

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., N.W., 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;

No. 3:16-cv-00438-JR

PROPOSED ORDER (1) ESTABLISHING
CLAIMS BAR DATE, (2) APPROVING THE
FORM AND MANNER OF NOTICE, AND (3)
APPROVING THE PROOF OF CLAIM
FORM, PROCEDURES AND OTHER
RELATED RELIEF



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

Defendants.

Upon consideration of the Receiver's Motion for Entry of an Order (1) Establishing the Claims Bar Date, (2) Approving the Form and Manner of Notice, and (3) Approving the Proof of Claim Form, Procedures and Other Related Relief (the "Motion")¹, any responses or objections to the Motion, and any reply in support of the Motion, this Court finds that: the relief requested in the Motion is in the best interests of the Receivership Estate,² potential Claimants, and all other parties; notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given; and based upon the record herein and after due deliberation it is hereby **ORDERED THAT:**

1. The Motion, together with the exhibits, instructions and other attachments thereto is GRANTED and approved in all aspects.

2. Objections Overruled. All objections not withdrawn or resolved by this Order are overruled in all respects.

3. Retention of Claims Agent. The Receiver's determination to retain Epiq Corporate Restructuring, LLC as his claims agent ("Claims Agent") is approved.

4. Claims Bar Date. This Court hereby establishes 11:59 p.m. (prevailing Pacific Time) on July 31, 2019 ("Claims Bar Date"), as the deadline for Claimants and Administrative

¹ Dkt #681.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

Claimants to submit a completed and signed Proof of Claim Form under penalty of perjury, together with supporting documentation against one or more of the Aequitas Entities.

5. Claims Procedures. The Claims Procedures, including the Notice of Claims Bar Date and Procedures for Submitting a Proof of Claim (the “Notice of Claims Bar Date”), Proof of Claim Form, Notice of Receiver’s Initial Determination, Notice of Claims Bar Date for Publication and Notice of Deficiency (and associated attachments) are approved substantially in the form attached to the Motion.

6. Eligibility to Submit a Proof of Claim. Except as to Investors, Former Aequitas Employees, Pre-Receivership Creditors, or Administrative Claimants who receive and agree with the contents of the Notice of Receiver’s Initial Determination of their Allowed Claim, all other Claimants and Administrative Claimants asserting or who believe they are entitled to assert a Claim or assert a right to distribution from the Receivership Estate, regardless of whether the Claim is held with or through any individual or entity or based on a primary, secondary, direct, indirect, secured, unsecured, unliquidated or contingent liability **MUST** timely and properly submit a Proof of Claim.

7. Professional Claims and Intercompany Receivership Claims. Holders of Professional Claims will not be required to submit a Proof of Claim. The Receiver will continue to satisfy Professional Claims in the ordinary course of the Receivership and in accordance with prior or future Court orders, as appropriate to the claim or pursuant to a Court approved distribution plan. Intercompany Receivership Claims among and between the Aequitas Entities are preserved without the requirement of the filing of a Proof of Claim by the Receiver at this time. Any such Intercompany Receivership Claims as appropriate will be subject to a Court approved distribution plan.

8. Notice Process. The Receiver shall provide the following notice in satisfaction of the due process interests of Claimants and Administrative Claimants:

a. Notice by Mail. The Receiver shall provide notice by mail in the following manner, timing and substance.

i. Timing of Notice. The Receiver shall provide notice within forty (40) calendar days of entry of this Bar Date Order.

ii. Substance of Notice. The mailing shall include: a) the Notice of Claims Bar Date (substantially in the form of Exhibit 1), b) the Proof of Claim Form (substantially in the form of the Exhibit 2), and c) at the Receiver's sole and absolute discretion, the Notice of Receiver's Initial Determination (together with the instructions and other attachments substantially in the form of the Exhibit 3) (collectively, the "Notice").

iii. Means of Serving Notice. The Receiver shall serve those Claimants and Administrative Claimants entitled to notice under subparagraph 8(b) below: (a) by United States first class mail (for those Claimants and Administrative Claimants with a last known address within the United States); and (b) by any method the Receiver deems reasonable in his sole and absolute discretion (for those Claimants/Administrative Claimants without a last known address or with a last known address outside the United States).

b. Individuals and entities to receive Notice by mail. The Receiver shall provide Notice by mail, by the means provided in subparagraph 8(a) above, on the following known Claimants and Administrative Claimants:

- i. All parties that have appeared in the SEC Enforcement Action;
- ii. Claimants that the Receiver has determined, upon reasonable review of the Books and Records, have or may assert a Claim against an Aequitas Entity or have asserted claims against the Receivership Estate during the pendency of the SEC Enforcement Action;
- iii. Former Aequitas Employees;
- iv. Investors;
- v. Pre-Receivership Creditors;
- vi. Administrative Claimants;
- vii. Federal, state, local or other governmental entities or authorities who may assert a Claim for taxes arising from or attributable to tax periods ending on or before March 16, 2106, even if the taxes are due and payable subsequent to March 16, 2016;
- viii. Counsel for parties in the following civil actions:
 - o American Student Financial Group, Inc. v. Aequitas Capital Management, Inc., 3:16-cv-01720-PK (D. Or.);
 - o American Student Financial Group, Inc. v. Aequitas Student Funding, LLC, No. 37-2013-00028562-CU-IP-CTL (San Diego Cty. Sup. Ct.);
 - o Enviso Capital Group, LLC v. Aequitas Holdings LLC, 37-2016-00009462-CU-BC-CTL (San Diego Cty. Sup. Ct.);
 - o Greenspan v. Fieldstone Financial Management Group, LLC, No. 3:17-cv-00233 (D. Or.);
 - o Gruber v. Education Dynamics LLC, No. 4:16-cv-06059-KAW (N.D. Cal.);
 - o Reyes v. Ocean Avenue Financial Services, LLC, No. BC628619

- (Los Angeles Cty – Central Dist. Sup. Ct.);
- Western Property Holdings LLC v. Aequitas Capital Management Inc., No. 121114490 (Mult. Cty. Cir. Ct.)
 - Albers v. Deloitte & Touche LLP, No. 3:16-cv-02239-AC (D. Or.);
 - Brown v. Price, No. 16-2-19544-0 SEA (King Cty. Sup. Ct.);
 - Brown v. Price, No. 3:17-cv-0089 (D. Or.);
 - Ciuffitelli et al. v. Deloitte & Touche LLP, No. 3:16-cv-00580-AC (D. Or.);
 - Farr v. Private Advisory Group, LLC, No. 2:16-cv-01565-RAJ (W.D. Wash.);
 - Kirk v. v. Deloitte & Touche LLP, No. 17CV42915 (Mult. Cty. Cir. Ct.);
 - Pommier v. Deloitte & Touche LLP, No. 16CV36439 (Mult. Cty. Cir. Ct.);
 - Wurster v. Deloitte & Touche, LLP, No. 16CV25920 (Mult. Cty. Cir. Ct.);
 - Cavanagh, et al. v. Deloitte & Touche LLP et al., No. 18CV09052 (Or. Cir. Ct. filed Mar. 7, 2018);
 - Ramsdell, et al. v. Deloitte & Touche LLP et al., No. 16CV40659 (Or. Cir. Ct. filed Dec. 2, 2016);
 - Layton, et al. v. Deloitte & Touche LLP et al., No. 17CV42915 (Or. Cir. Ct. filed Oct. 2, 2017);
 - Royal Fund LP v. Deloitte & Touche LLP et al., No. 18 Civ. 11198 (JGK) (U.S. District Court for the Southern District of New York); and
 - Tarrant County, et al v. Motolease Financial, LLC, No. 325-D17185-18 (In the 352nd Judicial District, Tarrant Cty, Texas).
- c. Notice by email for returned Notice by mail. Upon return of any service item that was undeliverable by mail and without a useful forwarding address for re-service,

the Receiver will perform a reasonable search of the Books and Records for a last

known e-mail address and attempt to provide Notice to that Claimant or Administrative Claimant at that last known e-mail address, which shall satisfy the Receiver's notice requirements.

- d. Notice by email to Counsel. Where the Receiver has notice that a Claimant, Investor, Pre-Receivership Creditor, Administrative Claimant, party or other individual or entity, who is entitled to notice, is represented by counsel, copies of the documents sent by the Receiver to that counsel's client(s) will also be sent by email to counsel who have not otherwise already been sent the documents.
- e. Posting the Notice of Claims Bar Date and Proof of Claim Form. Not later than forty (40) calendar days after entry of the Bar Date Order, copies of the Notice of Claims Bar Date and Proof of Claim Form will be available for downloading from (a) the Claims Agent's website (<http://www.AequitasClaims.com>), or (b) the Receiver's website (www.kccllc.net/aequitasreceivership).
- f. Duty to keep the Receiver advised of current contact information. It is the responsibility of Claimants, Administrative Claimants and other interested parties to keep the Receiver apprised with a current email and mailing address in order to receive notices or other communication from the Receiver or the Receivership Estate. A link to the Change of Information Form will be found on the (a) Claims Agent's website (<http://www.AequitasClaims.com>) and (b) Aequitas Receiver's website (www.kccllc.net/aequitasreceivership). The completed Change of Information Form must be sent to the Claims Agent by electronic mail, as an attachment in portable document format (.pdf), to Aequitas@epiqglobal.com.

g. Notice by Publication. The Receiver shall provide notice by publication in the following manner:

- i. Timing of notice. The Receiver shall provide notice by publication within forty (40) calendar days of entry of this Bar Date Order.
- ii. Substance of notice. The Notice of Claims Bar Date for Publication shall be substantially in the form of Exhibit 4.
- iii. Means of publishing notice. The Receiver proposes to publish the Notice of Claims Bar Date for Publication in newspapers of general circulation in (a) Oregon, Washington, California, Florida and Texas, and (b) such other publications, if any, that in the Receiver's sole and absolute discretion are reasonably calculated to provide notice to potential unknown Claimants and Administrative Claimants, on two days that are approximately two weeks apart. The publications and means chosen by the Receiver are reasonably likely to reach potential unknown Claimants and Administrative Claimants.

h. Notice by Press Release and Posting to the Receiver's website. The Receiver shall issue press releases and post for review on the Receiver's website (<http://www.kccllc.net/aequitasreceivership/>), this Bar Date Order, the Notice of Claims Bar Date and the Proof of Claim Form, not later than forty (40) calendar days after entry of the Bar Date Order.

i. Notice Upon Inquiry. Copies of the Notice of Claims Bar Date and the Proof of Claim Form will be available not later than forty (40) calendar days after entry of the Bar Date Order to any Claimant or Administrative Claimant who makes a

written request for such documents to the Claims Agent's e-mail address: Aequitas@epiqglobal.com or to the Claims Agent's mailing address: Aequitas Receivership Claims Processing Center, c/o Epiq Corporate Restructuring, LLC, P.O. Box 4421, Beaverton, OR 97005.

9. Procedure for Submitting a Proof of Claim. Except as otherwise provided by order of this Court or provided herein, each Claimant and Administrative Claimant must properly complete and sign a Proof of Claim under penalty of perjury, which, together with supporting documentation must be timely submitted to the Receiver's Claims Agent by i) electronic mail, as an attachment in portable document format (.pdf), to Aequitas@epiqglobal.com, or ii) by mail addressed to Aequitas Receivership Claims Processing Center, c/o Epiq Corporate Restructuring, LLC, P.O. Box 4421, Beaverton, OR 97076-4421, or iii) by courier service addressed to Aequitas Receivership Claims Processing Center, c/o Epiq Corporate Restructuring, LLC, 10300 SW Allen Blvd., Beaverton, OR 97005, such that if emailed or sent by courier service, it is delivered to the Claims Agent no later than the Claims Bar Date, or if sent by mail is postmarked no later than the Claims Bar Date.

If a Claimant or Administrative Claimant chooses to submit a Proof of Claim by electronic mail, they should retain a copy of the email or other evidence the Proof of Claim was delivered to the Claims Agent no later than the Claims Bar Date. If they choose to submit a Proof of Claim by courier service, they should retain evidence the Proof of Claim was delivered to the Claims Agent no later than the Claims Bar Date. If they choose to submit a Proof of Claim by mail, it is recommended that they submit their Proof of Claim by certified or registered mail and retain evidence that the Proof of Claim was postmarked no later than the Claims Bar Date. Proofs of Claim submitted with a valid email address will receive email confirmation of receipt by the

Claims Agent of the Proof of Claim.

Proofs of Claim should not be filed with this Court, or sent to the Receiver, his legal counsel, his retained professionals, or otherwise delivered to the Receivership Estate. Any Proof of Claim so filed or sent shall not be considered properly submitted and will be disallowed pursuant to this Bar Date Order.

10. Procedures related to the Notice of Receiver's Initial Determination. The Receiver has determined in his sole and absolute discretion that certain i) Investors, ii) Former Aequis Employees, iii) Pre-Receivership Creditors and iv) Administrative Claimants are entitled to an Allowed Claim and will receive a Notice of Receiver's Initial Determination, with attachments containing information and amounts, which together constitute the Receiver's initial determination of the Allowed Claim. An Investor, Former Aequis Employee, Pre-Receivership Creditor, or Administrative Claimant who **AGREES** with the information and amounts in the attachments to the Notice of Receiver's Initial Determination need **NOT** submit a Proof of Claim. An Investor, Former Aequis Employee, Pre-Receivership Creditor, or Administrative Claimant who **DISAGREES** with the information or amounts in the attachments to the Notice of Receiver's Initial Determination and wants to assert a Claim that is different, **MUST** timely and properly submit a Proof of Claim, including supporting documents in compliance with the Notice of Claims Bar Date and Procedures for Submitting a Proof of Claim. Investors who intend to file a Proof of Claim must also complete and submit the Investor Supplement to Proof of Claim Form, as applicable. A link to the Investor Supplement to Proof of Claim Form can be found on the i) Claims Agent's website (<http://www.AequisClaims.com>) and ii) Aequis Receiver's website (www.kccllc.net/aequisreceivership).

11. Supporting Documentation for Proof of Claim. Each submitted Proof of Claim shall

include attached copies of all documents available that support such Proof of Claim. Such documentation may include, but is not limited to: copies of personal checks, cashier's checks, wire transfer advices, and other documents evidencing the investment of funds; copies of each signed investment contract; copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, evidence of perfection of lien; and other documents evidencing the amount and basis of the Claim. As applicable, supporting documentation must also include a chronological accounting of any withdrawals made by or payments received from any Aequitas Entity, whether such payments were denominated as the return of principal, interest, commissions, finder's fee, or otherwise, indicating the date and amount of each withdrawal or payment. Investors must include such information starting from at least July 1, 2014 through March 16, 2016. Investors who intend to file a Proof of Claim must also complete and submit the Investor Supplement to Proof of Claim Form, as applicable. A link to the Investor Supplement to Proof of Claim Form will be found on the i) Claims Agent's website (<http://www.AequitasClaims.com>) and ii) Aequitas Receiver's website (www.kccllc.net/aequitasreceivership). If supporting documentation is not available, the Proof of Claim Form must include an attachment explaining why the documentation is unavailable. If supporting documentation is not available, the Claimant shall attach to the Proof of Claim an explanation of why the documentation is unavailable.

12. Supporting Documentation That Should Not Be Submitted. Proofs of Claim should not include the following types of materials unless requested by the Receiver or the Claims Agent: i) marketing brochures and other marketing materials received from an Aequitas Entity, ii) routine or form correspondence received from an Aequitas Entity, iii) copies of pleadings on file in this case or other cases related to the Receivership or the Receivership Estate, and iv) other documents

received from the Receivership Estate that do not reflect specific information concerning the existence or amount of a Claim.

13. Proof of Claim Must Identify Aequis Entity(ies). A Claimant or Administrative Claimant who is required to submit a Proof of Claim and who reasonably believes they hold or may hold a Claim against one or more Aequis Entity must identify each Aequis Entity against which the Proof of Claim is asserted. The failure to identify the correct entity(ies) on a Proof of Claim may be grounds for objection to, and disallowance of such Claim.

14. Effect of Failure to Submit Proof of Claim Before the Claims Bar Date. Any Claimant or Administrative Claimant who is required to submit a Proof of Claim, but fails to do so in a timely manner or in the proper form, shall (a) be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, any Claim against i) any Aequis Entity, ii) the Receivership Estate or its assets, and (b) shall not receive any distribution from or have standing to object to any distribution plan proposed by the Receiver. Further, the Receiver shall have no further obligation to provide any notices on account of such Claim and the Receivership Estate is discharged from any and all indebtedness or liability with respect to such Claim.

15. Proofs of Claim Processing and Verification, Compromise and Settlement. The Receiver is hereby authorized to employ any procedures he deems necessary, in his sole and absolute discretion to process and reconcile Proofs of Claim and to verify the Claims asserted in the Proofs of Claim. The Receiver shall have the authority to compromise and settle any Administrative Claim, Aequis Related Claim, Former Aequis Employee Claim, Investor Claim, or Pre-Receivership Creditor Claim, or resolve any Notice of Deficiency, at any time, as appropriate, without further order of this Court. The Receiver, at his discretion, may file a motion

seeking Court approval of any compromise or settlement of a Claim. All parties to this proceeding are directed to cooperate with the Receiver to the maximum extent possible to achieve swift resolution of disputes concerning claims without the need for a determination by the Court.

16. Request for Additional Information. If at any time after receiving a timely Proof of Claim, the Receiver determines that additional information is needed to assess and process a Claim, the Receiver or his Claims Agent may contact the Claimant or Administrative Claimant (or counsel, if one is designated) by telephone, mail or email to request such additional information.

17. Notice of Deficiency. Prior to filing an objection with the court seeking to disallow a Claim, the Receiver may in his sole and absolute discretion send to a Claimant or Administrative Claimant (and to counsel, if one is designated), to such address or email address as provided in the Proof of Claim Form, a written Notice of Deficiency (which is approved substantially in the form of Exhibit 5) that specifically identifies the information required to assess and process the Claim. Should the Receiver determine he needs additional information from anyone who was sent a Notice of Receiver's Initial Determination, the Receiver may send a Notice of Deficiency to that recipient. The Notice of Deficiency shall provide that the Claim will be disallowed, without the Receiver having to file an objection to the Claim as otherwise provided in Article 18, if the additional information is not provided to the Receiver within thirty (30) calendar days of the date of the Notice of Deficiency.

18. Receiver's Claim Objection. Claimants and Administrative Claimants are directed to work in good faith with the Receiver to resolve any disputes about a Claim. If the Receiver is unable to resolve disputes about a Claim, the Receiver shall file a written objection to the Claim with the Court. The objection shall include: i) a detailed statement of the reasons for the Receiver's objection, and ii) copies of any document or other writing upon which the Receiver relies. Unless

otherwise ordered by this Court, the Claimant or Administrative Claimant's response to the Receiver's claim objection shall be filed with the Court and a copy served on the Receiver and his counsel, within thirty (30) calendar days of the date on which the Receiver filed his written objection to the Claim. The Receiver shall have thirty (30) calendar days to file and serve his reply.

19. Limitation on Discovery and Motion Practice. Prior to the Receiver's filing of an objection to the Claim, no discovery, motion practice, or other claims litigation shall occur unless the Claimant or Administrative Claimant first seeks and obtains leave of Court, upon a showing of good cause and substantial need for such relief.

20. Consent to Jurisdiction. Submission of a Proof of Claim in this case constitutes consent to the jurisdiction of the Court for all purposes and constitutes agreement to be bound by its decisions, including, without limitation, a determination as to the extent, validity and amount of any Claim asserted against the Receivership Estate. The submission of a Proof of Claim shall constitute consent to be bound by the decisions of the Court as to the treatment of the Claim in a Court approved distribution plan.

21. Reservation of Rights. Nothing herein shall prejudice any right of the Receiver to dispute, or assert offsets or defenses as to the extent, validity, priority, or otherwise against amounts asserted in any Proof of Claim or against the initial Allowed Claim of any individual or entity who received a Notice of Receiver's Initial Determination, including but not limited to the manner in which accounts will be aggregated and Claims treated under a Court approved

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distribution plan. Nothing contained herein is intended to preclude the Receiver from objecting to any Claim on any grounds. Subject to approval of the Court, the Receiver retains the sole and absolute right to propose a plan of distribution.

Dated this _____ day of _____, 2019.

United States Magistrate Judge Jolie A. Russo

SUBMITTED BY:

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Alex I. Poust

Alex I. Poust, OSB #925155

apoust@schwabe.com

Troy D. Greenfield, OSB #892534

tgreenfield@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*)

iknauer@swlaw.com

SNELL & WILMER LLP

Telephone: 202.802.9770

Facsimile: 202.688.2201

Attorneys for the Receiver for Defendants

Aequitas Management, LLC, Aequitas

Holdings, LLC, Aequitas Commercial

Finance, LLC, Aequitas Capital Management,

Inc., and Aequitas Investment Management, LLC