

Troy 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.
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: iknauer@swlaw.com
Snell & Wilmer LLP
1101 Pennsylvania Ave. NW, Suite 300
Washington, DC 20004
Telephone: 202.802.9770
Facsimile: 202.688.2201

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;
AEQUITAS COMMERCIAL FINANCE,

No. 3:16-cv-00438-PK

RECEIVER'S REQUEST FOR APPROVAL
OF EIGHTH INTERIM FEE APPLICATION

Page 1 - RECEIVER'S REQUEST FOR APPROVAL OF EIGHTH
INTERIM FEE APPLICATION

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
1211 SW 5th Ave., Suite 1900
Portland, OR 97204
Telephone: 503.222.9981
Fax: 503.796.2900



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

Defendants.

Local Rule 7-1

Owing to the complexity and volume of the Receiver's Request for Approval of Eighth Interim Fee Application, the Receiver has not sought to confer with the other parties or counsel as would normally be required under Local Rule 7-1. In accordance with the direction set forth in the Order Appointing Receiver, the Receiver provided the Securities and Exchange Commission (the "Commission") complete copies of the detailed invoices of all of the firms prior to the filing of this Application and received no objection from the Commission.

I. RELIEF REQUESTED

The Court-Appointed Receiver in this action, Ronald F. Greenspan, respectfully requests the Court's approval to pay the interim fees and expenses of the Receiver and the professional service firms that have rendered services on behalf of the Receivership Entity for the period from January 1, 2018 through March 31, 2018 (the "Eighth Application Period").

The efforts of the Receiver and the professionals on behalf of the Receivership Entity are set forth in detail in the April 30, 2018 Report of the Receiver (the "April 2018 Report")¹ as well as in the summary invoice of each professional, which are attached to the Declaration of Ronald F. Greenspan (the "Greenspan Declaration") filed contemporaneously with this motion.² As the

¹ Dkt. 610.

² Greenspan Declaration, Exhibits B through F.

Court is aware, this is a very complex and otherwise difficult case. The information contained in the April 2018 Report and in the summary invoices demonstrates both the necessity of the services provided, as well as the reasonableness of the resulting fees and expenses.

The Court has previously approved the engagement of each of the professional service firms. In accordance with the request of the Commission, all of the firms have discounted their standard hourly rates. The fees and expenses submitted to the Court for approval are consistent with the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission (the “Billing Instructions”). In accordance with the direction set forth in the Order Appointing Receiver, the Receiver provided the Commission complete copies of the detailed invoices of all of the firms prior to the filing of this Application and received no objection from the Commission. Prior fees and expenses requested, allowed, and paid by the Receivership Entity are set forth in detail below.

II. BACKGROUND

On March 10, 2016, the Commission filed a Complaint (the “Complaint”) against the Entity Defendants as well as Robert J. Jesenik, Brian A. Oliver and N. Scott Gillis (collectively the “Individual Defendants”), for alleged violation of Federal Securities Laws in what the Commission describes as a “Ponzi-like” scheme.³ The Commission alleges that the Individual Defendants, all principals of one or more of the Entity Defendants, defrauded investors and also misused investor funds to pay operating expenses and to repay earlier investors.⁴ The Commission further alleges that “[b]y the end of 2015 [Aequitas] owed investors \$312 million

³ Dkt. 1.

⁴ Dkt. 1, ¶¶ 1-7.

and had virtually no operating income to repay them.”⁵ The investments identified by the Commission refer to the funds borrowed by ACF, one of the 48 entities composing the Receivership Entity. In total, there are over \$600 million of investor funds in the Receivership Entity.

On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Ronald F. Greenspan was appointed as Receiver for the Entity Defendants and 43 related entities on an interim basis (the “Interim Order”). On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis (the “Final Receivership Order”).⁶ In very general terms, the Receiver is directed to marshal and preserve assets of the Receivership Entity.

The Receiver has filed 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], through June 30, 2017 [Dkt. 491], through September 30, 2017 [Dkt. 559], and through December 31, 2017 [Dkt. 587] which are collectively referred to herein as the “Receiver’s Reports”. The April 2018 Report is the Receiver’s report and recommendations to the Court for the quarter ending March 31, 2018. The contents of the Eighth Interim Fee Application, like the focus of the April 2018 Report, provides the basis for the fees and expenses incurred by the professionals on behalf of the Receivership for the quarter ending March 31, 2018.

⁵ Dkt. 1, ¶ 5.

⁶ Dkt. 156.

A. The Receiver continues to successfully preserve and expeditiously monetize Receivership assets.

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 March 31, 2018, the Receiver has sold assets and collected receivables totaling approximately \$309 million. The Receiver has also entered into and substantially completed the implementation of a settlement with the Consumer Financial Protection Bureau (“CFPB”) and thirteen state Attorneys General in connection with the Corinthian Colleges student loan portfolio held by CSF, including modification or cancellation of each of the approximately 47,000 loans, and appropriate notification to each of the borrowers. As a result of the debt discharge provided to the student borrowers, the Receiver was also required to mail approximately 42,000 debt cancellation tax forms (1099’s) to the borrowers.

Having made substantial progress on the planned asset dispositions, the Receiver has proceeded with an investor claim validation process, which is approximately eighty percent (80%) complete.⁷ Also, the Receiver has continued his forensic investigation and the draft report is being finalized.

B. The Receiver continues the daily management of the Receivership Entity.

The various loan portfolios and numerous operating companies owned by the Receivership Entity require daily management until monetized or wound down. The Receiver and his team fill the management gap left after the termination of the Individual Defendants and

⁷ 80% completion is an estimate based on the dollar value of the outstanding balance of the amounts owed to investors. The Receiver is currently working with Integrity Trust Company (and its customers) in an effort to validate data regarding the approximately other 20% which is comprised of investments made by Integrity’s customers.

the departures of other management and staff (more than 90% of pre-Receivership employees are no longer with the Receivership Entities). Absent that day-to-day, hands-on management, the Receivership Entity's, and, ultimately, the investors' value would languish.

Feedback from Commission staff and the overwhelming majority of Aequis investors regarding our progress thus far has been very positive. The Receiver is very mindful of their priorities to proceed both expeditiously and economically and conclude this Receivership in an equitable fashion as soon as practicable. The Receiver believes he has their support and encouragement to continue his efforts, and that they also support the continuation of the Receivership.

C. The Receiver recommends that the Receivership continue for the benefit of creditors and investors.

It remains the Receiver's recommendation that the Receivership continue. 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 finish monetizing the remaining assets in a manner and timeline consistent with reasonably maximizing value to the investors. The Receiver also must (i) complete the investor data verification and claims reconciliation process, (ii) finish the forensic investigation, (iii) pursue asset recovery and avoidance litigation, (iv) resolve investor and other creditor claim amounts, and (v) draft and seek constituent support and court approval of an asset distribution plan, for which the modeling of several alternatives has already begun.

D. The following qualified professional service firms have been engaged by the Receiver to aid in the discharge of his duties and responsibilities to the Receivership Entity.

On March 16, 2016, pursuant to the Interim Order, the Receiver engaged FTI Consulting,

Inc. (“FTI”), as well as the law firms of Pepper Hamilton LLP (“Pepper”), Schwabe, Williamson & Wyatt PC (“Schwabe”) and Pachulski Stang Ziehl & Jones LLP (“Pachulski”) on an interim basis. On April 14, 2016, pursuant to the Final Receivership Order, the Receiver engaged FTI, Pepper, Schwabe and Pachulski on behalf of the Receivership Entity.

On July 18, 2016, pursuant to the Order Granting Receiver’s Application To Employ Counsel, the Receiver employed the Law Offices of Stanley H. Shure (“Shure”), Akin Gump Strauss Hauer & Feld LLP (“Akin”), Morrison & Foerster LLP (“MoFo”) and Ater Wynne LLP (“Ater”) *nunc pro tunc* to March 10, 2016.

1. FTI Consulting - Receiver, Financial Advisor and On-Site Management

The Receiver is employed as a Senior Managing Director of FTI, which bills and collects for the Receiver’s time and expenses. To support the Receivership, the Receiver has retained FTI and has access to FTI professionals. FTI is serving as financial advisor to the Receiver and providing daily, on-site management supervision over the operations of the Receivership Entity. Additionally, FTI has been instrumental in preparing assets for market, running certain sale processes, data and information consolidation, investor account data verification, coordinating the forensic accounting, and implementation of the national Corinthian Colleges student note receivable settlement with the CFPB and thirteen state Attorneys General.

2. Pepper Hamilton - Securities and Exchange Commission Counsel

Pepper represents the Receiver in connection with SEC-related matters, including the SEC Complaint and discovery promulgated thereunder. Pepper also represents the Receiver regarding other ongoing regulatory inquiries and acts as a point of contact for the Receiver with the Consumer Financial Protection Bureau (the “CFPB”) and certain other governmental

agencies. Pepper has also assisted the Receiver with certain transactional work.

3. Schwabe, Williamson & Wyatt – General Counsel

As general counsel to the Receiver, Schwabe provides general outside counsel advice, as well as the majority of transactional and litigation support for all matters other than the SEC action. As periodically requested by the Receiver and as required of local counsel, Schwabe assists in the SEC enforcement action. Schwabe also communicates with the Commission Staff regarding operations, asset sales and other issues related to the administration of the Receivership.

4. Pachulski Stang Ziehl & Jones – Bankruptcy Counsel

Pachulski has been retained to provide advice involving bankruptcy related matters, if needed. Pachulski also advised the Receiver at outset of the case on various receivership set up and administration matters and performed lien perfection analyses.

5. Stanley H. Shure – Insurance Counsel

The Law Offices of Stanley H. Shure was retained to provide counsel on all insurance coverage issues pertaining to the Receivership Entity, including but not limited to: (a) reviewing and analyzing the Receivership Entity's liability insurance policies with respect to the claims made against it, (b) providing counsel in the event of insurance coverage disputes with the Receivership Entity's insurers, (c) evaluating the "Bankers Bond" policy for scope of coverage and whether the Receivership Entity holds any claims under the policy, and (d) analyzing and providing counsel with respect to claims, if any, that the Receivership Entity may have against former directors and officers of the Receivership Entity.

6. Morrison & Foerster – Consumer Financial Protection Bureau

Before the Commission filed suit, MoFo was counsel for three entities within the

Receivership Entity: Aequis Capital Management, Inc., Aequis Commercial Finance, LLC, and Campus Student Funding, LLC on two matters. Specifically, MoFo represented those three entities with respect to (a) the Corinthian Colleges' bankruptcy case, and (b) an investigation initiated by the CFPB and certain state attorneys general relating to Corinthian-related student loans owned by Campus Student Funding (the "CFPB Matter"). The Receiver has retained MoFo with respect to ongoing representation in the CFPB Matter only.

7. Akin Gump Strauss Hauer & Feld – American Student Financial Group, Inc.

Prior to entry of the Interim Order, Akin was counsel to certain entities within the Receivership Entity in two matters. First, Akin represented Aequis Capital Management, Inc. in the matter of American Student Financial Group, Inc., et al. v. Aequis Capital Management, Inc., Case No. 12-cv-02445-CAB-JMA (S.D. Cal.). Akin also represented Robert Jesenik and Andrew MacRitchie in that action, but claims against those individuals were dismissed on summary judgment. Second, Akin has represented the following companies in the Receivership Entity, in the matter of American Student Financial Group, Inc. v. Campus Student Funding, LLC, et al., Case No. 37-2013-00028562-CU-IP-CTL (San Diego Superior Court): Aequis Commercial Finance, LLC; Aequis Investment Management, LLC; Aequis Income Protection Fund, LLC; Aequis Income Opportunity Fund, LLC; and Aequis Capital Management, Inc. Akin has also represented Campus Student Funding, LLC, f/k/a ASFG, LLC, Thomas Szabo, and Thomas Reiter in the same matter.

8. Ater Wynne – Conflicts Counsel regarding Wells Fargo Bank, NA

Ater was retained to represent the Receiver with respect to matters adverse to Wells Fargo Bank and other matters where the Receiver's retained counsel had a conflict of interest.

The Wells Fargo liability has been retired. Ater withdrew as counsel to the Receiver effective April 4, 2017.⁸

E. The Receiver and the professional firms have already returned millions of dollars to the Receivership Entity.

During the Eighth Application Period, the Receivership Entity's cash receipts totaled approximately \$7.68 million and cash disbursements totaled approximately \$7.75 million. As of March 31, 2018, the Receivership Entity had cash balances in excess of \$117 million. The Standardized Fund Accounting Report, which is included in the Receiver's April 2018 Report, provides a detailed statement of cash receipts and disbursements.

The April 2018 Report also contains detailed accounts of the asset sales completed during the Eighth Application Period, as well as prior transactions and ongoing sales efforts.⁹ The following are brief summaries of the transactions completed during the Eighth Application Period.

1. CarePayment Medical Receivables

On December 21, 2017, CPLLC and CPFIT sold the remaining healthcare receivables to an affiliate of CPYT. This marked a major milestone in the Receivership's successful complete liquidation of the CarePayment receivables portfolio.

In the first quarter of 2018, Receivership staff continued to work closely with CPYT to complete post-transaction reconciliations, clear remaining invoices, and to establish procedures to finalize separation of the CarePayment platform from the Receivership. The Receivership has negotiated and executed documentation with several healthcare providers that resulted in releases

⁸ Dkt. 396.

⁹ Greenspan Declaration, Exhibit A.

to the Receivership Entities in connection with prior contractual obligations of CPLLC and assignment of the agreements to an affiliate of CPYT. The Receiver, jointly with CPYT, is continuing to work on transitioning the remaining healthcare provider agreements and other contractual relationships.

In terms of outstanding collections associated with the CarePayment platform, based on the efforts undertaken during the Eighth Application Period, the Receiver subsequently obtained a return of the ~\$400K deposit that has been held by WebBank, following the termination of the relationship with WebBank.

2. Coeur d'Alene, Idaho real estate

The Receivership held title to a vacant lake-front, recreational home in Coeur d'Alene, Idaho, legally described as: Lot 6, Washington Place Subdivision, according to the plat recorded in Book F of Plats, Pager 4, records of Kootenai County, Idaho (the "Real Property"). In December 2017 the Receiver received a broker's opinion of value for the Real Property, estimating the value to be between \$595,000 and \$650,000. The Receiver engaged a broker to market the Real Property. The broker has received multiple offers for the Real Property, including the offer memorialized in the Real Estate Purchase and Sale Agreement dated March 6, 2018, between ACF, as Seller, and John Swallow, as Buyer (the "Agreement"). The Receiver determined, in the exercise of his reasonable business judgment, that the sale of the Real Property and all appliances situated at the Real Property (together, the "Property") on the terms set forth in the Agreement was the highest and best offer received, and was in the best interests of ACF, the Receivership Entity, and their investors and creditors.

The primary business terms of the proposed sale of the Property are:

- a. Buyer: John Swallow ("Buyer")

- b. Purchase Price: \$650,000.
- c. Payment of the Purchase Price:
- d. \$100,000 cash at closing; and
- e. \$550,000 in financing from Seller (the "Loan"). The Loan shall accrue interest at the rate of 5% interest, and repaid on a 30-year amortization schedule at the rate of \$2,952/month. The unpaid balance of the Loan shall be repaid nine (9) months after closing of the sale. The Loan shall be secured by a first priority deed of trust lien on the Real Property.

The Court approved the sale on March 14 2018¹⁰ and the transaction closed on April 30, 2018. The purchaser has made all payments due under the promissory note.

3. Claims against Gerald Frank

Receiver reached a settlement with Gerald W. Frank and the Gerald W. Frank Revocable Living Trust related to the Rock and Roll restaurant loan. The settlement involved Frank transferring and assigning ownership of his CPYT Stock to the Receiver and a cash payment of \$61,365 to ACF within thirty (30) days from the date of Court approval of the Settlement Agreement. The Court approved the settlement on February 2, 2018.¹¹ Accordingly, Frank tendered his CPYT stock on February 20, 2018 and \$61,365 monetary settlement on March 27, 2018. The Receiver is negotiating with CPYT to redeem this stock.

¹⁰ Order Granting Receiver's Motion for an Order Authorizing Sale of Residential Real Property in Idaho, and Related Relief [Dkt 594].

¹¹ Order Approving (1) Compromise of Aequitas Commercial Finance, LLC's Claims Against Gerald W. Frank and Gerald W. Frank Revocable Living Trust, and (2) Settlement Agreement [Dkt 585].

4. Synchronex, LLC¹²

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.

Aequitas Partner Fund, LLC's ("APF") owned 100% of the membership interests in Synchronex, LLC (the "Membership Interests").

Receivership Property also included certain loans held by Aequitas Holdings, LLC ("AHL") and Aequitas Corporate Lending, LLC ("ACL"). ACL held the lenders' interest in the following secured loans to Synchronex, LLC ("Company"): (a) a loan or loans in the aggregate principal amount of \$2,926,198 (the "2009 Loan") made pursuant to a Business Loan Agreement dated May 13, 2009 between the Company and Aequitas Hybrid Fund, LLC (as assigned, and together with any related documents and amendments thereto, the "2009 Loan Agreement"); and (b) a loan or loans in the aggregate principal amount of \$1,100,000 (the "2014 Loan") made pursuant to a Business Loan Agreement dated January 14, 2014 between the Company and Aequitas Commercial Finance, LLC ("ACF") (as assigned, together with any related documents and amendments thereto, the "2014 Loan Agreement"). The 2009 Loan, 2009 Loan Agreement, 2014 Loan, and 2014 Loan Agreement are referred to collectively as the "ACL Loans."

On January 31, 2017, AHL entered into a Revolving Secured Demand Note (the "2017 Loan Agreement") with the Company pursuant to which the Company was entitled to borrow up to \$100,000 and pursuant to which \$75,000 was borrowed thereunder (the total amount payable under the 2017 Loan Agreement being referred to herein as the "2017 Loan"). The 2017 Loan

¹² <http://www.synchronex.com/en/>

and 2017 Loan Agreement are referred to collectively as the “AHL Loan.”

The Receiver, on behalf of each of AHL, ACL, ACF, APF, and Aequitas Management, LLC (“AML”), (AHL, AML, ACL and APF each a “Seller Entity,” and collectively the “Seller Entities”), undertook significant efforts to identify a potential buyer for the Receivership Property associated with Synchronex and negotiated a Purchase Agreement during the Eighth Application Period with Silvermine Media Holdings, LLC (“Stalking Horse Bidder” or “Purchaser”). The Purchase Agreement provided the terms for sale of the Seller Entities’ (a) membership interests in Company and (b) their lenders’ interests in certain loans to Company.

The Receiver sought authority to implement bidding and auction procedures to ensure that the Receivership Entity will obtain the best return possible for the Receivership Property associated with the Company. The Bidding Procedures were detailed in the proposed Bid Procedures Order [Dkt. 600], which were subsequently approved by the Court. No overbids were received by the bid deadline and on May 15 the Court entered the Order Granting Receiver's Motion to Sell Personal Property to Silvermine Media Holdings, LLC, Free and Clear of Liens, Interests, Claims and Encumbrances [Dkt. 614]

5. Certified Security Solutions (CSS)¹³

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 satisfy such obligation. Receivership records showed ownership of

¹³ <https://www.css-security.com/>

1,596,643 shares of the common stock of CSS by APF. Overall CSS had between 82-85 million shares outstanding. 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 \$.05/share. CSS is pursuing additional financing that will further dilute the Common Stock. Given the Receiver's desire to liquidate APF's interests in CSS common shares and CSS's interest in reacquiring the shares, the parties have negotiated in good faith and have agreed to a purchase price of \$.03/share or a total purchase price of \$47,899.

On January 2, 2018, the Receiver filed a Motion for an Order Authorizing Aequitas Partner Fund, LLC, to Sell Common Stock in Certified Security Solutions, Inc., Free and Clear of Liens, Claims, Encumbrances and Interests [Dkt. 574]. The Motion was approved by the Court on January 4, 2018 [Dkt. 577].

F. The Receiver and the professional service firms have consistently strived to minimize costs.

As addressed above, in accordance with the request of the Commission, the Receiver and all of the professional firms have discounted their standard hourly rates. The Receiver is consistently mindful of the professional expenses and manages the work in the most cost-effective manner possible. He strives to avoid duplication of effort by the engaged professionals.

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 marshaling, preserving and monetizing 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. As assets are monetized, the Receiver has begun to close bank accounts that are no longer deemed necessary. Through March 31, 2018, the Receiver has closed an additional two post-Receivership bank accounts, for a total of seven closed post-Receivership bank accounts.¹⁴

The Cash basis reports, including information for the current reporting period and case to date, are attached as Exhibit B to the April 2018 Report.

3. Staffing

a. Employee Headcount

The Receiver continues to maintain the minimum staff necessary for the Receivership and enterprise to operate efficiently and effectively. As of March 31, 2018, the Receivership Entity had 10 full-time employees and 1 part-time employee. The Receiver's employee retention program provides for at least six-weeks' notice to employees whose services are anticipated to no longer be required by the Receivership.

¹⁴ An additional account was added to capture funds related to the IPM Liquidation wind-down.

b. Contractors

In response to some staff attrition in addition to planned reductions, the Receiver necessarily backfilled key accounting and technology positions with local independent contractors (not affiliated with FTI). As of April 30, 2018, the Receivership employed three full-time equivalent accounting contractors, one part-time accounting contractor and two part-time IT contractors.

4. 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 Aequis' auditor and tax preparer, the Receiver was required to engage new professionals to fulfill those requirements.

a. Tax Preparer

The Receiver retained a tax specialist to assist legacy Aequis 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.

b. Other Tax matters

2017 Partnership and Corporate tax return extensions for the Receivership were completed by their March 15th/April 15th due dates. Estimates of 2017 taxable income were distributed to members of:

- (i) Aequis Income Protection Fund LLC
- (ii) Aequis Hybrid Fund LLC
- (iii) Aequis Enhanced Income Fund LLC

Members of those funds will receive their form k-1s as tax returns are completed during the next few months.

Taxable income estimates for Aequis Holdings LLC and Aequis Management LLC were distributed to members in early April. On extension, the returns for Aequis Holdings LLC and Aequis Management LLC are due September 15, 2018.

The multi-tier structure including Aequis Holdings LLC and Aequis Management LLC was still in place in 2017 requiring federal and multiple state filings. The sale in 2017 of Receivership assets having portfolios with holdings in multiple states (including healthcare receivables) should allow the Receiver to file final state returns in additional states. Several of the portfolios still held (including student loans and motorcycle leases) continue to operate in multiple states so while the number of state filings will be reduced there will still be multiple states to file until those assets are sold.

Other required tax filings including 2017 information reporting and 2018 personal property tax reporting are complete.

Planning for the tax consolidation of the Aequis structure is in process and expected to be implemented during or shortly after the 2018 tax year.

Information reporting for student loans held by Campus Student Funding LLC was required in connection with debt cancellation that was provided under the terms of the settlement with the CFPB and state Attorneys General. Receiver and his legal counsel had been working with the IRS and had requested a Private Letter Ruling that would eliminate the need for the information reporting. Such relief from the reporting requirements was denied by the IRS. Receiver had also filed a request for an extension of the deadline to mail informational forms (1099's) to the student borrowers (which request was granted in January 2018). On or about

March 2, 2018, the Receivership mailed out ~42,000 informational tax forms to the student borrowers. To handle potential borrower inquiries related to the 1099 tax forms, the Receivership has set up an outsourced call center that handled 1,369 calls, including 609 calls answered by agents, through March 31, 2018 (the rest of the callers chose to only listen to a detailed recorded message). The Receivership staff and retained professionals worked closely with the call center vendor to prepare detailed response scripts, review call logs, and provide additional input to the call center agents to make sure that the borrowers receive appropriate information.

5. Leveraging the professional firms' resources

FTI continues to leverage its access to various resources and services to provide information at no additional charge to the Receivership. As a result, the Receivership Entity has been able to eliminate contracts with a number of corresponding providers. Additionally, FTI provides as-needed tele-conferencing and web-conferencing capabilities to the Receivership Entity at no charge.

Schwabe provides meeting space and infrastructure at no charge to the Receivership Entity, which allows the Receiver to minimize costs associated with the Investor Advisory Committee, investor counsel meetings and other in-person meetings.

6. Discounted Travel Time

The Receiver, FTI and the majority of legal counsel only charge 50 percent of actual travel time. Schwabe does not charge for travel time or travel expenses.

7. Out-of-Town Meals and Expenses

The Receiver carefully monitors the expenses incurred by his professionals. In furtherance of this effort, the Receiver has imposed a per diem limit on meal expenses and all costs incurred in excess thereof are not charged to the Receivership.

G. The Receiver and the professional firms have been working on the preparation for the 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 Aequis 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 are 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 completing the process of populating and distributing to all investors a summary of historical activity relating to each 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 March 31, 2018, 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. In the fourth quarter of 2017, the Receiver commenced working with Integrity Trust Company, LLC (“Integrity”) with the objective of facilitating data confirmation for Integrity investors whose funds were placed in Aequitas investment products. During the quarter ended March 31, 2018, we were able to perform an initial assessment of the extent to which the Receivership professional team can efficiently facilitate the data confirmation process on behalf of Integrity investors. The Receiver continues to work closely with Integrity on collection of the underlying Integrity investor transactional data, incorporating such information into the investor database created by the Receiver, and testing such data against information recorded on the Aequitas books and records for investments associated with Integrity. This work entailed extensive analysis by the Receivership team of the Integrity databases in order to identify relevant data sources to capture and evaluate data involving 835 investment accounts and over 10,000 individual transactions involving over \$200 million of gross transactional activity. During the first quarter of 2018, the Receiver and his staff also continued to assist in the execution of the Court-approved settlement in Brown et al. v. Price, et al. (Brown Class Action). Specifically, the Receiver and his staff utilized previously-validated information regarding each of the class member’s investments and applied a formula approved by the Court for the limited purpose of executing the Brown Class Action settlement to determine the net cash loss sustained by, and thus the calculation of proceeds to be received by, each class member.

The overall investor data 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.

H. The Receiver has made significant progress on the forensic investigation and preparation for the development of a potential distribution plan.

The Receiver and Receivership staff and professionals have made significant progress in their forensic accounting investigation of the Aequitas enterprise during the Eighth Application Period and are nearing completion of their analysis and summary of the findings.

The Receiver has also expended a considerable effort and dedicated resources during the Eighth Application Period to the gathering and analysis of financial and legal documentation and preliminary financial modeling necessary for the development of a future distribution plan.

III. AUTHORITY SUPPORTING REQUEST FOR APPROVAL OF FEES AND EXPENSES INCURRED FROM JANUARY 1, 2018 THROUGH MARCH 31, 2018

The Order Appointing Receiver provides that “[t]he Receiver and Retained Personnel are entitled to reasonable compensation and expense Reimbursement from the Receivership Estates....”¹⁵ Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.¹⁶ Allowed fees are subject to a twenty percent (20%) holdback pending final review and closing of the Receivership. Allowed expenses are not subject to a holdback.

¹⁵ Dkt. 156, ¶ 45.

¹⁶ Dkt. 156, ¶ 47.

The Receiver requests that the Court approve the fees and expenses incurred by the Receiver and his retained professionals for the period from January 1, 2018 through March 31, 2018.

A. This is the Eighth Interim Fee Application and the Court has previously approved the prior seven Interim Fee Applications

This is the Eighth Interim Fee Application of the Receiver and his retained professionals. The initial Interim Fee Application was filed on September 22, 2016.¹⁷ The Court approved the fees and expenses requested in the Interim Fee Application on October 21, 2016.¹⁸ The Second Interim Fee Application was filed on December 12, 2016.¹⁹ The Court approved the fees and expenses requested in the Second Fee Application on February 22, 2017.²⁰ The Third Interim Fee Application was filed on April 4, 2017.²¹ The Court approved the fees and expenses requested in the Third Fee Application on April 20, 2017.²² The Fourth Interim Fee Application was filed on July 14, 2017.²³ The Court approved the fees and expenses requested in the Fourth Fee Application on July 17, 2017.²⁴ The Fifth Interim Fee Application was filed on October 11, 2017.²⁵ The Court approved the fees and expenses requested in the Fifth Fee Application on

¹⁷ Dkt. 251.

¹⁸ Dkt. 273.

¹⁹ Dkt. 315.

²⁰ Dkt. 370.

²¹ Dkt. 393.

²² Dkt. 416.

²³ Dkt. 475.

²⁴ Dkt. 478.

²⁵ Dkt. 544.

October 12, 2017.²⁶ The Sixth Interim Fee Application was filed on December 12, 2017.²⁷ The Court approved the fees and expenses requested in the Sixth Fee Application on December 12, 2017.²⁸ The Seventh Interim Fee Application was filed on March 16, 2018.²⁹ The Court approved the fees and expenses requested in the Seventh Fee Application on March 20, 2018.³⁰ The following is a summary of the fees and expenses requested and approved from the prior Interim Fee Applications, the amounts allowed, the amounts paid, and identification of the twenty percent (20%) holdback for fees (which remain unpaid as required by the Billing Instructions):

Entity	Previous Fees	Previous Expenses	Total Previous Fees & Expenses	Holdback Amounts	Total Paid Amounts
Receiver	1,635,601	23,546	1,659,147	327,120	1,332,027
FTI Consulting	7,246,424	351,903	7,598,327	1,449,285	6,149,042
Pepper Hamilton	2,126,612	267,507	2,394,118	425,322	1,968,796
Schwabe, Williamson & Wyatt	4,583,983	23,959	4,607,942	916,797	3,691,145
Morrison Foerster	819,924	5,699	825,623	163,985	661,638
Law Office of Stanley H. Shure	509,288	5,807	515,095	101,858	413,237
Pachulski Stang Ziehl & Jones	100,243	604	100,847	20,049	80,798
Akin Gump	60,259	133	60,392	12,052	48,340
Ater Wynne	10,356	-	10,356	2,071	8,285
Total:	17,092,689	679,158	17,771,847	3,418,538	14,353,309

B. The Court should approve as reasonable and necessary all of the fees and expenses requested in this Eighth Interim Fee Application.

In the Ninth Circuit, in a common fund case such as this Receivership proceeding, the Court has the “discretion to apply either the lodestar method or the percentage-of-the-fund

²⁶ Dkt. 548.

²⁷ Dkt. 567.

²⁸ Dkt. 570.

²⁹ Dkt. 596.

³⁰ Dkt. 599.

method when calculating fees.”³¹ “Under either method, the Court must exercise its discretion to achieve a ‘reasonable’ result.”³²

Because there is a strong presumption that the lodestar amount represents a reasonable fee, adjustments to the lodestar are the “exception rather than the rule.”³³ Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.³⁴ In the current Receivership, where neither the amount of the common fund nor the aggregate amount of allowed claims has been determined, the lodestar method rather than the percentage-of-fund method should be applied to this interim fee application.

The amount of compensation to be awarded a court-appointed receiver is within the Court’s reasonable discretion.³⁵ The Commission’s approval of an application should be given great weight.³⁶

Factors for consideration include the “time, labor and skill required, but not necessarily that actually expended, in the proper performance of the duties imposed by the court upon the receiver, the fair value of such time, labor and skill measured by conservative business standards, the degree of activity, integrity and dispatch with which the work is conducted and the result

³¹ *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action case creating a common fund).

³² *In re Galena Biopharma, Inc., Sec. Litig.*, No. 3:14-cv-00367-SI, 2016 U.S. Dist. LEXIS 82693, at *15-16 (D. Or. June 24, 2016) (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)).

³³ *Stanger v. China Elec. Motor, Inc.* 812 F.3d 734, 738 (9th Cir 2016) (internal citations omitted) (class action with common fund settlement).

³⁴ *Id.*

³⁵ *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff’d*, 609 F.3d 87 (2d Cir. 2010).

³⁶ *Id.* (quoting *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (securities receivership).

obtained.”³⁷ The complexity and difficulty associated with the receivership are highly relevant factors in determining the reasonableness of professional fees.³⁸ The benefits bestowed on the estate are a relevant consideration.³⁹

The degree of success achieved in solving legal and practical problems should be considered when calculating the fees awarded.⁴⁰ Courts examine the credentials, experience, reputation, and other professional qualities required to carry out the court’s orders when assessing the reasonableness of the rates charged for services to a receivership.⁴¹

The Court should consider the usual and customary fees charged and the evidence

³⁷ *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal citation omitted).

³⁸ See *Fifth Ave. Coach Lines*, 364 F. Supp. at 1220 (awarding interim fees and expenses to law firm for role in receivership and noting that it involved wide variety of complex legal matters requiring the time, competence, and diverse resources of a law firm of high caliber); *SEC v. Mobley*, No. 00 CV 1316 RCC, 2000 WL 1702024, at *2 (S.D.N.Y. Nov. 13, 2000) (finding that fees requested in early stages of receivership were not excessive where receiver was faced with deconstructing an “enormous” fraud of seven years in which defendant utilized over forty entities to funnel investors’ money throughout the world and there were few, if any, verifiable financial records).

³⁹ See *Fifth Ave. Coach Lines.*, 364 F. Supp. at 1222; *Mobley*, 2000 WL 1702024, at *2 (receiver marshaled assets quickly and efficiently).

⁴⁰ See *SEC v. W.L. Moody & Co., Bankers*, 374 F. Supp. 465, 484-85 (S.D. Tex. 1974), *aff’d*, 519 F.2d 1087 (5th Cir 1975) (attorney’s timely action prevented delay in payment to bank depositors); *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222 (law firm’s services resulted in successful reorganization of company); *SEC v. Tanner*, No. 05-4057-RDR, 2007 WL 2013606, at *2 (D. Kan. May 22, 2007) (actions of receiver resulted in return of more money to investors than if defendant had continued in business).

⁴¹ See *W.L. Moody & Co.*, 374 F. Supp. at 481 (holding that a court should give “considerable weight” to “a receiver’s abilities, as required by the tasks of the receivership”); *SEC v. Aquacell Batteries Inc.*, No. 6:07-cv-608-Orl-22 DAB, 2008 WL 276026, at *4 (M.D. Fla. Jan. 31, 2008) (“The Receiver retained well qualified, experienced counsel and such representation does not come cheap.”).

presented to support the application for fees.⁴² All of the factors considered in these cases weigh heavily in favor of approving the fees and expenses requested in the Eighth Interim Fee Application.

C. The fees and expenses during this Eighth Application Period are reasonable and necessary in light of the complexity and difficulties of this case.

The Receiver requests approval of fees and expenses for the firms identified herein, which have provided the services summarized throughout this Motion, in the April 2018 Report and in each firm's summary invoice.⁴³ As noted, these firms agreed to substantial discounts of their customary fees, and the amounts requested reflect those discounts. The time spent, services performed, hourly rates charged, and expenses incurred were in the best interests of the Receivership Entity, and were indeed essential for the Receiver to perform his Court-ordered duties.⁴⁴ Each of these professional firms was selected because it possesses special expertise required to fulfill the Court's orders. The following chart is a summary of the fees and expenses reasonably incurred in the service of the Receivership Entity from January 1, 2018 through March 31, 2018:

⁴² See *Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. at 1222 (fees awarded in full because based on law firm's usual hourly rate and supported by meticulous records).

⁴³ Greenspan Declaration, Exhibits A through F.

⁴⁴ Greenspan Declaration, p. 4.

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	86,212.00	4.1%	4,443.61	9.3%	90,655.61	4.2%
FTI Consulting	1,225,691.00	57.6%	34,247.67	72.0%	1,259,938.67	57.9%
Pepper Hamilton	153,084.72	7.2%	6,561.11	13.8%	159,645.83	7.3%
Schwabe, Williamson & Wyatt	475,228.00	22.3%	2,200.40	4.6%	477,428.40	21.9%
Morrison Foerster	138,694.60	6.5%	140.24	0.3%	138,834.84	6.4%
Law Office of Stanley H. Shure	49,478.50	2.3%	-	0.0%	49,478.50	2.3%
Pachulski Stang Ziehl & Jones ^[1]	-	0.0%	-	0.0%	-	0.0%
Akin Gump ^[1]	-	0.0%	-	0.0%	-	0.0%
Ater Wynne ^[1]	-	0.0%	-	0.0%	-	0.0%
Total:	2,128,388.82	100%	47,593.03	100%	2,175,981.85	100%

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

D. The fees and expenses requested are in line with those approved in other cases.

The fees associated with complex receivership cases are often substantial percentages of the total assets recovered.⁴⁵ The size and scope of this equitable receivership are much greater than the size and scope of many of the receiverships in the reported cases cited in this Application. Courts have noted that compensation to equitable receivers is analogous to compensation to trustees in bankruptcy.⁴⁶ The United States Department of Justice reported that from 1994 to 2000, in Chapter 7 asset cases, 30% to 40% of total estate receipts were disbursed as fees and expenses to trustees and other professionals.⁴⁷ This was true regardless of the size of the case.⁴⁸ The fees incurred in this case are a significantly smaller percentage of the total recoveries through the end of the Eighth Application Period than any of these cases and the

⁴⁵ *SEC v. Megafund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at *2 (N.D. Tex. June 24, 2008) (approving final request for fees and expenses comprising 22.4% of total recovery by Receiver in light of complexities of case, difficulties in tracing proceeds, and results obtained); *SEC v. Funding Res. Group*, No. Civ.A.3:98-CV-2689-M, 2003 WL 145411, at *1 (N.D. Tex. Jan. 15, 2003) (costs of administration totaled 21% of cash and assets finally recovered by receiver).

⁴⁶ *W.L. Moody & Co.*, 374 F. Supp. at 481.

⁴⁷ U.S. DOJ, U.S. Trustee Program Prelim. Rep. on Ch. 7 Asset Cases 1994 to 2000, attached as Exhibit P, App'x 187, 192.

⁴⁸ *Id.*

Receivership Entity has benefitted by avoiding additional fees that would have been incurred if investment bankers were retained.

IV. CONCLUSION

The relief requested herein is appropriate and in furtherance of the provisions of the Final Receivership Order appointing the Receiver. Accordingly, the Receiver respectfully requests that the Court enter an order approving the fees and expenses requested in the Eighth Interim Fee Application, for the period from January 1, 2018 through March 31, 2018.

Dated this 26th day of June, 2018.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Alex I. Poust

Troy Greenfield, OSB #892534

tgreenfield@schwabe.com

Alex I. Poust, OSB #925155

apoust@schwabe.com

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

lream@schwabe.com

Telephone: 503.222.9981

Facsimile: 503.796.2900

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

knaueri@pepperlaw.com

PEPPER HAMILTON LLP

600 Fourteenth Street N.W.

Washington, D.C. 20005

Tel: 202.220.1665

Attorneys for Receiver for Defendants Aequitas
Management, LLC, Aequitas Holdings, LLC,
Aequitas Commercial Finance, LLC, Aequitas
Capital Management, Inc., and Aequitas
Investment Management, LLC