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 MANAGEMENT, LLC

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

SECURITIES AND EXCHANGE  
 COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;

No. 3:16-cv-00438-PK

NOTICE OF FILING RECEIVER'S  
 REPORT DATED OCTOBER 31, 2017



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

Defendants.

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

Dated this 10th day of November, 2017.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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AEQUITAS MANAGEMENT, LLC, AEQUITAS HOLDINGS, LLC, AEQUITAS COMMERCIAL  
FINANCE, LLC, AEQUITAS CAPITAL MANAGEMENT, INC., AEQUITAS INVESTMENT MANAGEMENT, LLC AND  
CERTAIN RELATED ENTITIES  
(the "Receivership Entity")

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In re AEQUITAS MANAGEMENT, LLC, et al.

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

United States District Court

District of Oregon

Portland Division

Report

of

Ronald F. Greenspan, Receiver

October 31, 2017

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# Aequitas Receiver Report

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## I. Introduction

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

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

In accordance with the Final Receivership Order, the Receiver is required to file a report (the “Receiver’s Report”) with the Court within thirty (30) days after the end of each calendar quarter. This report (the “Report”) represents the report and

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<sup>1</sup> All Dkt (or Docket) references are available at the Receiver’s website - <http://www.kccllc.net/aequitasreceivership>

recommendations to the Court for the quarter ending September 30, 2017. A voluntary report and recommendations to the Court (the “Initial Report”) for the first “stub quarter” ending June 30, 2016 [Dkt. 246], the first mandated quarterly report covering the period through September 30, 2016 [Dkt. 298] and subsequent reports covering the period through December 31, 2016 [Dkt. 365], through March 31, 2017 [Dkt. 444 and through June 30, 2017 [Dkt. 491]] are collectively referred to herein as the “Receiver’s Reports”. In the accompanying discussion of Receivership matters, the Report provides an update regarding some matters previously reported and does not include all details contained in prior Receiver’s Reports. For a complete and fulsome discussion and for such additional details please refer to prior Receiver’s Reports.

As is the case for the prior Receiver’s Reports, the findings and recommendations of the Receiver contained in this Report should be considered preliminary and subject to change due to the volume of material and information acquired, the complexity of matters analyzed and the need for additional information, verification and analyses. Furthermore, a forensic review is currently underway and this Report is qualified in its entirety by the findings of such review. The Receiver may need to materially modify the findings and recommendations contained within this Report after further consideration and the results of the forensic review are known.

## **II. Limitations of Report**

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

The Receiver has not subjected the information contained herein to an audit in accordance with generally accepted auditing or attestation standards or the Statement



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

### **III. Case Background**

#### **A. Introduction**

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

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

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

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

**B. Focus of the Activities to Date**

The Receiver has successfully stabilized the Receivership Entity, preserved value when possible and facilitated the monetization of a majority of the receivership assets. Through the quarter ended September 30, 2017, the Receiver has sold assets and collected receivables totaling approximately \$290 million. Further, the Receiver has entered into an option to sell the healthcare receivables owned by the Receivership to CPYT. CPYT has exercised the option and the Receiver expects to receive approximately \$13 million of additional proceeds prior to year-end. Operationally, employee headcount increased during the quarter to 12 for the reasons described below in section IV.A.3.a.

Having made substantial progress on the planned asset dispositions, the Receiver has commenced an investor claim validation process, which is approximately 80% complete.<sup>2</sup> Also, the Receiver has commenced his forensic investigation after receiving input from the SEC and counsel representing the Investors.

**C. Recommendation regarding Continuance of the Receivership**

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<sup>2</sup> 80% completion is an estimate based on direct investors in the Receivership. The Receiver is currently in discussions with Integrity Bank and Trust to validate the underlying investors within the IBAT subscription agreements.

It remains the Receiver's recommendation that the Receivership be continued. The conditions under which the Receivership was imposed still exist. While much has been accomplished, there is still much more to do. The Receiver must continue to focus efforts on monetizing the remaining assets in a manner and timeline consistent with reasonably maximizing the value to the investors. Sufficient progress has been made in these areas to permit the Receiver to have commenced a claims reconciliation process and his forensic investigation, both of which are now underway.

The Receiver completed the implementation of a consolidated database of the estimated 10 terabytes of documents in the possession of the Receivership Entity and controlled by receivership agents and vendors. The database is being utilized to fulfill current requests for production (RFP) from the SEC. There is currently an attorney-client privilege dispute among the Individual Defendants and the SEC<sup>3</sup> which Order is under appeal. On or about November 1, 2017, the Receiver will begin facilitating access to the database for third-party litigants. The documents subject to the on-going privilege dispute have been segregated and will not be made available to third-party litigants unless otherwise ordered by the Court. Additionally, the Receiver has initiated his investigative efforts with the development of a forensic workplan and the dedication of resources to move the investigation forward.

As the Receiver concludes the investigation stage, based on the investigation results, the Receiver may, with the approval of the Court, initiate the litigation stage, pursuing recovery from third parties for the benefit of the Receivership Entity. The final stage of the Receivership is the development and execution of the distribution plan to be approved by the Court.

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<sup>3</sup> See Individuals' Motion for Protective Order [Dkt 428] and Opinion and Order [Dkt 470].

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

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

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

The Receivership Entity currently owns a majority interest in Private Advisory Group, LLC, a registered investment advisor ("PAG"). With the Court's approval of the class-action settlement in *Brown* (U.S. District Court for the District of Oregon - Case No. 3:17-cv-00869-HZ), the Receiver will soon file a motion to approve the sale/transfer of the Receivership Entity's interest in PAG. In the event that motion is granted, the stay of litigation will no longer apply to PAG. Assuming negotiations are concluded productively, the Receiver anticipates filing shortly a motion to effect the resolution described below.

**1. PAG Membership**

PAG is a registered investment adviser ("RIA") in which the Receivership Entity currently holds an ownership interest.<sup>4</sup> Aspen Grove Equity Solutions, LLC ("Aspen

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<sup>4</sup> AIM was also filed as a registered investment advisor. The Receiver has withdrawn that registration. As addressed below, the Receiver has entered a contingent agreement for the transfer of the Receivership Entity's ownership interest in PAG.

Grove”) is currently a member of PAG, holding 68.23% of the membership units. Aspen Grove is part of the Receivership Entity (No. 35 on Exhibit A of the Order Appointing Receiver). Its ownership interest in PAG constitutes Receivership Property, as that term is defined in the Order Appointing Receiver [Dkt. 156, 6.A.]. The other members of PAG are Bean Holdings, LLC, with 27.4% of the membership units, and Aaron Maurer, with 4.37% of the membership units. The members of Bean Holdings, LLC are Chris Bean, Doug Bean and Jon Bishopp.

## 2. Relevant Insurance Coverage

PAG has an “Investment Advisor Professional Liability Policy” issued by Liberty Surplus Lines Insurance (“Liberty”), in effect for the policy period running from November 25, 2015 to November 25, 2016 (“PAG IA Policy”). The PAG IA Policy provides Directors and Officers Coverage for Insured Persons, which includes PAG’s directors, officers and independent contractors. It also provides Professional Liability Coverage, including for a “Securities Claim” against PAG itself. The policy limit is \$5 million. It is a wasting policy, which means that the limit available to mitigate the losses sustained by those who invested in Aequitas through PAG is depleted by attorney fees and other defense costs incurred by the insureds.

The Receiver determined that it was in the best interests of the Receivership Entity to have its insurance counsel, Stan Shure, assume direction of the efforts to maximize available insurance proceeds. Counsel for Chris Bean, Doug Bean, Bean Holdings, LLC, Aaron Maurer, Jon Bishopp and others associated with PAG (collectively referred to as the “PAG Related Parties”) fully cooperated in the efforts of the Receiver’s insurance counsel.

## 3. Indemnification Claims

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

The term "Covered Person" is defined under the Operating Agreement to include members, officers and directors. The other members of PAG as well as the individual members of Bean Holdings LLC — Chris Bean, Doug Bean, Jon Bishopp and Aaron Maurer — previously claimed entitlement to indemnification pursuant to the terms of the Operating Agreement. There is a \$100,000 self-insured retention under the subject PAG IA Policy.

#### 4. Settlement Process

At the urging of the Receiver, counsel for the those who invested in Aequitas through PAG and Strategic Capital Group, LLC ("SCG") worked diligently and cooperatively with the Receiver to develop and execute an orderly process to address claims against the two RIAs and related individuals that was designed to maximize recovery to investors and other creditors on an expedited basis. Other interested parties were invited and participated in the claims resolution process, including Enviso Group, LLC ("Enviso"), which brought claims against PAG and others in the Superior Court of San Diego County, California.

The various interested parties proceeded to mediation on March 1-2. The insurers attended and participated in the mediation. The entity and individual defendants produced financial statements and other evidence of potentially available assets prior to the mediation. Considerable progress was made during the mediation, however, further negotiation was necessary to reach a resolution.

On June 2, 2017, a number of individual investors filed a class action lawsuit (*Brown* - U.S. District Court for the District of Oregon - Case No. 3:17-cv-00869-HZ) against PAG, SCG and related parties on behalf of a class comprised of “all persons who purchased or renewed and continue to hold Aequitas promissory notes and funds while they were clients of [SCG or PAG] and upon the advice or recommendation of SCG or PAG or their investment advisor representatives.” The class “does not include Defendants, their officers, directors or employees [and] also does not include any of the Aequitas affiliated companies, and their officers, directors, board members, advisors, agents, employees, and affiliates, and the immediate family members of each of them.” The lawsuit was filed for the sole purpose of procedurally facilitating anticipated settlements on behalf of the defined Aequitas investors.

Subsequent to the filing of the class action lawsuit, counsel for the class of investors reached settlements with the named defendants including PAG. The settlements included the insurance carriers paying the remaining policy limits as well as a number of the individual defendants making personal contributions. On October 16, 2017, the Court granted the motions to approve the settlements and award fees [Dkt. 94]. The class members will receive an interim distribution of \$6.1 million less the reasonable fees and costs awarded by the Court. The formula utilized in executing the interim distribution will necessarily be without prejudice or precedential value. At this

early stage, the Receiver has not begun to formulate a distribution plan for the Receivership assets (which do not include the proceeds of this litigation).

5. Sale/Transfer of the Receivership Entity's Interest in PAG

In conjunction with the settlements referenced above, the Receiver and the members of PAG other than Aspen Grove reached agreement for the sale/transfer of the Receivership Entity's interest in PAG. The agreement is contingent upon Court approval. Among other terms of the agreement, PAG and its other members agree to defend and indemnify the Receivership Entity from all claims by Enviso as well as to fully satisfy all professional fees incurred by PAG. Further, they release all claims against AGES.

6. The Stay Will No Longer Apply To PAG

In the event the Court approves the sale/transfer of the Receivership Entity's ownership interest in PAG, Ancillary Proceedings against the RIA and its remaining members will have no effect upon the Receivership Entity and the stay will no longer apply to those parties.

**E. Probable Impact of Discovery Directed to the Receiver and the Receivership Entity**

**1. Consolidated Database**

As of the date of this report, the Receiver has consolidated all digital data within his control into a centralized, organized database. The database contains more than 13 million documents/emails. In addition to the Receivership's database, the Receiver has also integrated the multiple data repositories in DTI's<sup>5</sup> possession as well as the data

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<sup>5</sup> DTI (aka Document Technologies, Inc.) was the previous eDiscovery vendor employed by Aequitas and the database contains valuable work product related to prior productions in the ASFG litigation and to the SEC. The workproduct has been preserved.



repository hosted by Pepper Hamilton.<sup>6</sup> The Receiver is currently utilizing the centralized database to prepare his responses to SEC requests for production.

In accordance with the directive contained in paragraph 24 of the Order Appointing Receiver [Dkt. 156], the Receiver is pleased to report that the centralized database will be available for access and use by litigants and other appropriately-authorized parties on or about November 1, 2017. As the Court is aware, the individual Defendants lodged Objections to the July 7, 2017 Opinion and Order [Dkt. 479], continuing to contend certain communications are privileged. The documents subject to the on-going privilege dispute have been segregated and will not be made available to third-party litigants unless otherwise ordered by the Court. The protocol governing access to the database will be available on the Receivership website - <http://www.kccllc.net/aequitasreceivership/>

## 2. Orderly Discovery Process

As addressed in Section F. below, the Receiver recommends that the Court lift the stay of litigation against the Individual Defendants and the Receivership Entity effective January 1, 2018. In conjunction with that recommendation, the Receiver recommends and will file a motion to establish an orderly discovery process including reasonable limitations upon the discovery that may be directed to the Receivership Entity. Obviously, the receivership estate would be unnecessarily diminished by subjecting the Receiver, FTI personnel, remaining Aequitas employees and the Receivership Entity's engaged professionals to duplicative discovery in multiple lawsuits. The Receiver has addressed these concerns to counsel for investor claimants who support the general premise that

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<sup>6</sup> The Pepper Hamilton repository contains files provided by Sidley Austin and the SEC, as well as the ongoing privilege dispute by the Individual Defendants.

discovery directed to the Receivership Entity must be reasonably limited to avoid unnecessary depletion of the receivership estate.

#### **F. Lifting the Stay of Litigation**

By the end of 2017, the forensic accounting/investigation will likely be substantially complete and the majority of the Receivership Entity's assets will have been sold or otherwise monetized, thereby allowing some resources to be redirected to litigation-related matters without jeopardizing the Receivership's other vital activities. Accordingly, the Receiver recommends that the Court lift the stay of litigation against the Individual Defendants and the Receivership Entity effective January 1, 2018, but reasonably limit duplicative discovery and also channel investor and ordinary vendor claims into a systematic and efficient claims process to be proposed by the Receiver for Court approval (See Section IV.6.b, below, for additional detail).

### **IV. Overview of the Receiver's Activities**

#### **A. Summary of Operations of the Receiver**

##### **1. Day-to-Day Management**

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

##### **2. Bank Accounts**

As discussed in the Initial Report, the Receiver has instituted an integrated on-line platform that facilitates banking, future claims processing and cash reporting for

receivership cases. Cash basis reports including information for the current reporting period and case to date are attached as Exhibit B.

3. Staffing

a. *Headcount*

The Receiver continues to maintain the minimum staff necessary for the Receivership and enterprise to operate efficiently and effectively. As of September 30, 2017, the Receivership Entity had 12 full-time employees and 1 part-time employee – an increase of 2 employees during the quarter. The Receivership brought on a key person formerly with CarePayment Technologies to assist in the accounting for the portfolio receivables in connection with their reconciliation and transfer to CarePayment. The anticipated reduction in headcount of 1 FTE on June 30, 2017 did not occur as utilizing the employee as a contractor to shepherd the sale of certain small Receivership assets could not be legally accomplished under a consulting agreement. The Receiver's employee retention program provides for at least six-week notice to employees whose services are anticipated to no longer be required by the Receivership.

b. *Contractors*

In response to some staff attrition in addition to the planned reductions, the Receiver necessarily backfilled key accounting and technology positions with local independent contractors (not affiliated with FTI). As of September 30, 2017, the Receivership employed four full-time equivalent accounting contractors and two part-time IT contractors.

4. Audit and Tax Preparation

In the ordinary course of business, the Receivership has many reporting and tax preparation responsibilities to investors and taxing authorities. With the resignation of

Deloitte LLP as Aequitas' auditor and tax preparer, the Receiver was required to seek out and engage new professionals to fulfill those requirements.

*a. Audit*

The Receiver had engaged Burr Pilger Mayer ("BPM") to audit the 2015 financial statements for several Receivership entities where the Receiver believed an audit would be helpful in connection with a sale or refinancing process. This audit has been completed. The Receiver has facilitated the 2016 audit for COF/CCM, with the cost of the audit borne by COF/CCM (in which the Receiver no longer owns an interest). The Receiver has delayed the kick-off of the 2016 audit of CP LLC pending the timing of CPYT's purchase of the medical receivables portfolio.

*b. Tax Preparer*

The Receiver retained a tax specialist to assist legacy Aequitas staff in the preparation of tax and information returns, and to provide tax consulting services on an as-needed basis at the request of the Receiver.

*c. Other Tax Matters*

The 2016 Federal and state tax return filings for the Receivership LLCs, partnerships and trusts were completed in September. In all, more than 150 returns were filed with all federal and state authorities. Form k-1 information for investors and members was distributed as soon as returns were completed. The corporate tax returns for Aequitas Capital Management Inc. are in process and will be completed within the next 30 days.

The Receiver focused on marking as "final returns" as many of the 2016 filings as possible (primarily state returns) to reduce the number of returns to be filed for 2017. Looking forward, the 2017 short period tax returns for CCM Capital Opportunities Fund LP and Aequitas WFFF 1 LLC are due in December. These returns will be the final

receivership returns for those entities. Additionally, tax reporting for the Aequitas ETC Founders Fund LLC will be turned over to the new general partner now that the 2016 reporting is complete.

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

Under the Court's May 23, 2016 order granting limited relief from the stay to permit payment of defense costs for the Individual Defendants under the Receivership's D&O policy, the Individual Defendants are required to submit to the Receiver on a quarterly basis, commencing within 90 days of the entry of the order, a report reflecting the aggregate amount of defense costs paid by the insurer on behalf of the former executives during the prior quarter.

The Receiver was informed by counsel for XL Catlin, the insurer providing the first tier of \$5,000,000 coverage, that the total of the payments made by XL Catlin as of July 7, 2017 was \$5,000,000. The Individual Defendants claim to have incurred defense costs to date in excess of \$7,000,000.

The Receiver refused to stipulate to the payment of the Individual Defendants' claimed defense costs by the insurer providing the next \$5 million tier of coverage – Forge Underwriting Ltd. (Forge). The Individual Defendants filed motions for relief from the Order Appointing Receiver for the purpose of permitting Forge to reimburse their defense costs. The Receiver vigorously opposed the motions on a number of grounds, specifically including the fact that the Receivership Entity faces claims of Aequitas investors totaling approximately \$650 million.

The Receivership Entity is also insured under the subject policies, with coverage limits being depleted by the defense spend of the Individual Defendants. In August 2017, numerous counsel for the hundreds of Aequitas investors submitted written claims/demands to the Receiver totaling approximately \$650 million. The Receiver's

insurance coverage counsel promptly tendered those claims to the Receivership Entity's insurance carriers.

The Receiver has initiated settlement negotiations with the investors' counsel and will keep the Receivership Entity's insurance carriers as well as the Court apprised of how those negotiations progress.

6. Settlement of Dell Financial Services (DFS) Claim

The Receivership has reached a settlement with DFS regarding the \$1.2 million sale/leaseback taken out by Aequitas in December 2015 (schedule 506), which was approved by the Court on September 5, 2017 [Dkt 524]. Under the settlement, the Receivership paid \$100,000 to buy out the related lease obligations for equipment currently in use and additional excess equipment currently in the possession of the Receivership. The equipment in use and in possession had a lease schedule value of \$205,930.

We anticipate that DFS will file an unsecured claim for \$1.1 million of damages. Based on deficiencies and defects related to the lease claim, the Receivership believes the claim may be contested. DFS agrees to release all liens related to sale/leaseback (under schedule 506) which enables the Receiver to use the equipment currently needed and sell the remaining excess equipment.

**B. Development of Claims Process**

The Receiver has been working on quantifying and validating the over \$600 million of investor claims. This involves reconciling tens of thousands of investor investment/redemption activities documented by the books and records of the Receivership, which, because Aequitas did not utilize a consolidated accounting and investor reporting platform, requires reconciling investor account statements produced outside the accounting system with separate accounting and tax records. Additional

validations will be necessary to the extent issues are discovered during the reconciliation process and to the extent the Receivership's records do not align with investor and creditor records.

The Receiver is trying to ease the investor and creditor claims process burdens. The Receiver is in the process of populating and distribution to all investors a summary of historical activity relating to such investor / creditor. If the investor concurs with such records, no further effort is anticipated with respect to submission of claim information by such investor. If any investor disagrees with the Receivership's books and records, it is anticipated that a streamlined resolution process will be implemented.

The Receiver is continuing a phased roll out of a data confirmation process pursuant to which packets are being sent to each investor which had an active account balance in any fund of the Receivership Entity from January 1, 2012 to the date of the Complaint. As of September 30, 2017, 1,440 investor packets have been sent to investors representing substantially all of the invested capital in ACF Private Note, Income Opportunity Fund, Income Opportunity Fund II, Income Protection Fund, Private Client Fund, Enhanced Income Fund, ACC C Plus Holdings, ACC F Plus Holdings, Aequitas Peer-to-Peer Funding, CarePayment Holdings, ML Financial Holdings, and MotoLease Financial as of the date of the Complaint. The Receiver anticipates that validations for the remaining investments, covering about 50 direct investors, including investors in the equity-based funds will be completed in the coming months.

The confirmation process will allow the Receiver to gather/confirm information needed to begin the formulation of a distribution plan and will be levered into a formal claims process once the claims order has been issued and a bar date established. Nothing in the data confirmation process will be dispositive as to the form of the distribution plan.

## V. Disposition of Assets/Interests

### A. Assets/Interests Sold

#### 1. EdPlus Holdings, LLC/Unigo Group sale

On June 28, 2016, the Court approved the motion, and entered the Order (1) Authorizing Receivership Entities to Execute Instruments to Sell Extended Entity Assets, and (2) Approving Compromise of Creditor Claim Against ACF [Dkt. 207] and the transaction closed on the same day. As reflected in the motion and the Declaration of Ronald Greenspan filed in support of the motion [Dkt. 200] as well as prior Receiver's Reports, the consideration for the sale included an "earn out" based on the performance of EdPlus during the 12 months following the sale (the "Earnout").

The final reporting period for the quarterly statement of the Earnout closed July 31, 2017 and the statement for that quarter was received on September 26, 2017. The final quarterly statement showed no positive EBITDA and, therefore, no Contingent Payment is due under the terms of the Asset Purchase Agreement.

#### 2. CarePayment Medical Receivables

CCM Capital Opportunities Fund ("CCM") was a \$102 million fund formed to make control and minority investments in small to middle-market financial services companies. As detailed in prior Receiver's Reports, on or about March 7, 2017, the Receiver closed on a transaction that involved not only the sale of the Receivership Entity's interest in CCM, but also (i) the sale of certain CarePayment healthcare receivables, (ii) the payoff of Wells Fargo Bank, N.A, (iii) grant of an option to purchase the Receivership Entity's and its affiliate's healthcare receivables to CarePayment Technologies, Inc. (together with its subsidiaries, "CPYT"), and (iv) detailed agreements related to the continued operation of the CarePayment program during the option period



(collectively, the “CCM Transaction”). Details on the New Program Agreements coincident with this transaction are detailed in the Receiver’s Reports.

In order to facilitate the close of the CCM Transaction, the Receivership Entity provided a \$10.7 million senior secured loan to CPYT. The loan had a 12-month term. The loan shored up CPYT’s liquidity allowing it to fulfill its obligations to its capital partner, while providing a return to the Receivership on its funds. This funding to CPYT helped better protect the value of the millions of dollars of CarePayment receivables serviced by CPYT and still owned by the Receivership Entity and its affiliate and better positioned CPYT to acquire the Receivership Entity’s remaining CarePayment receivables portfolio.

On July 28, 2017, CPYT repaid the Receivership Entity loan of \$10.7 million plus accrued interest of \$464 thousand. It also purchased \$19.2 million (face value) of medical receivables from CPLLC and CPFIT for the agreed-upon purchase price of \$17.5 million (leaving the Receivership with a remaining portfolio balance of \$17.5 million face value). The Receivership used a portion of the proceeds to retire the outstanding DLI debt balance of \$7.6 million.

In total, between July 1, 2017 and September 30, 2017, CPYT acquired CarePayment receivables for a purchase price of \$19.7 million under the Option Agreement (face value of \$21.6 million). This brings the total amount of health care receivables acquired by CPYT from Receiver-controlled entities up to \$25.1 million (face value of \$27.5 million).<sup>7</sup> An additional \$2.4 million was received for the purchase of hospital accounts receivable owed to CPLLC and CPFIT from July to September, with the 2017 year to date total of \$9.1 million.

Pursuant to a stipulation with Weider/Forman litigants, the net proceeds of the account receivable sales in excess of institutional debt repayment were placed in a segregated account

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<sup>7</sup> Includes \$7.5 million of non-cash purchases; such funds went directly to pay down the DLI loan.

pending determination of their appeal. On October 12, 2017, an Order was filed that relieved the Receiver of any obligation to segregate funds on behalf of Weider/Forman.

### 3. Innovator Holdings LLC (IH)

IH holds a 51% interest in Innovator Management, LLC (“IM”) – a 1940-Act investment advisory platform that is owned equally with Clifton Larson Allen (“CLA”). IM has consistently lost money and, since the Receivership, has been funded solely by CLA. The Receiver and CLA agreed to sell IM and requested court approval on April 19, 2017.<sup>8</sup>

The Court entered its order<sup>9</sup> on April 20, 2017 permitting the sale of the Receivership’s interest in IM and a closing of the transaction occurred on May 9, 2017. Sale proceeds were held in escrow until the shareholders approved the new advisory agreement and the purchaser received an exemptive order from the SEC. These closing conditions were met in late September/early October and the \$50,000 in proceeds was received October 11, 2017.

### 4. ETC Founder Fund (ETCF)<sup>10</sup>

ACF owns 15.4% of ETCF, and AIM owns 11% of ETCF. ETCF’s sole investment is in \$8.8 million Series A convertible preferred stock in ETC Global Holdings, Inc. (“ETCGH”) which was purchased in September, 2011. As discussed in prior Receiver's Reports, ETCF was entitled to certain preferential rights, including a liquidation preference that requires ETCGH to first return ETCF’s capital investment in ETCGH, plus a 5% per annum preferred return, before making distributions to the other members of ETCGH.

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<sup>8</sup> 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 [Dkt. 412].

<sup>9</sup> Order Granting 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 [Dkt 415].

<sup>10</sup> <https://www.etc-clearing.com/>

On May 1, 2017, ETCGH notified the Receiver that ETCGH intended to enter into a “Financing Transaction” with two lenders that would provide ETCGH with critical capital, but would also drastically change the ownership and control of ETCGH. ETCF, through its ownership of the Series A Units, had the ability to block the Financing Transaction. The Receiver rejected that proposal and negotiated extensively the terms of the Financing Transaction taking into consideration the Receivership investors, the interests of non-AIM/ACF investors (a Receivership entity was the general partner of ETCF), the investment and execution risks, and the investment timeline.

The Receiver solicited the consent of ETCF investors formally documenting the approval of and consent to the renegotiated Financing Transaction, and a determination by the ETCF investors that the Financing Transaction is fair to ETCF and its members. The Receiver received consent from 92% of ETCF investors (all who voted) with no dissent noted. After conferral with interested parties, the Receiver filed on July 24, 2017 the Receiver's Motions for an Order (1) Authorizing Aequitas ETCGH Founders Fund to Consent to Loan to ETCGH Global Group, (2) Authorizing Receivership Entities to (A) Sell Special Member Interests in Aequitas ETCGH Founders Fund, (B) Release Claims, (C) Convert Aequitas ETCGH Founders Fund's Equity Interests in ETCGH Global Group, and (D) Execute Instruments to Effectuate Loan to ETCGH Global Group (3) Approving Compromise of Management Fees Owned by Aequitas ETCGH Founders Fund to Aequitas Investment Management, and (4) Granting Related Relief [Dkt 482]. The Court approved the Receiver's Motion [Dkt 485].

**B. Ongoing Asset Stabilization and Sales Efforts**

The Receiver continues to prepare assets for sale and actively market other assets.

**1. Campus Student Funding**

One of the gating monetization issues of the Corinthian Colleges student loan receivables is a settlement of the Consumer Financial Protection Bureau (CFPB) and state attorneys general claims against certain Receivership Entities. The Receiver has been working diligently since the commencement of the Receivership to advance a settlement that preserves some value in the portfolio of \$186 million<sup>11</sup> in student loans.

After over a year of negotiations, on August 17, 2017, the Court approved Receiver entering into the nationwide settlement with CFPB and thirteen state Attorneys General in connection with the Corinthian Colleges private student loan portfolio owned by the Receivership (the “Settlement”) [Dkt. 495].

All 14 individual settlements are on identical terms, although the form and structure of the settlement and ensuing court orders differ among the states. States that joined the settlement include: California, Colorado, Connecticut, Florida, Illinois, Iowa, Kentucky, Maryland, New York, Oregon, Pennsylvania, Texas, and Washington. The CFPB settlement pertains to all students nationally; the state settlements cover approximately 65% of the outstanding receivables balance.

Settlement terms include:

“Active Accounts” (accounts that are less than 270 days past due) – relief includes 55% principal reduction and 100% relief on 30+ day past due interest and fees, effective March 31, 2017.

“Defaulted and Closed School Accounts” (accounts that are 270 or more days past due and certain other accounts) – relief includes 100% discharge of all the amounts owed as of March 31, 2017.

The Settlement contains additional features including an option for borrowers to re-amortize the reduced unpaid balance (thus resulting in lower monthly payments),

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<sup>11</sup> Balance as of September 30, 2017. \$47.0 million is the unpaid principal balance (UPB) of active loans and \$138.7 million UPB of loans are more than 270 days past due.

detailed noticing regarding the settlement, prior credit history deletion, periodic reporting to CFPB, etc. The Settlement also requires that the Receiver shall use commercially reasonable efforts to obtain guidance from the Internal Revenue Service indicating that the Receiver is not required to make federal tax filings (including sending 1099-C forms to Borrowers) as a result of the debt relief provided in the Settlement. Receiver's counsel and CFPB have approached the IRS with a request to waive the debt cancellation tax noticing requirement.

While the Settlement represents significant relief to the borrowers in terms of the unpaid principal balance reduction and credit history "clean-up", it is beneficial for the Receivership Entity as it:

- Allows the Receivership to sell the portfolio and substantially enhances the marketability of the portfolio;
- Preserves the Receivership's (or purchaser's) ability to collect and pursue collection actions for the Active Loans, thus preserving value in the remaining portfolio;
- Avoids significant legal costs and disruption associated with on-going actions by CFPB and likely actions by state Attorneys General;

The implementation of the Settlement requires a very significant effort on the part of the Receivership staff and legal counsel who are working closely with the portfolio's main servicer, University Accounting Service, LLC, to provide the mandated relief to the student borrowers and to fulfill other obligations under the Settlement.

## **2. ACC Holdings 5 (Luxembourg Bonds)**

As detailed in Receiver's Reports, the Receivership Entity is involved in a complex trust structure (the "Lux Investment") related to several series of bonds offered on the Luxembourg Stock Exchange (the "Bonds") to non-U.S. investors. The issuer of such

bonds is Aequitas Income Opportunities S.A. (the “Issuer”), which is not part of the Receivership Entity. Issuer is an independent company that is owned by a Dutch Stichting (foundation) and managed by an independent Board of Directors (the “Lux Board”).<sup>12</sup> The Receiver continues to have active discussions with the Lux Board as to the monetization of the Lux Investment and received an updated proposal from the Lux Board on September 21, 2017 that is currently being evaluated.

### 3. Marketing Services Platform (MSP)<sup>13</sup>

MSP was originally a holding company formed to acquire companies in the marketing, printing, and graphic arts industries. Over time the holding company acquired the assets of three traditional printing companies, a packaging company, and Ivey Performance Marketing (a branding, marketing, and digital technology company). At the time of the Receivership, only the Ivey Performance Marketing (“Ivey”) business was active, with the other operations either being shut down, sold off, or rolled into Ivey. The majority of the equity of MSP is owned by APF and there is approximately \$12.5 million subordinated debt which is predominately held by AHF.

Due to the seasonality of the business and the loss of a key customer in early 2016, the Receiver – after consultation with the IAC – agreed to provide bridge financing of up to \$940 thousand while Ivey repositioned its business and prepared to sell itself as a going concern. The Receiver, MSP and Ivey retained the services of an investment banker. The marketing efforts were not successful in sourcing any offers that returned value to the Receivership and alternative plans were evaluated and offers sought for the separate business lines. This approach also failed to produce satisfactory offers.

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

<sup>13</sup> <http://ivey.com/>

Ivey was not able to sustain operations without additional loans or equity investment. Given the inadequate offers generated by the marketing efforts of the investment banker and the likely inability to recover any new funds advanced, the Receiver declined to provide additional funds. On September 15, 2017, Ivey sold two of its three lines of business (Branded Environment and Content) in a “distressed sale” for \$850 thousand with the bulk of the proceeds (together with existing cash balances) used to pay secured debt in exchange for lien releases (\$486 thousand), personnel-related costs (\$307 thousand) and investment banker costs (\$105 thousand). Also on September 15, 2017, all staff at Ivey were terminated. The Receiver recently closed a separate sale of the Performance Marketing line of business in partial satisfaction of related trade vendor liabilities.

#### 4. **Synchronex, LLC**<sup>14</sup>

Synchronex provides technology solutions to the publishing industry via multiple products. It offers syncAccess, a cloud-based pay meter solution that helps newspaper publishers to develop, configure, own, and evolve mobile and digital products.

The Receiver is working towards a definitive agreement with the potential stalking horse bidder.

#### 5. **MotoLease Financial (MLF)**

MLF holds subprime consumer leases for motorcycle and other recreational vehicles. To date, the Receiver has collected approximately \$11 million on account of the leases owned at the beginning of the Receivership. As of September 30, 2017, the remaining portfolio had a face value of approximately \$6.3 million, of which \$5.7 million is less than 60 days past due. Additionally, MLF had repossessed 155 vehicles with cumulative outstanding lease balances of \$959 thousand that are in various stages of

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<sup>14</sup> <http://www.synchronex.com/en/>

reconditioning and/or resale. The Receiver is also reviewing potential claims with the servicing of the portfolio and refurbishment of the repossessed assets. Several interested parties are reviewing the economics of the portfolio and the Receiver is working to bring a purchase agreement forward in the next 90 days. Depending upon the amount of the offers, the Receiver will determine whether a sale or continued natural run-off of the portfolio is optimal.

#### **6. Pipeline Health Holdings, LLC (“Pipeline”)<sup>15</sup>**

PCF owns 12.6% of Pipeline, which is a telepharmacy platform offering both a full service telepharmacy and also software as a service (SaaS) technology. Pipeline offers telepharmacy to hospitals and hospital networks.

Pipeline is in the process of completing its latest financing round with a strategic investor. There are a handful of early investors that have indicated an interest in exiting the company as part of this transaction, including Aequitas. Pipeline has engaged an investment banker to conduct a secondary offering to assist investors in the monetization their interests. The investment banker has contacted approximately 60 prospective buyers and believes 10-15 parties may have an interest. Pricing for the secondary offering has not been determined, but, due to delays in Pipeline’s process, it appears that the timing for a transaction would not occur before the end of December.

#### **7. Portland Seed Fund (PSF)<sup>16</sup>**

Portland Seed fund is an investment in a local venture capital fund providing early stage capital to Oregon based start-ups. ACF had made a \$250 thousand funding commitment pre-Receivership of which \$150 thousand had been advanced. On January 24, 2017, the Receiver elected to fund a \$50 thousand capital call rather than default

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<sup>15</sup> <http://www.pipelinerx.com/>

<sup>16</sup> <http://portlandseedfund.com/>



on the funding commitment and forfeit the \$150 thousand. The final \$50 thousand funding commitment was projected to be due in Q4 2017.

The Receiver undertook a joint marketing process with the PSF in which the Receivership's interests were marketed along with other investor interests (some of which were defaulted). On or about August 25, 2017, the Receiver received an offer to purchase the combined interests with the Receivership receiving \$195 thousand and the buyer funding the Q4 2017 funding commitment.

On or about September 7, 2017, the Receiver learned of a potential transaction involving the sale of a portfolio company by PSF. The transaction by PSF, at closing, would return approximately \$84 thousand for the Receivership. The PSF GP planned to utilize the funds to fully satisfy the Q4 2017 capital call and to distribute the remaining proceeds to LPs. As the offer to purchase the Receivership's interest had not yet been consummated, negotiations resumed for the sale of the Receivership's interest post-PSF transaction. The negotiations broke down over the value and disposition of the PSF transaction distribution. On September 29, 2017, the Receivership received \$32 thousand as the first payment of the distribution from PSF. The Receiver continues to seek opportunities to monetize the remaining PSF interest.

#### **8. Certified Security Solutions (CSS)<sup>17</sup>**

CSS is a cybersecurity company that provides company enterprise and IoT digital identity security for data, devices, and applications. Aequitas originally invested \$250,000 in a convertible note and then sold that note pre-Receivership at a discount - \$225,000. Interest had been accruing and unpaid such that CSS allocated common shares at \$.10/share to offset interest. Receivership records show ownership of 1.6 million shares of stock. Overall CSS has between 82-85 million shares outstanding.

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<sup>17</sup> <https://www.css-security.com/>

Since the time of Aequitas' investment, CSS has raised four additional rounds of preferred, participating stock with a 1x liquidation preference. Total raise is between \$14-15 million which would be paid prior to common shareholders receiving anything.

CSS recently completed a valuation of the fair market value of the company consistent with the provisions of Internal Revenue Code 409A which established the value for the common shares/options on a minority nonmarketable basis at \$.04/share. CSS has expressed an interest in reacquiring the shares and is preparing a letter of intent.

## **VI. Communications to Interested Parties**

### **A. Ongoing Communication with Investors/Counsel**

To facilitate regular communication regarding significant opportunities, challenges and actions, the Receiver formed the Investor Advisory Committee (the "IAC") which consists of 53 investors and advisers. Participation was solicited based on size of the investor or investment advisor and also with an eye toward ensuring that all of the significant constituencies would be represented. The latest meeting of the IAC was held in person (and telephonically) on September 13, 2017.

### **B. SEC and Other Governmental Agencies**

#### **1. SEC**

As previously discussed, on March 10, 2016, the SEC filed a complaint in this Court alleging that certain Aequitas executives and five entities had violated various federal securities laws. On June 6, 2016, the SEC and the Receiver, acting on behalf of the Aequitas Entity Defendants, filed a consent judgment with the Court, which resolved the claims set forth in the SEC Complaint against the Entity Defendants only, without admitting or denying the numerous allegations. We continue to interact and cooperate

with the SEC, as required by the consent judgement, but there is nothing new to report as of now.

2. CSF and CFPB, and State Attorneys General

Please see section V.B.1 above for the discussion of the Settlement with CFPB and thirteen state Attorneys General.

## **VII. Lender Relationships**

### **A. Retirement of Institutional Debt**

In conjunction with the previously discussed exercise by CPYT of its receivables purchase Option, the Receivership retired the associated institutional senior debt facility on July 28, 2017. The Receivership Entities and affiliates now have retired the entirety of the \$104.3 million of institutional secured debt which existed at the beginning of the Receivership.

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

### **Estate**

#### **A. Cash and Cash Equivalents**

The Receiver had cash balances of approximately \$110 million as of September 30, 2017. Over the period from March 16, 2016 to September 30, 2017, the overall cash balance of the Receivership Entity increased by approximately \$94 million.

Attached as Exhibit B to this Report is the Report of Cash Receipts and Disbursements in the form of the Standardized Fund Accounting Reports as prescribed by the SEC. The reports, together with the accompanying footnotes and detailed schedules, provide an accounting of the Receivership Entity's cash activities through September 30, 2017.

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

The Receiver is actively working and negotiating with Next Motorcycle, LLC in order to secure approximately 46 motorcycle assets (or obtain the funds due from the sale of said assets) which are currently not in the possession of the Receivership Entity. The sale of these assets may yield approximately \$100,000 in gross proceeds.

**X. Accrued Professional Fees**

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

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

**Aequitas Receivership**

Professional Fees &amp; Expenses by Entity (from July 1 through September 30, 2017)

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	132,330.00	5.3%	2,057.40	4.5%	134,387.40	5.3%
FTI Consulting	1,020,340.00	41.0%	34,402.19	75.6%	1,054,742.19	41.6%
Pepper Hamilton	265,764.43	10.7%	72.57	0.2%	265,837.00	10.5%
Schwabe, Williamson & Wyatt	682,837.40	27.4%	2,885.99	6.3%	685,723.39	27.1%
Morrison Foerster	237,884.60	9.6%	4,071.67	8.9%	241,956.27	9.5%
Law Office of Stanley H. Shure	150,309.75	6.0%	2,004.37	4.4%	152,314.12	6.0%
Pachulski Stang Ziehl & Jones <sup>[1]</sup>	-	0.0%	-	0.0%	-	0.0%
Akin Gump <sup>[1]</sup>	-	0.0%	-	0.0%	-	0.0%
Ater Wynne <sup>[1]</sup>	-	0.0%	-	0.0%	-	0.0%
<b>Total:</b>	<b>2,489,466.18</b>	<b>100%</b>	<b>45,494.19</b>	<b>100%</b>	<b>2,534,960.37</b>	<b>100%</b>

[1] Pachulski Stang Ziehl & Jones, Akin Gump, and Ater Wynne did not incur fees or expenses during the billing period.

**XI. Receivership Claimants**

In the Initial Report, the Receiver provided a summary compilation of claimants. The summary reflected the Aequitas entities where claimants invested/loaned funds. It does not reflect any subsequent inter-company investments/loans by the Aequitas entities. There have been no changes in the claimants since the last report.

**XII. Receiver's Plan**

As discussed more fully in the Report, the Receiver has made very substantial progress in actively recovering, stabilizing and monetizing assets, has consolidated and rationalized the terabytes of electronic data, and has commenced the forensic investigation and claims process. At this stage it is impossible to provide a definitive timeline for the completion of this and subsequent phases of the Receivership – culminating in a comprehensive, court-approved distribution plan to investors and creditors. This Receivership, comprised directly of 48 entities and almost a dozen more affiliated entities, and involving many operating business (as opposed to owning passive financial assets) is extraordinarily complex and it will take considerable time until distributions to investors can be made from the Receivership Estate. However, the Receiver has facilitated several approved and pending settlements between Investors

and professionals and IRAs, the proceeds of which are intended to be distributed (with the assistance of the Receiver) shortly after court approval of the settlements.