

**Troy D. Greenfield**, OSB #892534

Email: tgreenfield@schwabe.com

**Alex I. Poust**, OSB #925155

Email: apoust@schwabe.com

**Lawrence R. Ream** (Admitted *Pro Hac Vice*)

Email: lream@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 the 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

[PROPOSED] ORDER (1) APPROVING  
SETTLEMENT AGREEMENT, and (2)  
AUTHORIZING TRANSFER OF ESTATE  
PROPERTY



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

Defendants.

This matter having come before the Honorable Paul Papak on the Receiver's Motions for an Order (1) Approving Settlement Agreement Between Aspen Grove Equity Solutions and Private Advisory Group, and (2) Authorizing Transfer of Estate Property [Dkt. 555] (the "Motion"), and the Court, being fully advised in the premises, now, therefore,

THE COURT FINDS as follows:

A. On March 10, 2016, the Securities and Exchange Commission ("SEC") filed a complaint in this Court against the Entity Defendants<sup>1</sup> and three individual defendants, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

B. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, the Receiver was appointed as receiver for the Entity Defendants and 43 related entities on an interim basis (the "Interim Receivership Order"). On April 14, 2016, pursuant to the Final Receivership Order, the Receiver was appointed as receiver of the Entity Defendants and 43 related entities on a final basis.

C. Due, timely, and adequate notice of the Motion was given, and such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the Motion is or shall be required.

D. It is in the best interests of the Receivership Entity, its creditors and investors to (1) authorize the Receiver, on behalf of Aspen Grove Equity Solutions, LLC ("AGES"), to

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

deliver and perform the Settlement and Unit Transfer Agreement dated as of October 31, 2017, between AGES (acting by and through the Receiver) and Private Advisory Group LL (“PAG”) (the “Settlement Agreement”), in substantially the form attached as Exhibit 1, and (2) authorize the AGES to transfer the Units (as that term is defined in the Settlement Agreement) to PAG on the terms set forth in the Settlement Agreement.

E. The terms and conditions of the Settlement Agreement, including but not limited to AGES’s transfer of the Units to PAG represent fair value for AGES and, in the exercise of the Receiver’s business judgment, are in the best interests of the Receivership Entity, and its creditors and investors.

The Court having reviewed the Motion, the Declaration of Brad Foster, and being duly advised,

IT IS HEREBY ORDERED AND DECREED as follows:

1. The Motion is granted in its entirety.
2. The Settlement Agreement is approved.
3. The Receiver, in his capacity as receiver for AGES, is authorized to deliver and perform Settlement Agreement, including but not limited to transfer of the Units on the terms set forth in the Settlement Agreement.

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4. This Order shall be binding in all respects on all creditors and interest holders of the Receivership Entity, and their successors and assigns.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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United States Magistrate Judge Paul Papak

SUBMITTED BY:

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ Alex I. Poust, OSB #925155

Troy D. Greenfield, OSB #892534

tgreenfield@schwabe.com

Alex I. Poust, OSB #925155

apoust@schwabe.com

Telephone: 503.222.9981

Facsimile: 503.796.2900

Ivan B. Knauer (Admitted *Pro Hac Vice*)

knaueri@pepperlaw.com

Brian M. Nichilo (Admitted *Pro Hac Vice*)

nichilob@pepperlaw.com

PEPPER HAMILTON LLP

600 Fourteenth Street, N.W.

Washington, DC 2005

Tel: (202) 220-1665

Attorneys for the Receiver for Defendants

Aequitas Management, LLC, Aequitas

Holdings, LLC, Aequitas Commercial Finance,

LLC, Aequitas Capital Management, Inc., and

Aequitas Investment Management, LLC

## SETTLEMENT AND UNIT TRANSFER AGREEMENT

THIS SETTLEMENT AND UNIT TRANSFER AGREEMENT (the "Agreement") is entered into this 31<sup>st</sup> day of October, 2017, by and between Private Advisory Group LLC ("PAG"), and Aspen Grove Equity Solutions, LLC, through its Receiver Ronald F. Greenspan ("AGES")(collectively, the "Parties").

### Recitals

A. On July 13, 2017, the Parties entered into a Settlement Agreement Term Sheet (the "Term Sheet") by which PAG agreed to acquire all of AGES' membership units and interest in PAG (the "Units") in exchange for the consideration set forth in the Term Sheet.

B. Pursuant to Paragraph 8 of the Term Sheet the Parties agreed to execute a final settlement agreement, which the Parties hereby do by virtue of entering into this Agreement.

### Agreements

1. **Transfer of Units.** AGES hereby transfers and PAG hereby accepts the Units, on an "AS IS" basis, with no representations or warranties express or implied, for good and valuable consideration, the sufficiency of which is hereby acknowledged.

2. **Consideration.** In consideration of the transfer of the Units from AGES to PAG, PAG and its Class A Common Unit members other than AGES (the "Other Members") hereby agree to provide the following consideration:

A. **Indemnification.** PAG and the Other Members shall indemnify, defend and hold harmless AGES and its officers, directors, members, managers and agents, including any entity included within the Receivership Entity as that term is defined in the Order Appointing Receiver (the "Indemnified Parties") from and against any and all claims, allegations of liability, damages, losses, costs, or expenses whatsoever that have been or could be asserted by Enviso Capital Group LLC and/or PAG Class B Common Unit holders arising out of: (a) AGES's ownership or transfer of the Units on or before the Closing Date, specifically including but not limited to those claims set forth in California Superior Court, County of San Diego, Case No. 37-2016-00009462-CU-BC-CTL; (b) any claim or threatened claim relating to AGES's ownership or transfer of the Units on or before the Closing Date; (c) any claim or threatened claim arising from or related to the sale of the Units hereunder, and (d) any claim or threatened claim relating to an alleged breach or inaccuracy of any representation, warranty, or other term or condition contained in this Agreement.

B. **Satisfaction of Fees.** PAG and the Other Members shall satisfy all professional fees incurred through the Closing Date of this Agreement by PAG, including but not limited to \$298,894 in fees and costs incurred by Ryan Swanson & Cleveland, PLLC and \$61,767 in fees and costs from the Romero Park P.S. law firm, all of which have and/or will be paid for directly by PAG, except for \$100,000, which the Parties acknowledge shall be paid for by PAG's carrier Liberty Mutual.

**C. Release.** PAG, the Other Members and the spouses of the Other Members hereby release AGES from any and all claims, known or unknown, from the beginning of time through the date of this Agreement.

**D. Potential Additional Payments.** If PAG and/or any of the Other Members (A) consummate or agree to consummate a sale or other transfer of PAG membership units to a third-party in exchange for anything of value; (B) admit an additional member in exchange for anything of value; (C) experience any other positive equity event; or (D) experience an event resulting in receipt of value of \$100,000 or more (other than for provision of services in the ordinary course of business), within two (2) years of the date of execution of this Agreement, the advantaged party or parties will distribute to the Receivership Entity the monetary equivalent of 68.2% of the net value received within ten (10) days of receipt.

**3. Closing.** Closing shall occur simultaneously with the signing of this Agreement (the "Closing Date"). Closing shall take place at the offices of Private Advisory Group LLC, located at 16880 NE 79<sup>th</sup> Street, Redmond, Washington 98052, or at such other date and place as the Parties may agree. AGES will tender to PAG's counsel the original certificate evidencing the Units, endorsed to PAG or, if that original certificate cannot be located, execute a Lost Certificate Statement representing that the original certificate evidencing the Units could not be located.

**4. Presentation to Court.** The Parties acknowledge that the enforceability of this Agreement is conditioned upon approval by the Court in the Aequitas Receivership Action in the Federal District Court in Oregon, Cause No. 3:16-cv-00438-PK (the "Aequitas Receivership Action"). The Receiver will move for its approval and the Parties shall cooperate and use their best efforts to have the Court approve this Agreement. In the event the terms of this Agreement are not approved by the Court in the Aequitas Receivership Action, this Agreement shall be null and void. Upon approval of this Agreement in the Aequitas Receivership Action, PAG shall have no further obligation to AGES or the Receiver and PAG shall be free to run the company as it sees fit. PAG and the Other Members acknowledge that they will no longer be the beneficiary of the stay of legal matters entered in the Aequitas Receivership Action and that the stay will be lifted upon Court approval of this Agreement.

**5. Party Cooperation.** The Parties acknowledge that as additional consideration they are giving each other their mutual cooperation with one another to facilitate and finalize the settlement of the Brown Class Action in the federal district court in Oregon, Cause No. 3:17-cv-00869-HZ (the "Class Action"), which was approved by the court on or about October 16, 2017, and contains provision for PAG's insurance carrier, Liberty Mutual, to contribute \$5,000,000 toward said settlement of the Class Action.

**6. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, and assigns. The Parties agree and hereby acknowledge that there are no third-party beneficiaries to this Agreement.

7. **Entire Agreement.** This instrument contains the entire agreement of the Parties with respect to the transfer of the units and the other transactions contemplated herein, supersedes any and all prior agreements or understanding, written or oral, between the Parties, and may not be modified or amended in any way except in a written instrument signed by the Parties.

8. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any dispute or claim arising from this Agreement shall be resolved by Judge Papak in the Aequitas Receivership Action. In the event a dispute or claim arises after dismissal of the Aequitas Receivership Action, the U.S. District Court for the District of Oregon shall have exclusive jurisdiction.

9. **Good Faith.** The Parties represent and warrant that each party has acted toward the other in good faith, and agree to continue to so act, in the negotiation, execution, delivery, and performance of this Agreement.

10. **Facsimile and Electronic Transmission.** Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as transmission of an original. At the request of either AGES or PAG, the Parties will confirm signatures transmitted by facsimile or electronic mail by signing an original document.

EXECUTED as of the date written above.

Private Advisory Group LLC

By: 

Its: CEO

Bean Holdings LLC

By: 

Its: Managing Member

Aspen Grove Equity Solutions, LLC  
Through its Receiver Ronald F. Greenspan

By: 

Ronald F. Greenspan

Its: Receiver