement being or becoming untrue at any time at or prior to the Closing, (B) any of the conditions to Closing set forth in Article V of this Agreement not being satisfied, or (C) a material violation of any provision of this Agreement except, in each case, as shall be required by applicable Law; (f) make available all employees necessary to facilitate the transition of the Purchased Assets to Buyer; and (g) give Buyer at least 24 hours prior written notice in the event Seller decides to terminate any employee necessary for the transition prior to Closing.

## ARTICLE V

### CONDITIONS TO CONSUMMATION OF THE TRANSACTIONS

5.01 Conditions to Consummate the Transactions. The respective obligations of the Parties to consummate the Transactions is subject to the fulfillment at the Closing Date of each of the following conditions unless otherwise waived by the Parties:

(a) Governmental Approvals. All approvals required of Governmental Authorities to consummate the Transactions, including the Sale Order, shall have been obtained and shall remain in full force and effect and all statutory waiting periods and any extensions thereof under any applicable Law shall have expired or been terminated and no such approvals shall contain any conditions, restrictions or requirements which Buyer reasonably determines in good faith could, following the Closing, have a Buyer Material Adverse Effect.

(b) Consents. Seller shall have delivered to Buyer copies of all necessary third person and Governmental Agency consents, approvals, releases and filings required in order to effect the transactions contemplated by this Agreement (including any notification or

response from the relevant Governmental Authority(ies) in connection with any bulk sale notices).

(c) No Injunction. No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other Order (whether temporary, preliminary or permanent) which is in effect and prohibits consummation of the Transactions contemplated by this Agreement.

(d) Representations and Warranties. Each representation and warranty of the Parties, as applicable, set forth in this Agreement shall be true and correct in all respects as of the date of this Agreement and in all material respects as of the Closing Date as though made on and as of the Closing Date (except that representations and warranties that by their terms speak as of the date of this Agreement or some other date shall be true and correct as of such date), and Buyer shall have received a certificate, dated the Closing Date, signed by an authorized officer of Seller to such effect.

(e) No Material Adverse Effect. There shall not exist any Seller Material Adverse Effect.

(f) Other Transaction Documents. Each of the Seller Parties shall have executed and delivered to Buyer any Transaction Documents to which he, she or it is a party.

(g) CLA Promissory Note. The Seller shall delivered to the Buyer an executed amendment to the Seller's promissory note with CliftonLarsenAllen Wealth Advisors, LLC providing that the Closing will not constitute a breach or default under the promissory note.

(h) Employment Offer Letter. Buyer shall have received the executed Employment Offer Letter.

(i) Client Consents. Buyer shall have received a Fund Consent for each Fund.

(j) Sub-Adviser Approvals. Each Sub-Adviser shall have executed an interim Sub-Advisory Agreement and New Fund Sub-Advisory Agreement with Buyer for each Fund for which such Sub-Adviser provides sub-advisory services.

(k) Trustee Nominees. No Trustee Nominee shall have withdrawn or been disqualified for any reason from serving as a Trustee Nominee of the Trust.

(l) Termination of the Cedar Capital, LLC ETP Selling Agreement. The ETF Selling Agreement by and among the Seller, Cedar Capital, LLC and Foreside Fund Services, LLC dated April 20, 2015 is terminated.

(m) Satisfaction and Termination of Academy Asset Management LLC Earn Out Agreement. The Earn Out Agreement between Academy Asset Management LLC and Seller is satisfied and terminated.

(n) Assignment of Intellectual Property. The Seller Parties shall have delivered to the Buyer an executed version of the Intellectual Property Assignment in Exhibit D and the Seller Parties agree to take all action necessary to transfer ownership and control over the [www.innovatorfunds.com](http://www.innovatorfunds.com) Internet domain name to the Buyer at the domain name registrar designated by the Buyer

(o) Books and Records. Seller shall have delivered to Buyer all of the Contracts, files, books, records and other data relating to the Purchased Assets to the Seller.

(p) Liens and Indebtedness. Seller shall have delivered to Buyer evidence that the Purchased Assets are free and clear of all Liens.

(q) Tail Insurance. Seller shall have provided evidence satisfactory to Buyer that Seller has purchased fully-paid tail coverage to remain in place for a period of three (3) years from the Closing Date to insure against general liability and errors and omissions.

(r) Other Documents. The Seller Parties shall have delivered to Buyer such other documents or instruments as Buyer may request to effect the Transactions contemplated hereby.

## ARTICLE VI

### INDEMNIFICATION

#### 6.01 Indemnification by the Seller Parties.

(a) The Seller Parties and CLA, jointly and severally, agree to and shall indemnify Buyer (and its officers, directors, employees, agents, members and Affiliates) (each, individually, a “**Buyer Indemnified Party**” and, collectively, the “**Buyer Indemnified Parties**”), and defend and hold the Buyer Indemnified Parties harmless, against any Losses that the Buyer Indemnified Parties suffer, sustain or become subject to as a result of or arising out of or by virtue of:

(i) any misrepresentation in any of the representations or breach of any of the Fundamental Representations of the Seller Parties contained in Section 3.02 of this Agreement; or

(ii) any breach of, or failure to perform, any agreement or covenant of the Seller Parties contained in this Agreement.

(b) The Seller Parties jointly and severally, agree to and shall indemnify the Buyer Indemnified Parties, and defend and hold the Buyer Indemnified Parties harmless, against any Losses that the Buyer Indemnified Parties suffer, sustain or become subject to as a result of or arising out of or by virtue of:

(i) any misrepresentation in any of the representations or breach of any of the warranties of the Seller Parties contained in Section 3.02 of this Agreement

(other than such representations and warranties that constitute Fundamental Representations); and

(ii) the Excluded Liabilities.

(collectively with any Losses of the Buyer Indemnified Parties pursuant to Section 6.01(a) or (b), the “**Buyer Losses**”)

6.02 Indemnification by Buyer. Buyer agrees to indemnify the Seller Parties (and their successor, assigns, heirs and legal representatives) (each, individually, a “**Seller Indemnified Party**” collectively, the “**Seller Indemnified Parties**”) and defend and hold them harmless against any Losses which any of the Seller Indemnified Parties suffer, sustain or become subject to as a result of (a) any misrepresentation in any of the representations or breaches of any of the warranties of Buyer contained in Section 3.03, and (b) any breach of, or failure to perform, any agreement or covenant of Buyer contained in this Agreement, including Buyer’s obligation to pay or reimburse the Seller Parties for expenses as set forth in Section 8.06 hereof (collectively, “**Seller Losses**”).

6.03 Method of Asserting Claims. As used herein, an “**Indemnified Party**” shall refer to a “Buyer Indemnified Party” or “Seller Indemnified Party,” as applicable; provided that, with respect to any actions to be taken by an Indemnified Party under this Section 6.03, “Indemnified Party” shall mean Buyer or Seller, as applicable, and the “**Indemnifying Party**” shall refer to the party hereto obligated to indemnify such Indemnified Parties.

(a) Third-Party Claims.

(i) In the event that any of the Indemnified Parties is made a defendant in or party to any action or proceeding, judicial or administrative, instituted by any third party that subjects the Indemnified Party to or could result in the Indemnified Party suffering Seller Losses or Buyer Losses, as the case may be (any such third party action or proceeding being referred to as a “**Third-Party Claim**”), the Indemnified Party shall give the Indemnifying Party prompt notice thereof. The failure to give such notice shall not affect the Indemnified Party’s ability to seek reimbursement except to the extent such failure has materially and adversely affected the Indemnifying Party’s ability to defend successfully such Third-Party Claim. The Indemnifying Party shall be entitled to contest and defend such Third-Party Claim; provided that the Indemnifying Party (A) has a reasonable basis for concluding that such defense may be successful, (B) consults with the Indemnified Party with respect to the handling of such Third-Party Claim, (C) diligently contests and defends such Third-Party Claim and (D) unconditionally acknowledges in writing that such Third-Party Claim constitutes a Loss of the Indemnified Party for which such Indemnified Party is entitled to indemnification under this Article VI. Notice of the intention to contest and defend the Third-Party Claim shall be given by the Indemnifying Party to the Indemnified Party within ten (10) Business Days after the Indemnified Party gives notice to the Indemnifying Party of such Third-Party Claim. Such contest and defense shall be conducted by reputable attorneys employed by the Indemnifying Party that are reasonably acceptable to the Indemnified Party. The Indemnified Party shall be entitled at any time, at its own cost and expense



(which cost and expense shall not constitute a Loss unless such expense is incurred at the request of the Indemnifying Party, the Indemnified Party reasonably determines that the Indemnifying Party is not adequately representing or, because of a conflict of interest, may not adequately represent, the interests of the Indemnified Party), to participate in such contest and defense and to be represented by attorneys of his, her, its or their own choosing. If the Indemnified Party elects to participate in such defense, the Indemnified Party shall cooperate with the Indemnifying Party in the conduct of such defense. Neither the Indemnified Party nor the Indemnifying Party may concede, settle or compromise any Third-Party Claim without the consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, in the event the Indemnifying Party fails or is not entitled to contest and defend a Third-Party Claim, the Indemnified Party shall be entitled to contest, defend, and settle such Third-Party Claim and pursue its indemnification rights hereunder and whatever other legal remedies may be available to enforce its rights under this Article VI at the cost and expense of the Indemnifying Party.

(ii) Certain Claims. If (A) a Third-Party Claim relates primarily to a criminal proceeding, action or indictment, (B) the Indemnified Party reasonably believes an adverse determination with respect to a Third-Party Claim or other claim giving rise to a Third-Party Claim is likely and such adverse determination would materially adversely affect the Indemnified Party's reputation or future business prospects, (C) a Third-Party Claim seeks an injunction or equitable relief against the Indemnified Party or relates to Taxes, or (D) the Indemnified Party reasonably determines that the Indemnifying Party cannot adequately represent the interests of the Indemnified Party because of a conflict of interest, then in any such case the Indemnified Party shall have the sole right to defend and settle such Third-Party Claim, and to pursue its indemnification rights hereunder and whatever other legal remedies may be available to enforce its rights under this Article VI, at the cost and expense of the Indemnifying Party. If the Indemnified Party elects to assume and control the defense of such a Third-Party Claim, it will provide notice thereof to the Indemnifying Party within thirty (30) days after the Indemnified Party has obtained notice of such Third-Party Claim.

(b) Direct Claims. In the event any Party should have a claim ("**Direct Claim**") against any other Party that does not involve a Third-Party Claim, the Indemnified Party shall deliver a written notice of such Direct Claim with reasonable promptness to the Indemnifying Party. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the Direct Claim described in such notice or fails to notify the Indemnified Party within thirty (30) days after delivery of such notice by the Indemnified Party, the Loss in the amount specified in the Indemnified Party's notice shall be conclusively deemed a liability of the Indemnifying Party and the Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand in accordance with the terms hereof. If the Indemnifying Party gives notice to the Indemnified Party that it disputes the Direct Claim within such thirty (30) day period, the Indemnified Party may pursue its indemnification rights hereunder and whatever other legal remedies may be available to enforce its rights under this Article VI.

6.04 Adjustments. Any indemnification payments paid under this Article VI will be considered an adjustment to the Purchase Price.

#### 6.05 Limitations.

(a) The representations and warranties of Seller and Buyer shall survive the Closing, and shall remain in full force and effect until the date that is eighteen (18) months after the Closing; provided that, the representations and warranties in Sections 3.02(a), (b), (c), (o) and (x), and Sections 3.03(a), (b), (c) and (e) (collectively, the “**Fundamental Representations**”) shall survive indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Any claim for indemnification under (i) Section 6.01(a) or (b) or Section 6.02(a) or (b) may be made by giving notice under Section 6.03 to the Indemnifying Party during the applicable survival period stated in the immediately preceding sentences, and (ii) Section 6.01(c) or for fraud may be made by giving notice under Section 6.03 to the Indemnifying Party at any time.

(b) Except for any Claims under Section 6.08(c) or any claims based upon fraud or willful misconduct by the Seller Parties, for breaches of Fundamental Representations, breaches of covenants or claims for Excluded Liabilities, any claim or claims for indemnification under this Article VI shall not exceed the sum of the Purchase Price.

(c) Except for any Claims under Section 6.08(c) or breaches of Fundamental Representations, no Person shall be liable for indemnification under this Article VI for breaches of its representations and warranties contained in this Agreement until the aggregate amount of Losses for all such breaches exceeds \$50,000 (the “**Deductible**”), in which event the indemnity obligation shall be for the amount in excess of the Deductible; provided, however, that the Deductible shall not apply with respect to breaches of representations regarding taxes or to claims of fraud or willful misrepresentation.

6.06 Payments. Any payment pursuant to a claim for indemnification under this Article VI shall be made not later than thirty (30) days after receipt by the Indemnifying Party of written notice from the Indemnified Party stating the amount of the claim, unless the claim is subject to defense as provided in Section 6.03 above, in which case payment shall be made not later than fifteen (15) days after the amount of the claim is finally determined by written agreement between the Indemnifying Party and the Indemnified Party or a nonappealable judgment of a court of competent jurisdiction or a final arbitration award. In addition, such Party shall reimburse the other Party for any and all costs or expenses of any nature or kind whatsoever (including but not limited to all reasonable attorneys’ fees) incurred in seeking to collect any such Losses to which it is entitled. Buyer may set off an amount to which it may be entitled under this Article VI against any amount otherwise payable by Buyer under this Agreement.

6.07 Remedies. The provisions in this Article VI shall be the sole and exclusive remedy for the matters set forth in this Agreement and no Party shall have any cause of action or remedy at law or in equity for breach of contract, tort or otherwise against any other Party arising under or in connection with this Agreement, except in the case of fraud, in which case each of the Parties shall each have and retain all other rights and remedies existing in its favor at law or equity, including, without limitation, any actions for specific performance and/or injunctive or other equitable relief (including, without limitation, the remedy of rescission).



6.08 Release and Indemnity to Receiver. Except as limited by Section 3.04, at the Closing Date, each Buyer Indemnified Party (the “**Releasors**” and individually, a “**Releasor**”), hereby unconditionally and irrevocably discharge, release, and remise the Receiver, the Aequitas Entities and the Receivership Entities and each of their present and former agents, employees, officers, directors, shareholders, partners, affiliates, members, managers, successors, beneficiaries, trustees, assigns, and any related or successor person or entity (the “**Releasees**”), of and from all claims, causes of action, suits, charges, debts, dues, sums of money, attorneys’ fees and costs, accounts, bills, covenants, contracts, torts, agreements, expenses, wages, compensation, promises, damages, judgments, rights, demands, or otherwise (“**Claims**”), known or unknown, in law or equity, accrued or unaccrued, contingent or noncontingent, arising at any time up to and including the Closing Date, whether or not capable of proof as of the Closing Date, whether common law or statutory, whether or not now recognized or known, that Releasors, or any of them, in any way might have, or could have, against any of the Releasees related to or arising out of the Purchased Assets or the ownership of the Purchased Assets. It is the intention of the parties that the language relating to the description of Claims in this Agreement shall be given the broadest possible interpretation permitted by law. Notwithstanding the foregoing, nothing in this Agreement shall be construed to impair, limit, reduce, alter, or affect any Releasor’s rights or claims that cannot be waived as a matter of law. Each Seller Indemnified Party and Buyer Indemnified Party agrees to defend, indemnify and hold harmless each Releasee, for, from and against any Claims (including all legal fees and other expenses incurred in connection with investigating, preparing, defending, paying, settling or compromising any Claims, whether or not in connection with any pending or threatened litigation in which any Releasee is named a party), to which any of such Releasee may become subject and which are related to or arise out of (a) any breach by Seller or Buyer of any of the representations, warranties or covenants made by it under this Agreement, (b) all Claims in any way related to the Purchased Assets, and (c) the release in this Section. CLA agrees to defend, indemnify and hold harmless each Releasee, for, from and against any Claims (including all legal fees and other expenses incurred in connection with investigating, preparing, defending, paying, settling or compromising any Claims, whether or not in connection with any pending or threatened litigation in which any Releasee is named a party), to which any of such Releasee may become subject and which are related to (i) any misrepresentation in any of the representations or breach of any of the Fundamental Representations of the Seller Parties contained in Section 3.02 of this Agreement; or (ii) any breach of, or failure to perform, any agreement or covenant of the Seller Parties contained in this Agreement.

## ARTICLE VII

### TERMINATION

7.01 Termination. This Agreement may be terminated in any of the following situations:

(a) Mutual Consent. At any time prior to the Closing, this Agreement may be terminated by the mutual written consent of Buyer and Seller.

(b) Breach by the Seller Parties. At any time prior to the Closing, this Agreement may be terminated by Buyer in the event that either (i) the representations and

warranties of any Seller Party contained herein shall not be true and correct in all respects as of the date hereof, or shall not be true and correct in all material respects as of the Closing Date as if made on the Closing Date (or, in the case of representations and warranties speaking as of a specific date, shall not be true and correct in all material respects as of such date); or (ii) any Seller Party shall have failed to perform and comply in all material respects with its, his or her covenants or agreements contained herein, which breach cannot be or has not been cured by the Closing after the giving of written notice to such breaching Seller Party of such breach.

(c) Breach by Buyer. At any time prior to the Closing, this Agreement may be terminated by Seller in the event that either (i) the representations and warranties of Buyer contained herein shall not be true and correct in all respects as of the date hereof, or shall not be true and correct in all material respects as of the Closing Date as if made on the Closing Date (or, in the case of representations and warranties speaking as of a specific date, shall not be true and correct in all material respects as of such date); or (ii) Buyer shall have failed to perform and comply in all material respects with its covenants or agreements contained herein, which breach cannot be or has not been cured by the Closing after the giving of written notice to the Buyer Party of such breach.

(d) Impossibility of Satisfaction of Conditions. At any time prior to the Closing, this Agreement may be terminated by Buyer or Seller, in the event that any event shall occur or exist that otherwise shall have made it impossible to satisfy a condition precedent to the terminating Party's obligations to consummate the Transactions, unless the occurrence or existence of such event, fact or condition shall be due to, in the case of termination by Buyer, the failure of Buyer, and in the case of termination by Seller, the failure of any Seller Party to perform or comply with any of the agreements, covenants or conditions hereof to be performed or complied with by such Parties prior to the Closing.

(e) Changes to the Seller Disclosure Memorandum. This Agreement may be terminated by Buyer in its reasonable discretion if the Seller Parties shall have supplemented or amended the Seller Disclosure Memorandum after the date hereof and the changes made by such supplement or amendment, together with any previous supplement or amendment of the Seller Disclosure Memorandum, could reasonably be expected to be adverse to the Purchased Assets.

(f) Drop-Dead Date. This Agreement may be terminated by either Buyer or Seller if the transactions contemplated hereby have not been consummated by April 30, 2017; provided that neither Buyer nor Seller shall be entitled to terminate this Agreement pursuant to this Section 7.01(f) if such Person's (or, in the case of Seller, any Seller Party's) willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby.

7.02 Effect of Termination and Abandonment. In the event of termination of this Agreement and the abandonment of the Transactions pursuant to this Article VII, no Party shall have any liability or further obligation to any other Party hereunder except (i) pursuant to Article VIII of this Agreement, and (ii) that termination shall not relieve a breaching Party from Liability for any willful breach of this Agreement giving rise to such termination.

## ARTICLE VIII

### MISCELLANEOUS

8.01 Amendments and Waivers. This Agreement may be amended, modified or waived by a writing signed by the parties hereto. The failure of any Party at any time to require performance of any provision hereof shall in no manner affect the right of such Party at a later time to enforce the same or any other provision of this Agreement. No waiver of any condition or of the breach of any term contained in this Agreement in one or more instances shall be deemed to be or construed as a further or continuing waiver of such condition or breach or a waiver of any other condition or of the breach of any other term of this Agreement.

8.02 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, and all of which shall be deemed one and the same agreement. One or more counterparts of this Agreement may be delivered by facsimile or electronically in .pdf format with the intention that delivery by such means shall have the same effect as delivery of an original counterpart.

8.03 Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of Illinois applicable to contracts made and to be performed entirely within such state without regard to any choice of law or conflict of law provision or rule.

8.04 Consent to Jurisdiction; Waiver of Jury Trial.

(a) Each of the Parties hereby acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such Party hereby irrevocably and unconditionally waives any right such Party may have to a trial by jury with respect to litigation directly or indirectly arising out of or relating to this Agreement or the Transactions contemplated thereby.

(b) With respect to any action or proceeding involving the Receiver or any of the Receivership Entities as a named party, each of the Parties to this Agreement hereby irrevocably submits to the jurisdiction of the Oregon Court in any action or proceeding arising out of or relating to this Agreement and each Party hereby irrevocably agrees that all claims with respect to such action or proceeding may be heard and determined in such Oregon Court.

(c) With respect to all other actions or proceedings, each of the Parties to this Agreement hereby irrevocably submits to the jurisdiction of the courts of the State of Illinois and the Federal courts of the United States of America located in the Northern District in the State of Illinois in any action or proceeding arising out of or relating to this Agreement and each Party hereby irrevocably agrees that all claims with respect to such action or proceeding may be heard and determined in such Illinois court, or to the extent permitted by law, in such Federal court.

8.05 Assignments, Successors and No Third-Party Rights. No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties, except that Buyer may assign any of its rights and delegate any of its obligations under this Agreement to any Affiliate of Buyer and may collaterally assign its rights

hereunder to any financial institution providing financing in connection with the Transactions and except that the Receiver may assign this Agreement or any of its rights, interests or obligations under this Agreement to another Receivership Entity. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties; and the Receiver, the Receivership Entities and the Aequitas Entities are third party beneficiaries of this Agreement.

8.06 Expenses. Except as otherwise expressly provided in this Agreement, each of the Parties shall bear all Transaction Expenses incurred by him, her or it in connection with this Agreement and the Transactions, provided that (i) Buyer shall pay or reimburse Seller for any reasonable costs or expenses, including attorney's fees, incurred by Seller in connection with obtaining Seller's performance of its obligations under Section 4.08 up to an aggregate amount of \$50,000 and thereafter any such expenses shall be borne by the Buyer and Seller equally. The Buyer and Seller shall equally pay the Escrow Account fees charged by the Escrow Agent pursuant to the Escrow Agreement. Buyer may reduce the Cash Consideration payable from the Escrow Account to the Seller to the extent any costs payable by the Seller under this Section 8.06 have not been paid prior to the date of the distribution of the Escrow Account. Should any Party incur costs in connection with the enforcement of the terms and provisions of this Agreement or the Transactions against the other Party, which may include but shall not necessarily be limited to the institution of a lawsuit or other legal proceedings, the prevailing Party shall be entitled to and the non-prevailing Party shall pay to the prevailing Party all of the prevailing Party's costs, expenses and reasonable fees of his, her or its attorneys in connection therewith.

8.07 Notices. All notices, requests and other communications hereunder to a Party shall be in writing and shall be deemed given if personally delivered, telecopied (with confirmation), sent by an overnight delivery service or mailed by registered or certified mail (return receipt requested) to such Party at its address set forth below or such other address as such party may specify by notice to the Parties hereto.

If to Buyer:

Innovator Capital Management, LLC  
120 N. Hale Street, Suite 200  
Wheaton, Illinois 60187  
Attention: H. Bruce Bond  
E-mail: [bbond@innovatorfunds.com](mailto:bbond@innovatorfunds.com)

with a copy to:

Vedder Price P.C.  
222 North LaSalle Street, Suite 2400  
Chicago, Illinois 60601-1003  
Attention: Joseph M. Mannon, Esq.  
E-mail: [jmannon@vedderprice.com](mailto:jmannon@vedderprice.com)  
Fax: (312) 609-5005

If to Seller:

Innovator Management LLC  
325 Chestnut Street, Suite 512  
Philadelphia, PA 19106  
E-mail: djacovini@innovatorfunds.com  
Fax: (215) 979-3759

with a copy to:

Moss & Barnett, PA  
150 South Fifth Street, Ste 1200  
Minneapolis, MN 55402  
Attention: Yuri B. Berndt, Esq.  
E-mail: yuri.berndt@lawmoss.com  
Fax: (612) 877-5013

If to an Aequitas Entity: c/o Aequitas Management, LLC  
5300 Meadows Road, Suite 300  
Lake Oswego, OR 97035  
Attn: Receiver  
Email: ron.greenspan@fticonsulting.com  
Fax: (503) 419-3530

With a copy to: Schwabe Williamson & Wyatt  
1211 SW Fifth Avenue, Suite 1900  
Portland, OR 97204  
Attention: Lawrence R. Ream  
Fax: (503) 796-2900  
Email: lream@schwabe.com

If to CLA:

CliftonLarsonAllen Wealth Advisors, LLC  
220 South Sixth Street, Ste 300  
Minneapolis, MN 55402  
Attention: Chuck C. Betz  
E-mail: chuck.betz@claconnect.com  
Fax: (612) 376-4850

with a copy to:

Moss & Barnett, PA  
150 South Fifth Street, Ste 1200  
Minneapolis, MN 55402  
E-mail: yuri.berndt@lawmoss.com  
Attention: Yuri B. Berndt, Esq.  
Fax: (612) 877-5013

8.08 Entire Understanding; No Third-Party Beneficiaries. This Agreement and other Transaction Documents hereto represent the entire understanding of the Parties hereto with reference to the Transactions, and this Agreement supersedes any and all other oral or written agreements heretofore made. Nothing in this Agreement, express or implied, is intended to confer upon any Person, other than the Parties hereto or their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement, whether as third-party beneficiaries or otherwise.

8.09 Interpretation; Effect. When a reference is made in this Agreement to Sections, Exhibits or Schedules, such reference shall be to a Section of, Exhibit to or Schedule to this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and are not part of this Agreement. No Party to this Agreement shall be considered the draftsman. Neither this Agreement nor any uncertainty or ambiguity herein shall be presumptively construed or resolved against any Party, whether under any rule of construction or otherwise. The Parties acknowledge and agree that this Agreement has been reviewed, negotiated, and accepted by all Parties and their attorneys and shall be construed and interpreted according to the ordinary meaning of the words used so as fairly to accomplish the purposes and intentions of all Parties hereto. If any provision, including any phrase, sentence, clause, section or subsection, of this Agreement is invalid, inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering such provision in question invalid, inoperable or unenforceable in any other case or circumstance, or of rendering any other provision herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

8.10 Enforcement of Agreement. The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at Law or in equity.

[SIGNATURES ON NEXT PAGE]



***(Signature Page to Asset Purchase Agreement)***

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed in counterparts, all as of the day and year first above written.

**BUYER:**

**INNOVATOR CAPITAL  
MANAGEMENT, LLC**

By: 

Name: H. Bruce Bond

Its: CEO

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in counterparts, all as of the day and year first above written.

**BUYER:**

**INNOVATOR CAPITAL  
MANAGEMENT, LLC**

By: \_\_\_\_\_  
Name: H. Bruce Bond  
Its: CEO

**SELLER:**

**INNOVATOR HOLDINGS, LLC**

By: \_\_\_\_\_  
Name: Tony Hallade  
Its: Authorized Person

**INNOVATOR MANAGEMENT LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Solely with respect to Article VI**

**CLIFTONLARSONALLEN WEALTH  
ADVISORS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in counterparts, all as of the day and year first above written.

BUYER:

INNOVATOR CAPITAL  
MANAGEMENT, LLC


By: \_\_\_\_\_  
Name: H. Bruce Bond  
Its: CEO

SELLER:

INNOVATOR HOLDINGS, LLC

By: \_\_\_\_\_  
Name:  
Its:

INNOVATOR MANAGEMENT LLC

By:  \_\_\_\_\_  
Name: David Scavini  
Its: President

Solely with respect to Article VI

CLIFTON LARSON ALLEN WEALTH  
ADVISORS, LLC

By: \_\_\_\_\_  
Name:  
Its:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in counterparts, all as of the day and year first above written.

**BUYER:**

**INNOVATOR CAPITAL  
MANAGEMENT, LLC**

By: \_\_\_\_\_  
Name: H. Bruce Bond  
Its: CEO

**SELLER:**

**INNOVATOR HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Its:

**INNOVATOR MANAGEMENT LLC**

By: \_\_\_\_\_  
Name:  
Its:

**Solely with respect to Article VI**

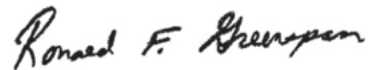
**CLIFTONLARSONALLEN WEALTH  
ADVISORS, LLC**

By:   
Name: **BRUCE Bushman**  
Its: **Advisory Officer**

*(Signature Page to Asset Purchase Agreement)*

**Solely with respect to Section 4.02 and  
Article VIII and to acknowledge this  
Agreement but not as a party:**

**AEQUITAS MANAGEMENT LLC  
AEQUITAS HOLDINGS LLC  
AEQUITAS ASSET MANAGEMENT  
OREGON, LLC  
AAM FUND INVESTMENT, LLC**



---

By: Ronald F. Greenspan

Title: Receiver

Date executed: April 6, 2017

---

## **SCHEDULE 2.01**

### **Purchased Assets**

1. In the Matter of Innovator Management LLC & Academy Funds Trust (File No. 812-14308), SEC Release No. IC-31248 dated September 9, 2014 (“**Active ETF Order**”).
2. In the Matter of Academy Funds Trust & Innovator Management LLC (File No. 812-14358), SEC Release No. IC-31711 dated July 9, 2015 (“**Manager-of-Managers Exemptive Order**”).
3. In the Matter of Innovator Management LLC, Academy Funds Trust & Quasar Distributors, LLC (File No. 812-14532), SEC Release No. 32026 dated March 9, 2016 (“**Index-Based ETF Order**”).
4. Trademark License Agreement dated September 23, 2014, between Investor’s Business Daily, Inc. (“**IBD**”) and Seller.
5. Investment Advisory Agreement dated April 7, 2015, between Seller and the Trust on behalf of the Innovator IBD 50® (“**IBD50**”) Fund.
6. Penserra Capital Management Sub-Advisory Agreement dated April 7, 2015, between Seller and Penserra Capital Management LLC.
7. Investment Advisory Agreement dated October 29, 2015, between Seller and Trust on behalf of the Innovator McKinley Income (“**IMI**”) Fund.
8. Sub-Advisory Agreement dated October 29, 2015, between Seller and McKinley Capital Management, LLC.
9. Selling Agreement dated December 14, 2012, between UBS Financial Services Inc., Quasar Distributors, LLC, and Seller.
10. Distribution Agreement dated April 1, 2015, as amended by that certain First Amendment to the Academy Funds Trust Distribution Agreement dated October 16, 2015, each between the Trust, Quasar Distributors, LLC, and Seller.
11. Distribution Agreement dated January 19, 2012, as amended by that certain First Amendment to the Academy Funds Trust Distribution Agreement dated April 20, 2012, that certain Amendment to Distribution Agreement dated June 29, 2012, that certain Third Amendment to the Academy Funds Trust Distribution Agreement dated December 12, 2012, and that certain Fourth Amendment to the Academy Funds Trust Distribution Agreement dated August 18, 2016, each between Quasar Distributors, LLC, the Trust, and Seller.
12. The lease by and between Constitution Partners, L.P. and Seller dated on or about July 28, 2014 for the premises located at 325 Chestnut Street, Suite 512, Philadelphia, Pennsylvania 19106 (“**Lease**”).



13. All documents, files and records relating to the Funds, equipment, furniture, supplies, computers and all related equipment, telephones and all related equipment and all other tangible personal property of the Seller Parties located at 325 Chestnut Street, Suite 512, Philadelphia, Pennsylvania 19106.

14. Services Agreement dated March 1, 2012, between Fidelity Brokerage Services LLC, National Financial Services LLC, Fidelity Investment Institutional Operations Company, Inc., Quasar Distributors, LLC and Seller.

15. Mutual Fund Platform Agreement dated November 1, 2012 between TD Ameritrade Clearing, Inc., TD Ameritrade, Inc., Quasar Distributors, LLC and Seller.

**SCHEDULE 2.02**

**Excluded Assets**

1. The Employment Agreement between Seller and David Jacovini dated August 7, 2015.
2. The Employment Agreement between Seller and Michael Gries dated August 7, 2015.
3. The Earn Out Agreement between Seller and Academy Asset Management LLC dated August 7, 2015.
4. The Revolving Note between Seller and CliftonLarsonAllen LLP dated March 11, 2016, amended as of June 30, 2016 and as of September 8, 2016.
5. The Consulting Agreement between Seller and Cedar Capital, LLC dated April 2015.
6. The ETF Selling Agreement among Seller, Cedar Capital, LLC and Foreside Fund Services, LLC dated April 20, 2015.
7. The Operating Agreement between the Trust and Charles Schwab & Co., Inc. dated July 8, 2008, amended as of January 1, 2009 and as of December 30, 2011.
8. The Services Agreement among Academy Asset Management, LLC, the Trust and Charles Schwab & Co., Inc. dated January 1, 2009.

**SCHEDULE 2.03****Assumed Liabilities**

Investor's Business Daily (License)	\$13,200.00
McKinley Capital Management, LLC	\$51,217.47
Penserra Capital LLC	\$11,602.81
Quasar Distributors, LLC	\$12,500.04
Stradley Ronon Stevens & Young, LLP	[\$49,000.00]
AMEX Balance	\$1,000.00
Lease	\$1,500.00

**EXHIBIT A****WIRE INSTRUCTIONS**

<b><u>Portion of Cash Consideration</u></b>	
Receiver	14.285714% (\$50,000.00)
Innovator Management LLC	85.714286% (\$300,000.00)

Receiver	<b>Bank Name:</b> [REDACTED] <b>Bank Address:</b> [REDACTED] <b>ABA:</b> [REDACTED] <b>Acct #:</b> [REDACTED] <b>Acct Name:</b> [REDACTED]
Innovator Management LLC	<b>Bank Name:</b> [REDACTED] <b>Bank Address:</b> [REDACTED] <b>ABA:</b> [REDACTED] <b>Acct:</b> [REDACTED] <b>Acct Name:</b> [REDACTED] <b>Account Holder Address:</b> [REDACTED]

**EXHIBIT B**

**PURCHASE PRICE ALLOCATION**

**(TO BE COMPLETED WITHIN 180 CALENDAR DAYS AFTER CLOSING)**

**EXHIBIT C**  
**SALE ORDER**



## EXHIBIT D

**INTELLECTUAL PROPERTY ASSIGNMENT**

This Intellectual Property Assignment (this “**Assignment**”), dated as of April 6, 2017 is being entered into by and among **Innovator Capital Management, LLC**, a Delaware limited liability company (“**Assignee**”), and **Innovator Management LLC**, a Delaware limited liability company and **Innovator Holdings, LLC**, a Delaware limited liability company (collectively “**Assignor**”).

Assignor and Assignee have entered into that certain Asset Purchase Agreement dated as of April 6, 2017 (the “**Purchase Agreement**”).

Pursuant to the Purchase Agreement, Assignor has agreed to assign to Assignee, and Assignee agrees to accept, all of Assignor’s right, title and interest in and to the Intellectual Property.

In consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms used in this Assignment and not otherwise defined herein but that are defined in the Purchase Agreement have the meaning ascribed to them in the Purchase Agreement.

2. **Assignment.** Assignor hereby, absolutely and unconditionally, conveys, sells, assigns, transfers, grants and sets over unto Assignee, all of Assignor’s rights, title and interest and benefit in and to the Intellectual Property, together with the right to all past, present and future income, royalties, damages and payments due with respect to the foregoing and all rights of action, both at law and in equity with respect thereto, including all rights to sue, settle any claims, and collect all damages for any past, present, or future infringement or misappropriation of the Intellectual Property, the same to be held and enjoyed by Assignee, its successors and assigns forever, as fully and entirely as the same could have been held and enjoyed by Assignor if this sale had not been made and Assignee does hereby accept such sale, assignment, transfer, grant, conveyance and set over.

3. **Recordation.** Assignor authorizes and requests the U.S. Patent and Trademark Office, and the U.S. Copyright Office, or any foreign equivalent thereto, and any other governmental entity, subject to the sole election of Assignee, to record Assignee as owner of the entire title and interest in, to and under the Intellectual Property, for the use and enjoyment of Assignee, its successors, assigns and other legal representatives. Assignor shall take all steps and actions reasonably requested by Assignee following the date hereof, including the execution of any documents or other similar items, to facilitate assignment of the Intellectual Property to Assignee, or any assignee or successor thereto, and recordation of such assignment.

4. **Cooperation.** Assignor hereby covenants and agrees that it shall communicate to Assignee, its successors, legal representatives and assigns, any material facts (including information relating to use or non-use, enforceability, or infringement of the Intellectual

Property, to the extent any such information exists) known to Assignor with respect to the Intellectual Property and testify, at Assignee's expense, in any legal proceeding, sign all lawful papers, execute all applications (including, but not limited to, powers of attorney, specific assignments, transfers and assurances), make all rightful oaths and take any other actions, in each case using its reasonable best efforts and in each case promptly following the reasonable request of Assignee, to aid Assignee, its successors, legal representatives and assigns in obtaining and enforcing protection for the Intellectual Property and in enjoying the full benefits thereof. In the event that Assignor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise, Assignor hereby constitutes and appoints Assignee the true and lawful attorney of Assignor to act as Assignor's attorney-in-fact solely for the purpose of executing any documents and taking all necessary steps to cause Assignor to perform any of Assignor's obligations set forth in this Assignment.

5. Purchase Agreement Controls. In the event of a conflict between any term or provision contained in this Assignment and any term or provision of the Purchase Agreement, the applicable terms and provisions of the Purchase Agreement shall govern and prevail. Nevertheless, this Assignment is made pursuant to and subject to the terms and conditions of the Purchase Agreement.

6. Governing Law. This Assignment shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of Illinois or any other jurisdiction).

7. Successor and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

8. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The execution of this Assignment and any agreement or instrument entered into in connection with this Assignment, and any amendment hereto or thereto, by any of the parties or any other person may be evidenced by way of a facsimile, portable document format (.pdf) transmission or electronic production or reproduction, photostatic or otherwise, of such party's or person's signature, and such portable document format (.pdf), or electronic production or reproduction signature shall be deemed to constitute the original signature of such party.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, duly authorized representatives of Assignor and Assignee have caused this Assignment to be executed and delivered as of the date first above written.

**ASSIGNEE**

**INNOVATOR CAPITAL MANAGEMENT, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNOR**

**INNOVATOR MANAGEMENT LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**INNOVATOR HOLDINGS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SELLER DISCLOSURE MEMORANDUM**

**(SEE ATTACHED)**