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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;  
 AEQUITAS HOLDINGS, LLC;

No. 3:16-cv-00438-JR

NOTICE OF FILING RECEIVER'S  
 REPORT DATED APRIL 30, 2019



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 April 30, 2019.

Dated this 14th day of May, 2019.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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COURT-APPOINTED RECEIVER FOR  
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-JR

United States District Court

District of Oregon

Portland Division

Report

of

Ronald F. Greenspan, Receiver

April 30, 2019

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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” or “Aequitas”), 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 March 31, 2019. 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], through December 31, 2017 [Dkt. 587], through March 31, 2018 [Dkt. 610] through June 30, 2018 [Dkt. 644], through September 30, 2018 [Dkt. 662] and through December 31, 2018 [Dkt. 674] 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.

## **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”). 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**

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 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 March 31, 2019, the Receiver has sold assets and collected receivables totaling approximately \$318.4 million. The Receiver has also entered into and substantially completed the implementation of a settlement with the Consumer Financial Protection Bureau (“CFPB”) and fourteen 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 thousand loans, and appropriate notification to each of the borrowers.

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.

Having made substantial progress on the asset dispositions and resolution of the numerous governmental investigations, the Receiver has proceeded with an investor claim validation process involving the compilation and dissemination of 2,561 individually-tailored investment data verification packets. As mandated by the Order, the Receiver has concluded his forensic investigation and the resulting forensic report (the “Forensic Report”) was filed with the Court and posted to the Receiver’s website<sup>2</sup> on November 21, 2018 [Dkt. 663].

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<sup>2</sup> <http://www.kccllc.net/aequitasreceivership/document/1600438181121000000000001>

During the reporting period, the Receiver has continued to expend a significant effort in data analysis and financial modeling necessary for an efficient claims process as well as analyses of potential distribution plans. As the result of these efforts, on February 12, 2019, the Receiver circulated to the approximately 68 counsel of record, via email, a version of the claims motion, related exhibits, and proposed form of order. Following the conferral and after incorporating some minor changes as a result, on April 23, 2019, the Receiver filed a claims and bar date motion. On April 25, 2019, the Court entered the 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 (the "Claims Procedures Order"). The Receiver is proceeding expeditiously to implement the claims process as mandated in the Claims Procedures Order.

Further, the Receiver and his team coordinated and participated in two mediation sessions with the Receivership Entity's insurers, the Individual Defendants and counsel for the investor groups, in an effort to broker settlement of claims that, absent an early negotiated resolution, would diminish the insurance proceeds available to pay a portion of the investors' claims against the Receivership Entity and the Individual Defendants.

The Receiver and his team have been intimately involved in shepherding settlement of claims against Tonkon Torp LLP, a law firm that provided legal services to the Receivership Entity and alleged by the various investor groups to have aided and abetted in the fraud. The Tonkon Torp settlement is subject to approval by this Court as well as the Court in the matter of *Ciuffitelli, et. al. v. Deloitte & Touche, et. al.*, Case No. 3:16-cv-00580-AC ("Investor Class Action"). On March 19, 2019, Judge Acosta issued Findings and Recommendations granting preliminary approval of the partial class settlement with Tonkon Torp [Dkt. No. 481].

As addressed in greater detail below, during the reporting period, the Receiver successfully resolved significant claims against the Receivership. Additionally, the Receiver was instrumental in organizing and facilitating mediation of remaining claims among investors, Deloitte & Touche, EisnerAmper, Sidley Austin, Duff & Phelps, TD Ameritrade, as well as the Individual Defendants and Receivership Entity.

Finally, the Receivership continues to facilitate discovery, with over 260 people having accessed the database, which contains 17.5 million documents, and provide financial and tax administration including preparing and filing over 100 entity tax returns.

### **C. Compromise of Claims**

During the reporting period, the Receiver successfully settled two significant claims against the Receivership. The resolution of these claims represents a major development in advancing the Receivership towards a consensual distribution plan and provides a substantial benefit to the investors.

#### **1. Terrell Parties**

After considerable investigation and negotiation, the Receiver executed a settlement agreement with Patrick Terrell, Richard Terrell, Kimberly Terrell, Megan Terrell, Terrell Group Management, LLC, and PatRick Investments, LLC, (collectively, the “Terrell Parties”). The Terrell Parties were parties to certain contracts with the Receivership Entity, including, but not limited to contracts governing the issuance or sale of Aequitas securities and loans from the Receivership Entity. Additionally, certain of the Terrell Parties were a lender to a Receivership Entity which lender alleged it held a senior lien<sup>3</sup> on certain assets in the amount of \$10.6 million (principal and accrued interest).

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<sup>3</sup> Terrell Group Management, LLC (“TGM”), claimed a security interest in substantially all of the personal property of Aequitas Corporate Lending, LLC (“ACL”). In the course of selling assets, the Receiver agreed to hold the proceeds of certain assets in a segregated account, subject to further order of the Court. At the date of the settlement agreement, the amount of segregated funds totaled \$4.8 million.

Finally, certain of the Terrell Parties received compensation from the Receivership Entity including advisory fees.

With regard to the senior lien, the Receiver reviewed the note and certain UCC lien filings that formalized the claim to the collateral that Aequitas pledged to secure the financing. As part of the forensic investigation, the Receiver determined that certain aspects of the financial transaction were not supported by cash consideration and could be contested as a fraudulent conveyance. To resolve the dispute over the validity of the debt, the Terrell Parties and the Receiver entered into the settlement.

The Terrell Parties agreed to pay the Receivership Entity \$4.4 million and also release both the alleged senior lien in the amount of \$10.6 million and any claim to a distribution from the Receivership Estate. In return, the Receiver agreed to release claims of the Receivership Entity against the Terrell Parties and either secure releases from the investor groups or indemnify the Terrell Parties in the event any investor pursues a claim. The Receiver anticipates presenting the settlement to the Court for approval during the second quarter of 2019.

## 2. Weider/Forman

Receivership creditors Weider Health & Fitness and Bruce Forman (Weider/Forman) alleged a security interest in the medical receivables held by certain affiliates of CarePayment Holdings LLC, purportedly securing a roughly \$14 million dollar obligation arising from a \$10.5 million promissory note together with accrued interest, and demanded adequate protection related to the sale of those medical receivables. As previously reported, on April 6, 2018, Weider/Forman filed a petition to the Ninth Circuit [9th Cir. Case No. 18-70984, Dkt. 1], asking the appellate court to overturn this Court and require imposition of a dedicated reserve for their benefit [9th Cir Case No. 18-

70984, Dkt. 2]. On April 26, 2018, the Ninth Circuit denied Weider/Forman's petition and motion. [9th Cir Case No. 18-70984, Dkt. 10].

With regard to the purported senior lien under which Weider/Forman claimed the security interest, the Receiver reviewed the note and certain UCC lien filings that formalized the claim to the equity collateral that Aequitas pledged to secure the financing. As part of the forensic investigation, the Receiver determined that certain aspects of the financial transaction were not supported by cash consideration and could be contested as a fraudulent conveyance. To resolve the dispute over the validity of the debt, Weider/Forman and the Receiver entered into the settlement.

Weider/Forman agreed to abandon its claim of roughly \$14 million, releasing both the alleged senior lien and any claim to a distribution from the Receivership Estate. As with the Terrell Parties, the Receiver agreed to release claims of the Receivership Entity against Weider/Forman and either secure releases from the investor groups or indemnify Weider/Forman in the event any investors pursue claims. The Receiver anticipates presenting the settlements with Weider/Forman and the Terrell Parties to the Court for approval during the second quarter of 2019.

### **3. Fieldstone Parties**

On February 1, 2019, the Court approved the settlement of the Receivership Entity's claims against Fieldstone Financial Management Group, LLC, Kristofor Behn and Christine Behn (collectively the "Fieldstone Parties") [Dkt. No. 673]. The Fieldstone Parties repaid the Receivership Entity \$1 million on a \$1.5 million note. Due to claims concurrently asserted by the SEC and others against the Fieldstone Parties, the Receiver was pleased to recover \$1 million for the benefit of the Receivership Entity and its investors/creditors.

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

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 finish monetizing the remaining assets in a manner and timeline consistent with reasonably maximizing the value to the investors. The Receiver also must (i) complete the claims processes, (ii) complete asset recovery and avoidance litigation, (iii) resolve investor and other creditor claim amounts, (iv) draft and seek constituent support and court approval of an asset distribution plan, for which the modeling of several alternatives has already begun, and (v) manage the distribution process.

The remaining loan portfolios owned by the Receivership require management until they are monetized or wound down. 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 (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 SEC Staff and Aequis investors regarding our progress thus far has been positive. The Receiver is very mindful of the priorities to proceed both expeditiously and economically, to seek an interim distribution when possible, and conclude this Receivership in an equitable fashion as soon as practicable. The Receiver believes he has the constituents' support and encouragement to continue his efforts, and that they also support the continuation of the Receivership.

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

**Entity**

**1. Consolidated Database**

The Receiver has consolidated all digital data within his control into a centralized, organized database. The database now contains approximately 17.5 million documents/emails. In addition to the Receivership Entity's database, the Receiver has also integrated the multiple data repositories in DTI's<sup>4</sup> possession as well as the data repository hosted by Pepper Hamilton.<sup>5</sup> The database was effectively utilized to fulfill requests for production (RFP) from governmental agencies.

In accordance with the directive contained in paragraph 24 of the Order Appointing Receiver [Dkt. 156], the Receiver made the centralized database available for access and use by counsel for litigants and other appropriately-authorized parties.<sup>6</sup> Additional parties interested in obtaining access should contact Troy Greenfield at Schwabe, Williamson & Wyatt ([tgreenfield@schwabe.com](mailto:tgreenfield@schwabe.com)/ 206.407.1581).

**2. Orderly Discovery Process**

Pursuant to the Court's May 23, 2016, October 23, 2017 and August 16, 2018 orders granting limited relief from the stay [Dkt. Nos. 185, 551 and 646], the Individual Defendants' defense costs are paid from the Receivership Entity's wasting D&O policies.

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<sup>4</sup> DTI (aka Document Technologies, Inc. and Epiq) 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 work product has been preserved.

<sup>5</sup> The Pepper Hamilton repository contains certain files provided by the Receivership Entity as well as Sidley Austin and the SEC.

<sup>6</sup> As of April 23rd 2019, access has been provided to 260 users from the following law firms, advisors and interested parties: Beugelmens LLP, Bressler, Amery & Ross, P.C., Corr Cronin, Covington & Burling, LLP, Deloitte, Department of Justice (United States), Epiq Systems, Eversheds Sutherland, FBI, Hart Wagner LLP, Larkins Vacura Kayser, Latham & Watkins, Law Offices of Stanley H. Shure, Miller Nash Graham & Dunn LLP, Munger Tolles & Olson, NJ Attorney General's Bureau of Securities, Pepper Hamilton LLP, Schulte Roth & Zabel, Schwabe Williamson & Wyatt, Securities & Exchange Commission (SEC), Shartsis Friese & Ginsburg, Stoll Bern, The Ferranti Firm LLC, TM Financial Forensics, Winston & Strawn LLP

The Receiver remains willing to work with any of the remaining law firms interested in accessing the consolidated database.

Final resolution of the SEC's claims against the Individual Defendants would benefit the Receivership Estate and the Aequitas investors by reducing the legal spend and corresponding depletion of the insurance policy limits.

In the last report, the Receiver recommended that the Court refrain from lifting the stay of litigation against the Individual Defendants and the Receivership Entity until after March 30, 2019 because the SEC Staff and the Individual Defendants had reached a tentative resolution of the claims presented in the SEC Complaint, contingent upon approval by the Commission.<sup>7</sup> The successful negotiations between the SEC Staff and the Individual Defendants paved the way for subsequent settlement negotiations between the Aequitas investors, the Individual Defendants, the Receivership Entity, as well as the responsible insurance carriers. The Receiver and those parties held private mediation sessions on August 22, 2018 in Portland, Oregon, and on November 12, 2018 in Seattle, Washington. Subsequently, as mentioned above, the Receiver expended considerable time and effort in organizing and facilitating mediation of remaining claims among investors, Deloitte & Touche, EisnerAmper, Sidley Austin, Duff & Phelps, TD Ameritrade, as well as the Individual Defendants and Receivership Entity. The first mediation session among these parties was held on April 29 and May 1 in San Francisco. The second session is scheduled May 20 – 23 also in San Francisco. These mediation sessions hold significant promise for direct payments to the plaintiff investor groups, expedited distributions from the Receivership Estate and, ultimately, an expeditious conclusion to the Receivership.

As addressed in Section F. below, the Receiver continues to recommend that the Court refrain from lifting the stay of litigation against the Receivership Entity until after June 30, 2019, by which time the Receiver will submit an interim report regarding the

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<sup>7</sup> On June 1, 2018, the SEC Staff and Individual Defendants filed their Joint Stipulation To Stay Discovery And To Vacate All Pre-Trial Deadlines; Proposed Order [Dkt. 615] which order was granted the same day [Dkt. 616].



results of the mediation sessions and include a recommendation based on whether he believes a further stay is in the best interests of the Receivership Entity and its investors/creditors. Contemporaneous with a recommendation to lift the stay of litigation against the Receivership Entity, the Receiver 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 discovery directed to the Receivership Entity must be organized and reasonably limited to avoid unnecessary depletion of the Receivership Estate.

The Receiver notes the upcoming May 29, 2019 Scheduling Conference to address the stay of discovery against the Individual Defendants, in place by virtue of this Court's June 1, 2018 Order Staying Discovery and Vacating All Pre-Trial Deadlines [Dkt. No 616]. Based on the measure of progress achieved during the mediation sessions, the Receiver will submit a recommendation prior to or during the conference addressing whether he believes a further stay of discovery against the Individual Defendants would be in the best interests of the Receivership Entity and its investors/creditors.

#### **F. Forensic Report**

As described in prior reports and pursuant to the Order which authorized and empowered the Receiver to investigate (the "Investigation") the manner in which the financial affairs of the Receivership Entity were conducted, on November 21, 2018, the Receiver filed his Forensic Report [Dkt. 663].

Since the publication of the Forensic Report, the Receiver has received mostly favorable response from governmental agencies and counsel for the investors. Additionally, a few items of feedback/revision were noted in the prior report and additional items were received during the reporting period and are worthy of mention:

On January 17, 2019, counsel for the Receiver received a letter from counsel representing Bill Ruh and Keith Barnes which letter was intended to raise several purported factual misstatements in the Forensic Report and protest certain inferences of wrongdoing. On February 20, 2019, counsel for the Receiver delivered a detailed response to all items raised – which response is summarized below<sup>8</sup>.

Mr. Ruh asserted that the Forensic Report portrayed him as an insider and implied he was a party to some form of wrongdoing in making his investments and receiving a redemption. Mr. Ruh's position is very different than that of other investors and the Report is proper in pointing this out. He was privy to information and access not possessed by the typical investor and was able to "roll" a significant portion of his investment into ACL, a construct designed to give these few privileged investors an advantage over all other ACF investors. Further, based on the Receivership Entity's books and records, Mr. Ruh held the following positions, and served on the following Aequitas (or Aequitas-related) Committees and Boards: Executive Vice President, Managing Principal of Aequitas Capital Opportunities Fund LP, Managing Principal of Aequitas Capital Opportunities Fund GP, ACM Investment Committee Member, Aequitas Conflicts Review Committee Member, AOD-ACOF co-lead, MotoLease LLC Board of Managers, SCA Management Committee, and MOGL Board of Directors. The forensic team's review of information on the Aequitas email servers clearly revealed that Mr. Ruh

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<sup>8</sup> The summary of responses is not intended to discuss all issues raised by Messrs' Ruh and Barnes. Some items have been excluded as not germane to the discussion as determined by the Receiver.

regularly received information and was frequently consulted on decisions– a very different circumstance than that of ordinary, third-party investors.

The following was not included in the Forensic Report: In addition to the positions held, Aequitas used defrauded investor funds to subsidize/provide office space for Mr. Ruh's use in San Diego, California with Mr. Ruh executing a lease for the office of Ruh Advisory Corp d/b/a Aequitas Capital. Given the many positions held, information received, holding himself out as doing business as Aequitas Capital, and his corresponding ability to influence if not direct the actions of Aequitas entities, Mr. Ruh is considered an insider for purposes of the Forensic Report.

Mr. Ruh objected to Forensic Report, Page 22 - "In-house legal counsel" - The section cites an email from early May 2015 regarding the in-house legal team telling Mr. Oliver, "that Ruh must be informed of the SEC investigation prior to making his investment." Mr. Ruh contends the Forensic Report fails to make clear that Mr. Ruh was not, in fact, told about the investigation. Mr. Ruh asserts he was informed of an SEC investigation of Aequitas during an October 6, 2015 meeting in his Del Mar, CA offices, where Tim Mundy, a partner at Deloitte, provided the news. Prior to that meeting, Mr. Ruh claims he had heard several times about an SEC examination, but not that it was an investigation.

The relevant section of the Forensic Report includes a factual statement - legal counsel advised Aequitas Management to inform Mr. Ruh of the SEC investigation and does not state whether he in fact was or was not so informed. Based on the available documentary information, the Receiver cannot confirm or refute Mr. Ruh's contention that he was not informed of the investigation prior to October 6, 2015.

Mr. Ruh asserts that Forensic Report, Page 22 - "Covenant breach and collateral transfer" is misleading in that Mr. Ruh was never informed of a covenant breach, nor

was he part of any funding discussions related to any Aequitas entity other than COF. However, the Forensic Report does not state that Mr. Ruh was informed of the covenant breach. Again, while Mr. Ruh presents certain contentions, the Receiver does not have documentary information to confirm or refute those contentions. The Forensic Report contains only verified factual statements.

Mr. Ruh challenges Forensic Report, Page 22-23 - "nD investment approval by Aequitas management" - The Forensic Report states that Mr. Ruh "waived/approved the nD investment on behalf of Aequitas Investment Management ("AIM")" – which Mr. Ruh claims is not correct. Mr. Ruh asserts his email response was to provide approval for the outgoing wire on behalf of COF and that he was not a voting member of AIM and had no authority on its behalf.

There is no evidence that any AIM member provided approval to Treasury prior to the wire release (Mr. Jesenik's approval came in three minutes after the wire release). Rather, Treasury released the wire upon Mr. Ruh's assurance that all approvals had been secured. However, the Receiver will revise the footnote as follows: "Ruh confirmed he had received AIM's approval when prompted by Treasury, whereupon the wire was released. Jesenik approved on AIM's behalf shortly after the wire was released"

On Forensic Report, Page 62 - Footnote 194 – Mr. Ruh is mentioned as being involved in e-mail correspondence with Joe Garea related to Scottrade. Mr. Ruh asserts he never played an active role with Mr. Garea and had virtually no knowledge related to the transaction Aequitas was attempting to structure. On this point, Mr. Ruh is correct. The footnote contains a typo and will be corrected to identify "Rull" (Steve Rull of Hancock Securities) as the person involved in the email correspondence.

Mr. Ruh contends that Forensic Report, Page 126 - The "COF Sources and Uses of Cash" table and footnote 468 are incorrect. Mr. Ruh maintains he did not have an

investment in Aequitas Income Opportunity Fund, LLC (“IOF”), and never made any capital contribution via any Aequitas vehicle into COF.

The Receiver identified that the check Mr. Ruh sent for \$11,714.57 was deposited into IOFs bank account on October 27, 2014. Upon re-review, it appears that a corresponding amount of cash was transferred to COF on October 29, 2014. The cash transfer occurred in a similar way to Investment Transfers, and therefore was represented as such. Manual review of emails around that time now show that the Aequitas accounting department deposited the check into IOF by mistake, and it was intended for COF.

The header on the table remains accurate. However, footnote 468 will be amended to state: “Includes cash transfer from IOF to COF for the accounts of Glasgow and Ruh; these funds were intended for COF but mistakenly deposited by the accounting department into IOF.”

Additionally, Mr. Ruh maintains that the \$949,588 represents LP interests that ACF and Mr. Ruh purchased, and then rightfully sold to two investors that were late to the deal. He further asserts that footnote 472 is incorrect in that it implies that Mr. Ruh received a \$124 thousand return on a \$67 thousand investment.

As this chart is intended to reflect the cash flows of COF, it is correct to state that Mr. Ruh wired in \$67 thousand in February 2015 towards the additional \$150 thousand commitment. However, including non-cash items, it is noted that Mr. Ruh deferred a \$45 thousand distribution that was allotted to like investors. As a result of our further review, the footnote will be amended as follows: “As such, Ruh invested an additional \$67 thousand in cash towards a \$150 thousand additional commitment and deferred a \$45 thousand distribution from the fund as consideration for the additional investment.”

Similarly, Mr. Barnes argues that despite serving as an Advisory Board (“AB”) member and being featured prominently in the private placement memorandums – he too should not be considered an insider. Mr. Barnes asserts that when he agreed to be an AB member in 2013, he made it clear that he would not be anything more than an advisor and would not engage in any binding or fiduciary work. Mr. Barnes takes exception to the reference to his resignation letter and claims it provides the implication that this idea was something he came up with after the fact.

The Forensic Report contains an accurate quote from Mr. Barnes’ resignation letter concerning his purported understanding of the position, which differs from the Aequitas Private Placement Memorandums (“PPM”) which were distributed by Aequitas Management. The Receiver does not endeavor to address inferences that can be made by others. Mr. Barnes also claims he was clear with Aequitas that any use of his name was to include that he was only an advisor and that Aequitas ignored this and published Mr. Barnes' name in PPMs without his knowledge. However, the Forensic Report does not state that Mr. Barnes (or any AB member) asked to be included in the PPMs nor whether or not he was “only an advisor”. The Receiver has record of Mr. Barnes receiving copies of the PPMs which included his name. In the Receiver’s opinion, no amendment to the Forensic Report is necessary.

Mr. Barnes takes exception to Forensic Report, Page 77 – claiming the reference to the use of Aequitas' jet is very misleading. Mr. Barnes insists he was not inquiring about the jet as some sort of perk or compensation. Instead, that Mr. Jesenik spoke to several people about buying time on the Aequitas jet in an effort to raise money. Mr. Barnes requested cost information, reviewed it, and decided not to purchase time on the jet and that this should be clarified. As the title of the email sent by Mr. Barnes to Mr. Jesenik is “Jet Access”, the statement “in an August 2015 email chain wherein Barnes is

seeking access to one of the Aequitas jets” is accurate. The Receiver has not seen direct communication in which Mr. Jesenik uses the jet as an effort to raise money. However, the Receiver agrees that the later communication between Mr. Barnes and Mr. Jesenik includes reference to payment terms.

In the interest of clarity, the subject sentence will be amended as follows:

“Further, in an August 2015 email chain wherein Barnes is seeking information in connection with his consideration to purchase access to one of the Aequitas jets, which he declined to do ....”

Finally, Mr. Barnes claims he never saw the e-mails discussed on Forensic Report Page 76 between Oliver and McRitchie (sic), nor was he a part of their conversations regarding the concerns they were having – and that should be made clear in the Report. Mr. Barnes maintains this information was kept from him and the other AB members and the email states "Bob was masterful at explaining how CarePayment would be a game Changer." Mr. Barnes asserts the bad actors were using and manipulating the Advisory Board.

However, the Forensic Report clearly states: “Oliver and MacRitchie take a different view of the importance of the AB and information the AB knew (or should have known) as to Aequitas’ dire outlook.” The Forensic Report later includes numerous quoted statements of Mr. Oliver and Mr. MacRitchie regarding their perception that the AB did not challenge or question the running of Aequitas. Accordingly, in the Receiver’s opinion, no amendment to the Forensic Report is necessary.

Of note, review of the presentation shown to AB members at the referenced August meeting reveals that there was discussion regarding certain financial issues and the AB members reviewed two year P&Ls provided by Aequitas and discussed risks associated with Aequitas (including a flagged “High Financial Risk”).

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

With the filing of the Forensic Report and given that the majority of the Receivership Entity's assets have been sold or otherwise monetized, and the majority of outstanding governmental litigation has been settled, some resources are being redirected to litigation-related matters, where the stay has been lifted, without jeopardizing the Receivership's other vital activities.

As addressed above, the Receiver recommends that the Court refrain from lifting the stay of litigation against the Receivership Entity until after June 30, 2019, by which time the Receiver will submit a further interim recommendation. Additionally, prior to or during the May 29, 2019 Scheduling Conference to address the stay of discovery against the Individual Defendants, based on the measure of progress achieved during the mediation sessions, the Receiver will submit a recommendation addressing whether he believes a further stay of discovery against the Individual Defendants would be in the best interests of the Receivership Entity and its investors/creditors.

## **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, preserving and monetizing of 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. As assets are being monetized, the Receiver has been closing bank accounts that are no longer necessary.

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 March 31, 2019, the Receivership Entity had 9 full-time employees and 1 part-time employee (a decrease of one from the prior quarter). 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.

#### *b. Contractors*

In response to 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 March 31, 2019, the Receivership employed two full-time equivalent accounting contractors and two part-time IT contractors (unchanged from the prior quarter).

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

a. *Tax Preparer*

Since the inception of the Receivership, the Receiver has 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.

b. *Other Tax Matters*

Required 2018 tax reporting and return preparation is underway. 1099 information reporting was completed in January 2019.

Estimates of 2018 taxable income was provided to fund members for the remaining investor funds and to equity members of Aequitas entities in March and April 2019 consistent with timing in prior years. 2018 form k-1s will be provided as returns are completed later this year.

The remaining investor equity funds are:

Aequitas Income Protection Fund LLC

Aequitas Enhanced Income Fund LLC

Aequitas Hybrid Fund LLC

Extensions for the 2018 returns for all the remaining Aequitas entities were filed in March and April 2019. The completed returns are due in September and October 2019.

Federal and state tax reporting for the Aequitas multi-tier structure will continue to be required until there is a conversion of the structure. Depending on the timing, short prior returns could be required.

c. *Tax Reform Impact and Other Tax Law Changes*

A comprehensive review of the impacts of tax reform on the Receivership is ongoing and will continue as the 2018 returns are prepared. The Receiver cannot provide tax advice to investors. Investors are urged to consult their own tax advisors for

guidance and counsel about the applicability and impact of the significant tax law changes that were enacted in late 2017 by the Tax Cuts and Jobs Act (TCJA, P.L. 115-97, 12/22/2017).

The information provided here may be helpful to investors and their advisors in identifying changes that should be reviewed. This list may not contain all of the impacts and other guidance may be applicable. It is not intended to replace advice from investors' own advisors.

Tax law changes include:

1. IRC Section 199A: Qualified Business Income Deduction

The 2017 Tax Cuts and Jobs Act created a 20% deduction for "qualified business income" from pass-through businesses. All the remaining investor equity funds and many of the other receivership entities are pass-through businesses. The Receivership will be providing required disclosure on 2018 form k-1s to assist recipients in determining if there is an impact from Section 199A. The 20% deduction, if applicable, is claimed on a member's return. Investors should consult with their tax advisors to determine any impact.

2. Negative Tax Basis Capital Accounts

2018 form k-1s are required to include tax basis capital account disclosure if the tax basis capital account is negative. The Receiver's team is compiling tax basis capital account information from historical records of the company and will provide the required disclosure to the extent possible from those records.

3. Other Changes:

Federal tax elimination of loss carrybacks, reduction of tax rates and changes to casualty/theft loss provisions could impact tax reporting for investors. These changes will impact investors differently depending on how investments and income were

reported in prior years. States and other localities where investors or the Receivership file returns may or may not have adopted the federal tax changes. The Receivership cannot provide member specific advice or guidance. Investors should consult with their tax advisors to determine any impact from these changes.<sup>4</sup> IRC Section 6221:

Determination at partnership level

Beginning with the 2018 tax year, federal tax attributable to adjustments made during audits or other changes resulting in tax due will be assessed at the entity level. This means that a receivership pass-through entity could be subject to tax. The receivership will be monitoring the impact of the new provision and evaluating the available options to elect out, as possible. Members are required to receive notice of electing out of the new provisions.

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

Pursuant to 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 insurers on behalf of the former executives during the prior quarter.

The Receiver had been informed by counsel for XL Catlin, the insurer providing the first tier of \$5 million coverage, that the total of the payments made by XL Catlin as of July 7, 2017 was \$5 million. 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 over \$600 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 over \$600 million. The Receiver's insurance coverage counsel promptly tendered those claims to the Receivership Entity's insurance carriers.

Pursuant to the Court's October 23, 2017 order granting further limited relief from the stay, Forge was permitted to pay the Individual Defendants' reasonably-incurred defense costs. The Receiver has been informed that Forge made payments totaling \$5 million, exhausting the second tier of coverage.

To facilitate the Individual Defendants' participation in a private mediation of claims amongst the Receivership Entity, the Aequitas investors, the Individual Defendants and the responsible insurance carriers, the Receiver stipulated to limited relief from the stay to permit the payment of the Individual Defendants' reasonable and related Defense Costs by Starr Indemnity & Liability Company ("Starr") not to exceed certain specified amounts. On August 16, 2018, the Court lifted the Receivership stay so that Starr could advance up to \$237,522 of defense costs incurred on behalf of the Individual Defendants in connection with the defense of the SEC Claim. On November 6, 2018, the Court issued a subsequent order that allowed Starr to advance an additional \$90 thousand of defense costs on behalf of the Individual Defendants. The Receiver has been informed that Starr has not paid any additional defense costs. However, it is the Receiver's understanding that there are several hundred thousand dollars of invoices related to Defense Costs that are currently outstanding.

## 6. Ongoing Litigation

As addressed above and reflected in the settlements with the Terrell Parties, Weider/Forman and the Fieldstone Parties, the Receiver has continued his frequent engagement in negotiations with a number of parties to recover Receivership Assets and/or to resolve substantial, disputed claims. Consistent with the Court's prior orders, to the extent negotiated resolutions are not reached with any of the parties, the Receiver will file additional actions.

A significant claim against the Receivership which is currently stayed is by American Student Financial Group, Inc. ("ASFG") in connection with the Corinthian student loan receivables program. During the third quarter of 2018, the Receiver met with representatives of ASFG in an effort to resolve the claims between the Receivership Entity and ASFG. As a follow up to this meeting, in the fourth quarter of 2018, the Receiver and his counsel continued their attempts to reach a consensual resolution of the alleged claims, but these efforts have not yet come to fruition. The Receiver expects that this claim will be resolved during the upcoming implementation of the claims process.

### **B. Development of Claims Process**

The Receiver has substantially completed quantifying and validating approximately \$600 million of investor claims. This involved 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, required reconciling investor account statements produced outside the accounting system with separate accounting and tax records. Additional validations were 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.

As of June 30, 2018, 2,561 investor data validation packets (including Integrity investors) 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.

During the last half of 2018 and first quarter of 2019, the Receiver undertook a significant effort involving integration of information on interest and return payments made to investors prior to the Receivership into the comprehensive investor activity database that the Receiver has developed. Given the uncertainty of the nature of a future distribution plan, the Receiver has determined that it was necessary to supplement the investor activity database with the detail of interest and return payments in order to be able to accommodate a wider range of possible distribution plans and be able to readily access this important information. The Receivership staff and retained professionals worked to review numerous Aequitas excel-based schedules, capture the relevant information involving approximately 19 thousand transactions, and then map and integrate such information into the existing database. This work was recently completed in preparation for the claims process.

The Receiver and the retained professionals designed and drafted the necessary documentation for the upcoming claims process. The Receivership staff also interviewed several potential claim agent vendors and reviewed such vendors' capabilities, tools, and process, as well as solicited proposals to provide claims agent services. Ultimately, the Receiver has made a decision to hire Epiq Restructuring Services, LLC as a claims

agent. As discussed above, in February 2019, the Receiver circulated a claims motion for conferral and, thereafter, filed it with the Court. On April 25, this Court entered an Order (1) Establishing Claims Bar Date, (2) Approving Form and Manner of Notice, and (3) Approving the Proof of Claim Form, Procedures and Other Related Relief [Dkt. No. 683].

## **Disposition of Assets/Interests**

### **C. Assets/Interests Sold**

#### **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.

Throughout 2018 and in the first quarter of 2019, we continued to work closely with CPYT to finalize separation of the CarePayment platform from the Receivership. The Receivership completed the negotiations and executed documentation with healthcare providers that resulted in releases to the Receivership Entities in connection with prior contractual obligations of CPLLC and assignment of the agreements to an affiliate of CPYT. Such releases and assignments reduce the risk to the Receivership Entity going forward and are intended to minimize any potential future claims from the providers. As of December 31, 2018, the Receiver obtained releases and provider agreement assignments in connection with 32 contracts, encompassing approximately 120 medical facilities. Several additional agreements with hospital providers were terminated. To the best of Receiver's knowledge, the Receivership has resolved all the previously outstanding CarePayment provider agreements by either assigning them to an affiliate of CPYT (with a release to the Receivership Entity) or by terminating such agreements. The Receiver, jointly with CPYT, has continued to work on terminating or transitioning the remaining contractual relationships with marketing partners. All



but two such agreements have been resolved and the remaining agreements are expected to either be assigned or terminated shortly,

2. **Coeur d'Alene, Idaho real estate**

The Receivership has a second position lien on a lake-front, recreational home in Coeur d'Alene, Idaho, legally described as: Lots 4 and 5, Washington Place Subdivision, according to the plat recorded in the office of the County Recorder in Book F of Plats at Page 4, records of Kootenai County, Idaho, along with all furniture, fixtures, rugs, window coverings, and household appliances (subject to some exclusions). The lien is the result of a certain Joint Sales Agreement, Promissory Note and Deed of Trust, each dated March 1, 2011, between Ronald F. Pirello ("Pirello") and Aequitas Equipment Financing, LLC and Aequitas Hybrid Fund, LLC, as a result of a defaulted loan from Aequitas Equipment Financing, LLC and Pirello's guaranty of same. On or about March 1, 2011, Pirello and Aequitas executed a Joint Sales Agreement, Promissory Note and Deed of Trust for the purpose of satisfying Pirello's guaranty obligations. Under the Joint Sales Agreement: 1) Pirello and Aequitas agreed to sell certain real property owned by Pirello located in Kootenai County, Idaho ("Property"), the proceeds of which would be applied to Pirello's guaranty obligations; and 2) Aequitas would advance funds to Pirello relating to the Property. The Promissory Note evidenced the funds that were to be advanced by Aequitas under the Joint Sales Agreement and the Deed of Trust secured the repayment of the advanced funds with a lien on the Property.

Under the terms of the Promissory Note, the maturity date of the outstanding balance of all funds advanced under the Joint Sales Agreement was the date that the Joint Sales Agreement was terminated. The Joint Sales Agreement terminated upon the earlier of 1) the sale of the Property, 2) upon mutual agreement of Pirello and Aequitas, or 3) by Aequitas by written notice on or after February 28, 2013. Aequitas terminated the Joint Sales Agreement

effective as of February 28, 2013 at which time the amounts under the Promissory Note became due and owing. The Promissory Note remains unpaid.

On or about February 15, 2019, the Receiver commenced foreclosure proceedings and caused to be recorded a Notice of Default with the Kootenai County Recorder. Under Idaho law, the recordation of a notice of default is the first step in foreclosing on real property secured by a deed of trust. That same day, a trustee's sale to foreclose on the Property was scheduled for June 20, 2019.

### 3. Claims against Gerald Frank

The Receiver continues to work with CPYT regarding the monetization of 111,573 shares of Class A Common Stock in CPYT received as part of the settlement with Gerald W. Frank and the Gerald W. Frank Revocable Living Trust related to the Rock and Roll restaurant loan.

### 4. Synchronex, LLC<sup>9</sup>

Synchronex LLC 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, 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”), entered into a Purchase Agreement dated as of April 9, 2018, subject to approval of this Court, with Silvermine Media Holdings, LLC (“Purchaser”), which provides the terms for sale of the Seller Entities’ (a) membership interests in company, and (b) their lenders’ interests in certain loans to company (together, the “Assigned Interests”, as defined in the Purchase Agreement). The Court issued its Order Granting Receiver's Motion To Sell Personal Property To Silvermine

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<sup>9</sup> <http://www.synchronex.com/en/>

Media Holdings, LLC, Free And Clear Of Liens, Interests, Claims And Encumbrances relative to the Assigned Interests on May 17, 2018 [Dkt. 614] and the sale closed on June 15, 2018 repaying the AHL Loan in full. Pursuant to the Purchase Agreement, the Purchaser had until September 15, 2018 to calculate a purchase price adjustment for operating capital which could result in the receipt of additional consideration of up to \$75 thousand. On September 14, 2018, the Purchaser advised the Receivership that the review of the Closing Balance Sheet had concluded and the Losses (as defined in the Purchase Agreement) exceed \$75 thousand by a substantial margin and, accordingly, the Purchase Price will be reduced by \$75 thousand pursuant to the terms of the Purchase Agreement. Accordingly, the Receiver is seeking compensation in the amount of \$75 thousand plus reasonable costs from Synchronex' s CEO based on representations and warranties made by him in conjunction with the Purchase agreement.

**D. Ongoing Asset Monetization and Sales Efforts**

**1. Campus Student Funding**

On August 17, 2017, the Court approved Receiver entering into the nationwide settlement with Consumer Financial Protection Bureau (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.

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 (after a significant settlement implementation process and period) 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.

In addition to the Settlement discussed above, after extensive negotiations, the Receiver has reached a separate settlement with the Attorney General of Massachusetts (the “Massachusetts Settlement”), who had not previously joined the Settlement reached with CFPB and thirteen individual states. On June 12, 2018, the Court approved the Receiver’s Motion for Approval of Proposed Settlement with Massachusetts Attorney General. [Dkt. 620]. The Massachusetts Settlement, implemented in the form of an Assurance of Discontinuance, became effective on June 21, 2018.

Following the very significant effort expended by the Receivership on the implementation of the Settlement at the end of 2017 and in the beginning of 2018 which resulted in processing relief in connection with approximately 47 thousand loans, the Receiver continued to implement the remaining obligations under the Settlement in 2018. In the third quarter of 2018, the Receiver developed and submitted the second Settlement compliance progress report to CFPB and thirteen state Attorneys General.

Following the submission of the compliance progress report, no Settlement compliance issues were brought up by CFPB and state Attorneys General. The Receivership staff and retained professionals continued to work with the regulators to address any questions that came up in the course of the operations of the portfolio.

Additionally, we have continued to maintain and update a detailed informational website for the borrowers in connection with the Settlement. Through April 30, 2019, the website had received 90,686 hits from 38,090 visitors. Most of the borrower inquiries are being addressed by the servicer but the Receivership also addressed 1,502 borrower inquiries directly (through April 29, 2019). In addition to addressing direct borrower inquiries, the Receivership staff and retained professionals monitor, review, and respond to borrower complaints that are submitted through the CFPB on-line consumer complaint portal or through other venues. All these activities are instrumental in mitigating the Settlement implementation risk to the Receivership, reducing the number of potential borrower complaints, and stabilizing the portfolio.

As discussed in the prior Receiver's Reports, and despite the intervention of the IRS Taxpayer Advocate Service office, the IRS did not agree to waive the requirement for the Receiver to provide informational tax forms (1099's) to student borrowers in connection with the debt discharge granted as part of the Settlement. In the first quarter of 2018, the Receivership staff, retained professionals, and a specialty vendor prepared and mailed out approximately 42 thousand informational tax forms. To handle potential borrower inquiries related to the 1099 tax forms, the Receivership has set up an outsourced call center that handled 2,046 calls, including 910 calls answered by agents, through March 31, 2019 (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 review call logs and monitor the performance to make sure that the borrowers receive appropriate information.

In the reporting periods, the Receivership team continued to work closely with UAS and Receivership counsel on designing and implementing certain updates and additions to the existing servicing policies that would provide more loan repayment options to the borrowers. Going forward, we will continue working with the loan servicer and our other service providers to complete the implementation of the Settlement and the Massachusetts Settlement and to adjust loan servicing requirements as necessary based on the performance of the portfolio. The Receiver is also evaluating the next steps in connection with the monetization of the remaining portfolio.

## **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>10</sup> During the fourth quarter of 2018, the Receiver received an objection from counsel for the Lux Board as to the Receiver's ongoing practice of deducting the contracted monthly management and administration service agreement fees from the underlying investments.

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

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<sup>10</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.

MLF holds subprime consumer leases for motorcycle and other recreational vehicles. Through March 31, 2019, the Receiver has collected approximately \$15.1 million on account of the leases owned at the beginning of the Receivership. As of March 31, 2019, the remaining portfolio (excluding repossessed motorcycles) had a face value of approximately \$1.3 million, of which \$1.1 million is less than 60 days past due. Additionally, MLF had in its possession 51 vehicles with cumulative outstanding lease balances of \$346 thousand that are in various stages of reconditioning and/or resale. The Receiver is also reviewing potential claims related to the refurbishment of the repossessed assets. Given the small size of the remaining portfolio and continued payment performance, the Receiver believes the most cost-effective way to monetize this asset is through continued runoff of the portfolio in the near term.

**4. Pipeline Health Holdings, LLC (“Pipeline”)<sup>11</sup>**

PCF owns 12.6% of Pipeline, which is a telepharmacy platform offering both a full service telepharmacy and software as a service (SaaS) technology. Pipeline offers telepharmacy to hospitals and hospital networks. The Receiver continues to explore opportunities to monetize this asset.

**5. Portland Seed Fund (PSF)<sup>12</sup>**

Portland Seed Fund is an investment in a local venture capital fund providing early stage capital to Oregon based start-ups. The Receiver continues to seek opportunities to monetize the remaining PSF interest.

**6. WorkAmerica**

WorkAmerica offers a web-based platform to source qualified job candidates from community colleges, technical colleges, and vocational training centers nationwide. ACF made a \$250 thousand loan to WorkAmerica in April 2014 via a Convertible

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<sup>11</sup> <http://www.pipelinerx.com/>

<sup>12</sup> <http://portlandseedfund.com/>

Promissory Note (“Note”). WorkAmerica is in default under the terms of the Note due to its failure to make timely payments when due. The Note matured on October 18, 2015, at which time the outstanding principal balance and all accrued and unpaid interest was due and payable.

The Receiver has been advised that WorkAmerica is insolvent (total outstanding note holders are estimated at \$2 million) and in the process of being acquired by a competitor. The acquirer is offering to distribute directly to WorkAmerica noteholders a convertible note to be issued upfront and an additional convertible note tied to a potential earn-out which would indicate a recovery of 5-15% of outstanding debt. The Receiver is reviewing the offer and additional documentation has been requested.

## **V. 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”). Participation was initially solicited based on size of the investor or investment advisor and with an eye toward ensuring that all of the significant constituencies would be represented. Further, the Receiver received several inquiries from additional investors who desired to participate in the IAC. The Receiver evaluated each of these requests and accommodated the investor when circumstances warranted. The last IAC meeting was held on November 13, 2018. The IAC meeting planned during the first quarter of 2019 was continued to allow the various stakeholders to focus attention and efforts upon the upcoming large-scale mediation sessions. The Receiver did provide an email update to the IAC on April 29, 2019. As the Court is aware, the Receiver, his legal counsel, and staff stay in regular contact with the IAC members and their legal counsel, including addressing investor inquiries.



**B. SEC and Other Governmental Agencies**

**1. SEC**

We continue to interact and cooperate with the SEC (including substantial discovery requests), as required by the consent judgement, but there is nothing new to report as of now (other than the developments referenced in section III.D above).

**2. CSF and CFPB, and State Attorneys General**

Please see section IV.D.1 above for the discussion of the Settlement with CFPB and fourteen state Attorneys General.

**3. Additional Governmental Agencies**

The Receiver has expended significant efforts to comply with various subpoenas and discovery requests from state and federal agencies as those investigations continue.

**VI. Lender Relationships**

**A. Retirement of Institutional Debt**

The Receivership Entities and affiliates have retired, generally on discounted terms, the entirety of the approximately \$104 million of institutional secured debt.

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

**Estate**

**A. Cash and Cash Equivalentents**

The Receiver had cash balances of approximately \$122.0 million as of March 31, 2019 for the entities included in the Receivership Entity. Over the period from March 16, 2016 to March 31, 2019, the overall cash balance of the Receivership Entity increased by approximately \$106.0 million.

On February 25, 2019 our banking partner, MUFG Union Bank (“Union Bank”), erroneously charged and withdrew a combined \$189,045 from 32 bank accounts for

“Cash Management Fees”, due to a software coding mistake. These charges were in error, as the Receivership had negotiated with Union Bank to provide banking services free of charge for all accounts. The error was immediately caught by Receivership employees and they worked with Union Bank to correct and refund all erroneous charges. All funds were returned on February 26 to each affected account.

To avoid overstating Banking Fee expenses on the Standardized Fund Accounting Reports (SFAR) reporting that is included as Exhibit B to this Report, but maintain all records of the transactions, the related refunds were recorded as “negative” Banking Fees. This effectively netted out the erroneous charge for the reporting period. As such, while all the base data is available through our reporting systems, Line 10d of the SFAR reporting shows the correct net amount of Banking Fee charges that the Receivership has paid (which currently includes a minimal charge paid monthly to Wells Fargo Bank).

Attached as Exhibit B to this Report is the Report of Cash Receipts and Disbursements in the form of the SFAR 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 March 31, 2019.

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

The Receiver believes Next Motorcycle, LLC and/or its affiliates possesses or have previously possessed approximately 46 motorcycle assets (or the funds due from the sale of said assets) which are currently not in the possession of the Receivership Entity. Due to the unknown condition or value of these vehicles and the associated litigation costs to pursue recovery, the Receiver continues to evaluate various options to pursue a recovery (or abandon if non-economic to pursue) on all or some of these assets.

## IX. 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 & Expenses by Entity (from January 1 through March 31, 2019)

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	26,070.00	1.7%	633.96	3.7%	26,703.96	1.7%
FTI Consulting	994,729.00	63.5%	12,041.45	70.5%	1,006,770.45	63.6%
Pepper Hamilton	27,885.00	1.8%	1,842.66	10.8%	29,727.66	1.9%
Schwabe, Williamson & Wyatt	349,407.00	22.3%	1,442.13	8.4%	350,849.13	22.2%
Morrison Foerster	4,301.00	0.3%	-	0.0%	4,301.00	0.3%
Law Office of Stanley H. Shure	98,370.51	6.3%	-	0.0%	98,370.51	6.2%
Snell & Wilmer	65,205.00	4.2%	1,115.50	6.5%	66,320.50	4.2%
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>1,565,967.51</b>	<b>100%</b>	<b>17,075.70</b>	<b>100%</b>	<b>1,583,043.21</b>	<b>100%</b>

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

## X. 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. Interests in ACF Private Notes held by three investors and totaling approximately \$9.55 million in stated principal balance and interest in a note issued by

Aequitas Income Opportunity Fund II, LLC (“IOF II”) totaling \$750 thousand in stated principal balance have been sold by investors and ownership transferred on the Receivership’s records.

## **XI. Timeline and Distributions**

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 facilitated access by litigating parties, effected settlements with multiple governmental agencies and major claimants, has finalized the forensic investigation and designed and began the implementation of the claims process—but work on each of these activities is still continuing. At this stage it is impossible to provide a definitive timeline for the completion of these 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 initially involving many operating business (as opposed to owning passive financial assets), is extraordinarily complex and it will take some additional 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 registered investment advisors, the proceeds of which have been, and are intended to be, distributed (with the assistance of the Receiver) shortly after court approval of the settlements.

The Receiver continues to evaluate the feasibility of an initial, partial distribution from the considerable funds now on hand. As mentioned above, the upcoming mediation sessions may well result in direct payments to the plaintiff investor groups, expedited distributions from the Receivership Estate and, ultimately, an expeditious

conclusion to the Receivership. The Receiver has initiated preliminary discussions with the IAC and investors' counsel regarding various possible distribution plan structures.