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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 JANUARY 31, 2020



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 January 31, 2020.

Dated this 7th day of February, 2020.

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

January 31, 2020

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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 recommendations to the Court for the quarter ending December 31, 2019. A voluntary

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

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], through December 31, 2018 [Dkt 674], through March 31, 2019 [Dkt 700], through June 30, 2019 [Dkt 749], and through September 30, 2019 [Dkt 776] 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 Aequis and uncertain consequences of past and future events involving Aequis. 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 December 31, 2019, the Receiver has sold Receivership Entity gross assets and collected receivables totaling approximately \$321.8 million plus an additional \$32 million of gross assets owned by CPFIT, an affiliate of the Receivership Entity but excluded from the Receivership itself. 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 proceeded with a preliminary investor data validation process involving the compilation and dissemination of 2,561 individually-tailored investment data verification packets. As mandated by the Order, the Receiver conducted 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].

Throughout 2019, the Receiver continued to expend significant effort in data analysis and financial modeling necessary for an efficient claims process as well as analyses of potential distribution plans. 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 then proceeded expeditiously to implement the claims process as mandated in the Claims Procedures Order. As of December 31, 2019, 339 claims had been received and 4,830 Notices of Receiver’s Initial Determination had been issued.<sup>3</sup>

During the second half of 2019, the Receiver and his team continued to refine the tools and systems necessary for the implementation of the claims process, perform initial review and assessment of the filed claims as they were received, as well as conduct additional research and verification of the claimant data that is expected to be needed for execution of the proposed future distribution plan.

During the current reporting period, the Receiver and his team expended significant effort finalizing the development and drafting of the Receiver’s proposed distribution plan, performing related analyses, and investigating options related to the future administration and wind-down of the Receivership. On December 23, 2019, with the goal of mitigating certain potential tax consequences and maximizing the future distributions on the Allowed Claims, the Receiver filed his Motion and the Court entered the Order To Authorize, Approve, And Take Continuing Jurisdiction Over A Qualified Settlement Fund (“QSF”), And For Related Relief [Dkt 781]. Subsequently, on December

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

<sup>3</sup> The Receivership team is processing and reviewing the filed claims. Certain claims appear to agree with the Notice of Receiver’s Initial Determination, and a number of filed claims are likely duplicative. Therefore, the number of actual claims is less than the sum of the filed claims and NODs issued.

31, 2019, the Receiver filed his Motion For Order (1) Approving Form And Manner Of Notice Regarding Approval Of Proposed Distribution Plan And Ponzi Determination, (2) Approving Procedures And Deadlines, (3) Setting A Hearing, And For Related Relief [Dkt 785] which was approved by the Court on January 14, 2020 [Dkt 790]. Also on December 31, 2019, the Receiver filed the Motion To Approve The Receiver's Distribution Plan And Determination Of A Ponzi Scheme [Dkt 787], which is currently being considered by the Court.

From the outset of the Receivership including during this reporting period, the Receiver and his team have expended considerable time and effort to orchestrate successful resolution of investors' claims against the professional firms that served the various Aequitas entities, including but not limited to Tonkon Torp, Integrity Bank & Trust, Deloitte & Touche, EisnerAmper, Sidley Austin, Duff & Phelps, and TD Ameritrade.

By facilitating mediation sessions and through other significant efforts, during 2017 and 2018, the Receiver aided the four principal investor litigation groups in reaching settlements with Tonkon Torp and Integrity Bank & Trust.

In December 2018, shortly after completing work on the Forensic Report, the Receiver began efforts to organize and facilitate numerous large-scale mediation sessions to resolve investors' claims against the remaining professional firm defendants – Deloitte & Touche, EisnerAmper, Sidley Austin, Duff & Phelps and TD Ameritrade. Those significant efforts over the ensuing months ultimately proved successful. All parties agreed to mediate in San Francisco, with the Honorable Daniel Weinstein, Ambassador David Carden and Lizbeth Hasse acting as the mediators. Once all parties agreed to the terms governing the mediation process, the Receiver and his team devoted considerable time and resources to providing extensive data and counsel to aid the parties in reaching negotiated resolutions. The Receiver's efforts prior to, during and

after five multi-day mediation sessions between April and September of 2019, together with his efforts in 2017 and 2018 to facilitate settlement of the investors' claims against Tonkon Torp and Integrity Bank & Trust paved the way for the following:

- Payments from the professional firm defendants to the class totaling \$234,613,000, as well as multiple additional seven- and eight-figure payments to other plaintiff groups presently subject to confidentiality agreements;
- Releases of contribution and other claims of the professional firm defendants against the Receivership Entity, including the release of a \$50 million contribution claim presented by Deloitte; and
- Contingent releases of contribution and other claims of the professional firm defendants against the Individual Defendants, Advisory Board members and other former officers and directors. The releases are contingent upon those parties releasing claims to the proceeds of the insurance policies maintained by entities comprising the Receivership Entity.

As the Court is aware, on December 16, 2019, Judge Hernandez entered Limited Judgments of Dismissal in favor of Tonkon Torp and Integrity Bank & Trust (Ciuffitelli, et. al. v. Deloitte & Touche, et. al., Case No. 3:16-cv-00580-AC – Dkt. Nos. 622 and 623). On December 17, 2019, Judge Hernandez entered Final Judgment and Order as to the remaining professional firm defendants - Deloitte & Touche, EisnerAmper, Sidley Austin, Duff & Phelps and TD Ameritrade (Dkt. No. 624).

The efforts of the Receiver to facilitate resolution of investor claims against the professional firm defendants have greatly accelerated anticipated distributions to the investors, both direct distributions of the settlement proceeds and ultimately

distributions from the Receivership estate and will meaningfully reduce the cost of administering the Receivership.

In 2019, the Receiver filed a coverage action against the Receivership Entity's insurers. Concurrently, the insurers filed an action for declaratory relief. The Receiver sought and secured the agreement of all interested parties to consolidate the two insurance coverage actions and immediately address the priority issues (relative rights of insureds to the insurance proceeds). Related motions were heard on November 20, 2019, and the Court issued its Findings and Recommendations on December 2, 2019 [Dkt. 139]. By Order dated January 6, 2020, Judge Hernandez struck the deadlines for objections to the Court's Findings and Recommendations noting that they will be reset at a later date. Presently, in accordance with the direction of the Court, the Receiver is diligently working to set a mediation amongst the numerous parties to the insurance coverage litigation. As noted above, the Receiver secured conditional releases of the Individual Defendants, other former Aequis officers and directors, as well as Aequis Advisory Board members. Those parties will be released from claims of investors and the professional firm defendants provided they forgo any further draws upon the insurance policies.

During this reporting period, the Receivership continued to facilitate discovery, with 278 people accessing the database, which contains 17.5 million documents, and provide financial and tax administration including preparing and filing of over 100 entity tax returns.

**C. Compromise of “Lux” Claims**

The Receivership Entity is involved in a complex trust structure related to several series of bonds offered on the Luxembourg Stock Exchange to non-U.S. investors. The issuer of the bonds is Aequitas Income Opportunities S.A. (“Issuer”), which is not part of the Receivership Entity. The Issuer purchased limited partnership interests in Aequitas International Opportunities LP, a Cayman Islands limited partnership (“Cayman”) which is one of the “Extended Entities” under the Order Appointing Receiver. Cayman is the holder of certificates of beneficial interest in ACC Holdings 5, LLC (“ACCH5”) and part of the Receivership Entity, which is wholly-owned by AH, which is also part of the Receivership Entity. ACCH5 established a series of Grantor Trusts that purchased and currently hold certain C+ and F+ Freedom loan portfolios, as well as proceeds from the on-going monetization of such portfolios.

As previously reported, after considerable investigation and negotiation, the Receiver reached a settlement agreement with the Board of Directors and certain bondholders of the Issuer to resolve their claims against the Receivership. Similar to other settlements of claims with CCM Capital Opportunities Fund, ETC Founders’ Fund and WindowRock Feeder Fund, the Receiver agreed to the following:

1. ACC Funding Series Trust 2015-5 (“ACC Trust”): ACF will (a) resign as the grantor of the ACC Trust and (b) release the funds held in a segregated bank account on the date of Court Approval (approximately \$9.2 million as of December 31, 2019), in consideration of (i) the ACC Trust and Cayman entity paying the Receivership Entity any accrued and unpaid ASA and management fees determined as of the date of Court Approval (subject to adjustments for any overpayments), (ii) Cayman terminating the ACC Entities Repurchase Obligation and any other similar or related obligation, and (iii) termination of

ACF's and AES's management obligations. The ACC Trust will be removed from the Receivership Entity.

2. Convertible Preferred Equity Certificates ("CPEC"): Aequitas Enhanced Income Fund, LLC (AEIF) will transfer all CPECs to Lux.
3. Revolving Line of Credit: Cayman will release ACF from all obligations pursuant to promissory notes dated July 31, 2015, October 1, 2015 and October 14, 2015, evidencing a revolving line of credit with a current principal balance of \$3,786,671.
4. Mutual Releases: The Receivership Entity will release all claims against Cayman, Lux, ACC Trust and their affiliates (the "Lux Parties") and the Lux Parties will release all claims against Receivership Property, the Receivership Estates (as those terms are defined in the Receivership Order), any other assets of the Receivership Entity, the Receivership Entity, the Receiver, and any person acting on behalf of the Receiver or the Receivership Entity, including but not limited to any claim under any Court-approved distribution plan.
5. Expenses: Each party will pay its own expenses, including legal fees.

The Receiver and the Lux Parties worked closely during the fourth quarter of 2019 to finalize the documentation of the settlement, which was subsequently completed in January 2020.

**D. Settlement of Claims Against William Malloy and Related Entities**

On July 25, 2019, the Receivership Entity filed suit against William Malloy and related entities - Case No. 3:19-cv-01153-MO. Before initiation of discovery and incurring related litigation expenses, the parties negotiated a settlement of all claims.

Malloy and the related entity defendants will pay the Receivership Entity \$1,000,000.

Malloy will release personal claims for distributions from the Receivership estate as well as any claim to the proceeds of any insurance policies maintained by entities comprising the Receivership Entity. The parties executed a final Settlement Agreement on January 10, 2020.

**E. Court Approval of Settlements**

The Receiver anticipates presenting all of the aforementioned settlements, together with the prior settlements with the Terrell Parties and Weider/Forman, to the Court for approval within 30 days.

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

It remains the Receiver's recommendation that the Receivership be continued. Many of the conditions under which the Receivership was imposed still exist. While much has been accomplished, several crucial steps remain before the Receiver can wind up operations and seek an order terminating the Receivership. The Receiver must finish monetizing the remaining assets in a manner and timeline consistent with reasonably maximizing the value to stakeholders. The Receiver also must (i) complete the claims processes, (ii) complete necessary litigation, (iii) resolve investor and other creditor claim amounts, (iv) obtain Court approval of an asset distribution plan, and (v) manage the distribution process.

Although the consumer loan portfolios have been immensely reduced, the thousands of remaining loans owned by the Receivership require management until they are monetized completely. 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 Aequitas 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.

**G. 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, the Receiver made the centralized database available for access and use by counsel for litigants and other appropriately-authorized parties.<sup>6</sup> Additional

<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 December 31, 2019, access has been provided to 278 users from the following law firms, advisors and interested parties: Akerman Law Firm, Beugelmans LLP, Boise Matthews, Bressler, Amery & Ross, P.C., Calfo Eakes & Ostrovsky, Corr Cronin, Covington & Burling, LLP, Cozen O'Connor, Deloitte, Department of Justice (United States), Epiq Systems, Eversheds Sutherland, Federal Bureau of Investigation, Hart Wagner LLP, Larkins Vacura Kayser, Latham & Watkins, Miller Nash, Graham & Dunn LLP, Munger Tolles & Olson, NJ Attorney General's Bureau of Securities, Pepper Hamilton LLP, Reif Law Group, Samuels Law Firm, Schulte Roth & Zabel, Schwabe Williamson & Wyatt, Securities & Exchange Commission (SEC), Shartsis Friese & Ginsburg, Stoll Berne, 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.

parties interested in obtaining access should contact Troy Greenfield at Schwabe, Williamson & Wyatt (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 were paid from the Receivership Entity's D&O policies. Subsequently, the Receiver negotiated a settlement of the investors' tort claims, for a figure that exceeds the remaining policy limits. It is the Receiver's position that this "Loss" as defined in the relevant insurance policies must be addressed before additional insurance proceeds are released to the Individual Defendants, other former officers some of whom are the subjects of criminal investigations, former Advisory Board members or others claiming to be insureds under the relevant policies for payment of their legal fees in defense of criminal investigations/actions and, in the case of the Individual Defendants, defense of the ongoing enforcement action brought by the SEC. Accordingly, as noted above, the Receiver filed an insurance coverage action against the insurers.

As addressed in Section I. below, the Receiver continues to recommend that the Court refrain from lifting the stay of litigation against the Receivership Entity and related parties, at least until the immediate insurance coverage issues including those of priority rights to the insurance policy proceeds are fully and finally resolved (potentially through the mediation process encouraged by the Court) and the claims process has been completed, which is the venue the Receiver believes is most appropriate and efficient to consider and adjudicate any unresolved claims against the Receivership Entity.

Contemporaneous with any later recommendation to lift the stay of litigation, 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.

#### **H. Criminal Actions and SEC Investigations**

On July 1, 2019, The Securities and Exchange Commission brought an enforcement action against Fieldstone Financial Management Group LLC and its principal Kristofor R. Behn for defrauding retail investment advisory clients by failing to disclose conflicts of interest related to their recommendations to invest in securities issued by affiliates of Aequitas Management LLC. The Commission also alleged that Behn fraudulently misused approximately \$500,000 of one investor's funds to pay personal expenses.

Without admitting or denying the Commission's findings, Fieldstone and Behn consented to the issuance of the order, which finds that they violated the antifraud provisions of the federal securities laws, censures Fieldstone, orders them to cease and desist from future violations, and orders them to pay, on a joint-and-several basis, disgorgement and prejudgment interest of \$1,047,971 and a penalty of \$275,000, all of which will be distributed to harmed investors. Behn will also be permanently barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

On July 24, 2019, the Securities and Exchange Commission announced that recidivist Gary Price, a principal of formerly registered investment adviser Genesis Capital LLC, agreed to settle claims that he failed to disclose to clients significant

conflicts of interest relating to recommendations to invest in securities issued by Aequitas Commercial Finance, LLC.

The SEC's order found that Price violated Section 206(2) of the Investment Advisers Act of 1940. Without admitting or denying the SEC's findings, Price consented to a cease-and-desist order and agreed to pay disgorgement and prejudgment interest of \$67,033 and a civil penalty of \$75,000. The order also bars Price from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, with the right to apply for reentry after one year.

On July 26, 2019, the Receiver became aware that Andrew MacRitchie received a letter from the United States Attorney's Office on April 23, 2019 informing him that he is a target "of a federal criminal investigation concerning fraud that occurred at Aequitas Commercial Finance and related entities." MacRitchie petitioned the Court to intervene and sought limited relief from the litigation stay to permit payment of defense costs related to the criminal investigation [Dkt 721]. MacRitchie subsequently withdrew the request [Dkt 766] in light of the fact that he is a party in the pending insurance coverage litigation.

Similarly, the Receiver learned that Brian Rice had also received a letter from the United States Attorney's Office on April 23, 2019 informing him that he is a target "of a federal criminal investigation concerning fraud that occurred at Aequitas Commercial Finance and related entities." Rice also petitioned the Court to intervene and sought limited relief from the litigation stay to permit payment of defense costs related to the criminal investigation [Dkt 732]. Like MacRitchie, Rice subsequently withdrew the request [Dkt 761], given that he is a party to the pending insurance coverage litigation.

## **I. 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 and related parties, at least until the immediate insurance coverage issues including those of priority rights to the insurance policy proceeds are fully and finally resolved and the claims process has been completed.

## **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, processing of future distributions, and cash reporting for receivership cases. As assets are being monetized, the Receiver has been closing bank accounts that are no longer necessary. Following the approval of the QSF

by the Court, the Receiver has established four separate QSF bank accounts and has consolidated the majority of the funds controlled by the Receiver in such account(s). Going forward, The Receiver intends to close the remaining legacy Receivership bank accounts that the Receiver deems as no longer needed for the ongoing operations of the Receivership and the QSF. This will help streamline the Receivership cash management operations and facilitate future wind down.

During the fourth quarter of 2019, the Receiver and his professionals have expended significant time and effort addressing the consequences of the ending of a business relationship between two of Receivership's important vendors: Union Bank (the main depository of Receivership funds) and Axos, the provider of the integrated cash management and reporting platform. The Receivership staff and retained professionals have explored various alternatives, including switching to other banking institutions and / or cash management and reporting providers. Ultimately, the Receiver has negotiated a solution with Union Bank and Axos that allows the Receivership to continue its banking and reporting operations with minimum disruption and on more beneficial economic terms.

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 December 31, 2019, the Receivership Entity had 8 full-time employees and 1 part-time employee (a decrease of 1 full-time employee 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 December 31, 2019, the Receivership employed two full-time equivalent accounting contractors and two on-call IT contractors (unchanged from the prior quarter).

**4. Tax Preparation**

*a. Taxes*

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.

*b. 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.

*c. 2019 Returns and Other Tax Matters*

As further described in section XI of this Report), on motion and by order of the Court, the Receivership Entities transferred selected assets to a Qualified Settlement Fund ("QSF") in late December 2019. The Receivership Entities are required to recognize the impact of the transfer to the QSF on their 2019 tax returns.

Extensions for the 2019 returns for the remaining Aequitas Receivership Entities are due in March and April 2020. The completed returns are due in September and October 2020.

As allowable, the Receivership Entities will file as many final returns as possible for 2019. Additional transfers of assets to the QSF will continue in 2020.

*d. Investor Fund Form K-1s*

Equity fund members, including investors in Aequitas Income Protection Fund LLC, Aequitas Enhanced Income Fund LLC, and Aequitas Hybrid Fund LLC, will be receiving estimates of their 2019 form k-1 information prior to tax return due dates. Form k-1s will be distributed later this year. At the time of filing of the returns, the Receivership will determine if the 2019 forms will be final returns or if 2020 returns will be required.

*e. QSF Taxation*

A QSF is subject to tax on its modified gross income. To the extent that assets transferred to the QSF produce includable income, less certain expenses, the QSF will be required to pay tax at the maximum tax rate in effect for that tax year under section 1(e) of the Internal Revenue Code. The QSF is required to pay its tax using quarterly estimates. Its initial tax return is due in April 2020. State tax filing requirements for the QSF will be determined by sourcing of the activity of the assets transferred to the QSF.

*f. Tax Reform Impact and Other Tax Law Changes and Events*

The impact of tax reform in the past couple of years has been incorporated as required into the Receivership Entities tax reporting.

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 significant tax law changes, in particular the ones that were enacted in late 2017 by the Tax Cuts and Jobs Act (TCJA, P.L. 115-97, 12/22/2017).

Prior quarterly receiver reports have included information about the impact of tax reform that may be applicable to the receivership or to Investors. It is not intended to replace advice from Investors' own advisors. In addition, Investors are urged to consult with their tax advisors regarding the consequences of the guilty pleas entered by certain Individual Defendants and their effect on the Investors' ability to recognize losses. Finally, Investors should also consult their tax advisors about the impact of the Distribution Plan described in section XI.

#### **5. Payments Made on Behalf of the Defense of the Individual Defendants**

Entities within the Receivership Entity maintained policies of insurance with coverage limits of \$15M for each policy year. There are two policy years at issue (total of \$30M). The Receiver seeks all remaining available benefits of those policies. To date, the insurance carriers have dispersed over \$10M to the Individual Defendants for their use in defending the enforcement action initiated by the SEC. The insurance carriers contend the subject insurance policies are wasting policies (coverage limits reduced by defense costs such as those of the Individual Defendants).

As briefly addressed above, the Receivership Entity has sustained a "Loss" under the relevant policies that exceeds the policy limits. To the extent the Receiver is successful in obtaining insurance proceeds to indemnify the Receivership Entity for that "Loss," they will be available for distribution to innocent investors.

#### **6. Ongoing Litigation**

As addressed above and reflected in the previously disclosed settlements with the Terrell Parties, Weider/Forman, the Fieldstone Parties, Lux and, most recently, Malloy, 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 litigation matter against the Receivership which is currently stayed is by American Student Financial Group, Inc. ("ASFG") in connection with the Corinthian student loan receivables program. ASFG and TRD Consulting, LLC ("TRD") have also filed a \$27.4 million claim pursuant to the claims process. 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 claims process.

#### **B. Claims Process**

During 2019, the Receiver, his professionals and staff expended a very significant effort on the development and implementation of the claims process to meet the requirements of the Claims Procedures Order. The Receiver undertook an extensive claim noticing process that included notices by publication in 15 major newspapers, issuance and dissemination of a press release, and mail and email noticing of over 6,982 parties, including at least 4,830 parties who received a Notice of Receiver's Initial Determination.

In total, the following number of Notices were sent out:

Investor with NOD	2,060
Other Pre-Receivership Creditor / Vendor with NOD	2,040
Employee with NOD	84
Administrative Claimant with NOD	646
Non-NOD notices (not counted above)	2,152
<b>Total Notices</b>	<b>6,982</b>

### **1. Additional Information Sharing**

Consistent with the requirements of the Claims Procedures Order, the Receiver set up a dedicated data sharing site that allowed him to provide copies of notices to the legal counsel representing various potential claimants. In some instances, copies of the notices were emailed to legal counsel directly.

While not required by the Claims Procedures Order, in the spirit of cooperation, the Receiver elected to also share copies of the notices received by investors with their Registered Investment Advisors (“RIA”) upon receipt of a confirmation of investor’s consent to the Receiver’s sharing of such information. Through December 31, 2019, 176 investor notice packets have been shared with the RIAs.

### **2. Responding to Claims Process Inquiries**

Following the mailing of the claims process notices, the Receiver and his staff received numerous follow up inquiries from various parties, including potential claimants and their representatives. Through December 31, 2019, over 442 inquiries were addressed directly by the Receivership staff and professionals. The Receivership team is continuing to field and respond to inquiries as they are received.

### **3. Claims Processing and Analysis**

During the current period, the Receivership team continued to make upgrades to the transactional database that was previously developed in connection with the investor data validation process and used to generate claims process and bar date noticing communications and the NOD forms. Following the intake of the initial received claims, the Receivership team worked to refine its claims management tools used to store and analyze the relevant filed claims data and compare it with the Receivership records. The Receiver’s professionals and staff have performed the initial review of the filed claims in

preparation for the more detailed analysis and claims resolution process that will come next. Through December 31, 2019:

- 4,830 Notices of Receiver's Initial Determination ("NOD") were mailed or emailed out by the Receivership
- 336 individual claim submissions were received by Epiq (the claims agent) including:
  - 33 duplicates
  - 2 claims representing amendments of previously filed claims
  - 41 late-filed claims
- 3 claims that were submitted prior to the Bar Date Order and the establishment of the claims process.

Of the 301 non-duplicative individual claims submissions received above, at least 15 non-duplicative claims did not list any appropriate Aequitas Receivership entities. Additionally, 68 of the non-duplicative claims were filed against multiple Aequitas Receivership entities. As detailed in the attached Report of Cash Receipts and Disbursements (Exhibit B to this Report), for the purpose of consolidated reporting, these claims are counted only once. On the individual entity reports, each entity determined on a preliminary basis as being named in the claim form has the claim included in its count.

Based on the initial review of the Receivership staff, the following is a summary on non-investor claims filed (or allowed NODs if no claim filed). The Receivership staff is continuing to review all submissions to determine the validity of claims. Nothing in the summaries should be considered an acceptance or allowance of any claim.

Non-investor Claims		Count
NODs Mailed		2,770
Unique claims filed		87
Less: Claims filed and NOD sent		(20)
Total non-investor Claims		2,837

Non-investor Claim Type	Count	Amount as Filed or Allowed
Non-Officer Former Employees >\$12,850	41	1,438,316
Non-Officer Former Employees <=\$12,850	46	384,668
CarePayment Refund Checks	2,430	183,156
Campus Student Funding Refund Checks	189	61,614
Taxes	43	510,261
Other Claims >\$20,000	15	\$ 88,704,271
Other Claims <=\$20,000	73	248,897
Total	2,837	\$ 91,531,184

#### Top Ten Non-Investor Claims

Claimant Name	Amount
Deloitte & Touche LLP <sup>7</sup>	\$ 50,000,000
ASFG Inc & TRD Consulting LLC	27,381,257
Norman Gary Price/Strategic Capital Group	5,638,129
CBL Insurance Ltd	1,994,000
DELL Financial Services LLC	1,124,865
Olaf Janke	897,360
Akin Gump Strauss Hauer & Feld LLP	646,127
Brian K Rice	438,837
Salesforce.com Inc.	346,478
JCPR Inc D/B/A J Connelly	65,998
Total Top Ten Trade Claims	\$ 88,533,050

## V. Disposition of Assets/Interests

### A. Assets/Interests Sold

#### Synchronex, LLC<sup>8</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.

<sup>7</sup> On January 24, 2020, the Receiver executed a settlement agreement with Deloitte regarding their contribution claim.

<sup>8</sup> <http://www.synchronex.com/en/>

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 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.

**B. 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]. Subsequently, 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. 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 a detailed informational website for the borrowers in connection with the Settlement. Most of the borrower inquiries are being addressed by the servicer but the Receivership also addressed 1,652 borrower inquiries directly (through December 31, 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.

To handle potential borrower inquiries related to the 1099 tax forms, the Receivership has set up an outsourced call center that handled 2,218 calls, including 993 calls answered by agents, through December 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 period, the Receivership team continued to work closely with the loan servicer and help address borrower inquiries. The Receiver is also evaluating the next steps in connection with the monetization of the remaining portfolio.

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

MLF holds subprime consumer leases for motorcycle and other recreational vehicles. Through December 31, 2019, the Receiver has collected approximately \$15.8 million on account of the leases owned at the beginning of the Receivership. As of December 31, 2019, the remaining portfolio (excluding repossessed motorcycles) had a face value of approximately \$400 thousand, of which \$307 thousand is less than 60 days past due. Additionally, MLF had in its possession 47 vehicles with cumulative outstanding lease balances of \$337 thousand that are in various stages of reconditioning and/or resale. The portfolio is expected to continue to amortize on its own accord with the final payment receivable around Q1 2021. 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.

## **3. Pipeline Health Holdings, LLC ("Pipeline")<sup>9</sup>**

PCF owns approximately 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.

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<sup>9</sup> <http://www.pipelinex.com/>

#### **4. Portland Seed Fund (PSF)**<sup>10</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 and the Receivership continues to receive distributions from PSF as the underlying investments experience liquidity events.

#### **5. 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 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.

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

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

At the outset of the Receivership, 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

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<sup>10</sup> <http://portlandseedfund.com/>

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. As the Court is aware, the Receiver, his legal counsel, and staff continue to 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 (other than the developments referenced in section III.F above).

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

Please see section V.B.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 discovery requests from state and federal agencies in conjunction with their investigations.

**VII. 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.

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

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

The Receiver had cash balances of approximately \$128.9 million as of December 31, 2019 for the entities included in the Receivership Entity. Over the period from March 16, 2016 to December 31, 2019, the overall cash balance of the Receivership Entity increased by approximately \$111.1 million.

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 December 31, 2019.

## **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 &amp; Expenses by Entity (from October 1 to December 31, 2019)

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	56,182.50	4.0%	-	0.0%	56,182.50	3.9%
FTI Consulting	726,781.50	51.5%	9,821.00	69.5%	736,602.50	51.7%
Pepper Hamilton <sup>[1]</sup>	-	0.0%	-	0.0%	-	0.0%
Schwabe, Williamson & Wyatt	376,571.00	26.7%	824.85	5.8%	377,395.85	26.5%
Morrison Foerster	1,491.75	0.1%	-	0.0%	1,491.75	0.1%
Law Office of Stanley H. Shure	141,943.59	10.1%	921.60	6.5%	142,865.19	10.0%
Snell & Wilmer	7,830.00	0.6%	-	0.0%	7,830.00	0.5%
Parsons Farnell & Grein	99,364.75	7.0%	2,572.16	18.2%	101,936.91	7.2%
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>1,410,165.09</b>	<b>100%</b>	<b>14,139.61</b>	<b>100%</b>	<b>1,424,304.70</b>	<b>100%</b>

[1] Pepper Hamilton, 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. The Receiver will provide updated information once the review and analysis of the claims received as part of the claims process is completed.

**XI. Summary of the Distribution Plan**

The Receiver, among other duties, is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and distribution of Receivership Property for the benefit of investors and creditors (the “Distribution Plan”).<sup>11</sup> The following describes the significant effort undertaken by the Receiver and his staff and retained professionals to advance the Distribution Plan. This Report is not intended to establish any presumption(s) regarding distribution of the Receivership

<sup>11</sup> Receivership Order [Dkt. 156], ¶ 38.

Property and nothing described herein is considered binding or final until the Distribution Plan is approved by the Court.

**A. Qualified Settlement Fund**

On December 23, 2019, the Receiver filed his Motion For Order To Authorize, Approve, And Take Continuing Jurisdiction Over A Qualified Settlement Fund (“QSF”), And For Related Relief [Dkt 779]. In relation to effectuating the distribution plan, the Receiver and his professionals determined that, for tax purposes, a QSF is the best vehicle for making distributions to holders of Allowed Claims, including Investors and other Claimants found to have Allowed Claims. Further, to mitigate certain potential tax consequences to the Receivership Estate under Oregon law, the Receiver requested the creation and transfer of assets to the QSF to be approved by the Court before January 1, 2020. The Receiver and his professionals estimate the potential tax savings to the Receivership Estate from implementing the QSF at upwards of \$2 million.<sup>12</sup>

The requested QSF motion was so ordered on December 23, 2019 [Dkt 781].

**B. Procedures Motion**

On December 31, 2019, the Receiver filed his Motion For Order (1) Approving Form And Manner Of Notice Regarding Approval Of Proposed Distribution Plan And Ponzi Determination, (2) Approving Procedures And Deadlines, (3) Setting A Hearing, And For Related Relief [Dkt 785].

On January 14, 2020, the Court approved the form and manner of notice regarding approval of the proposed distribution plan and Ponzi determination and set deadlines and the date of the hearing to consider the distribution plan [Dkt 790]. The following timeline was approved:

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<sup>12</sup> Following additional tax planning work related to the possible tax treatment on cancellation of debt income under the “Corporate Activity Tax” (the “CAT”), newly created under Oregon House Bill (“HB”) 3427 and HB 2164, the estimated tax impact was increased to approximately \$2 million from the initial estimate of in excess of \$1 million.

- Receiver to file the Plan Distribution Motion, requesting Court approval of the proposed distribution plan and determining the existence of the Ponzi Scheme by 12/31/2019.
- Receiver to mail the Notice by first class mail to investors and other parties in interest by 1/24/2020.
- Written responses or objections to the Receiver's Distribution Plan Motion to be filed and served by 2/20/2020.
- Receiver to file his reply to any such written responses or objections by 3/20/2020.
- The hearing on Receiver's Motion to Approve the Receiver's Distribution Plan and Determination of a Ponzi Scheme will be held on 3/31/2020.

### **C. Distribution Plan**

On December 31, 2019, the Receiver filed the Motion To Approve The Receiver's Distribution Plan And Determination Of A Ponzi Scheme [Dkt 787]. In conjunction with his request for the finding of a Ponzi scheme, the Receiver moved the Court to approve a Distribution Plan that contains interrelated components and compromises that he believes provides the most equitable treatment of Allowed Claims and the equitable distribution of funds. The major components of the Distribution Plan as summarized in the Distribution Plan Motion are as follows:

- The Receiver, subject to Court approval, has resolved the tort claims of four investor litigation groups (the "Tort Claims Settlement"). Under the Tort Claims Settlement, the Receivership Estate will distribute a total of \$30 million to those four investor litigation groups (the "Tort Settlement Payment"). Regardless of how those four investor litigation groups intend to internally distribute their portion of the Tort Settlement Payment, for purposes of calculating additional distributions under the Distribution Plan, the Receiver will apply the Tort Settlement Payment as if it were allocated among the members of each of the groups as if distributed under the rising tide methodology of the proposed Distribution Plan. That treatment preserves equity, to the extent within the Receiver's control, between those Investors that were members of the four investor litigation groups that were party to the Tort Claims Settlement and those Investors that were not.
- The Receiver will pay as priority payments the Allowed Claim of Non-Officer Former Employees up to \$12,850, which the Receiver deems equitable as it comports with both federal bankruptcy law and the Oregon Receivership Code.
- Allowed administrative tax claims shall be paid in full.
- The overwhelming majority of Investors are Defrauded Investors, who will be treated as a single class because they are similarly situated in that the funds of the Defrauded Investors were commingled in various transactions and entities, notwithstanding some

ostensible structural differences in their investments.

- Defrauded Investors' claims will be calculated on the basis of their Total Investment, which precludes claims for purported "profits," "interest," contractual default provisions, punitive damages, etc. after the Aequitas Enterprise was insolvent.<sup>13</sup>
- Assets that were substantially commingled during the operations of the Aequitas Enterprise will be pooled across entities involved in the commingling (the "Commingled Pool Entities") and will be, consistent with Court determined priority and the rising tide, used to make distributions on Allowed Claims.
- Consistent with many courts' finding about the most equitable distribution methodology in the aftermath of a Ponzi scheme, distributions will be made to Defrauded Investors on a rising tide basis—that is, distributions will be made in an attempt to equalize the percentage of invested funds that are returned to each Defrauded Investor without regard for whether those funds were returned by the perpetrators of the fraud pre- Receivership (after the Aequitas Enterprise was insolvent) or paid under the Distribution Plan (and from the Tort Settlement Payment).
- When a Defrauded Investor holds a beneficial interest in multiple accounts—which the Receiver will determine from the Aequitas Enterprise's Books and Records matching accounts to taxpayer identification numbers ("TIN")—that Defrauded Investor's claims will be aggregated for purposes of calculating the claim and allowing a distribution.<sup>14</sup> Such aggregation is equitable because it treats a Defrauded Investor that held multiple accounts with different Pre-Receivership Returns the same as a Defrauded Investor who held a single account. For those accounts where a single TIN is used but one account is designated as a "trust" account and other account(s) as either a separate "trust" account or an "individual" account, the "trust" accounts will be treated as separate accounts and not be aggregated.
- In the event of transfers of an investment between investors or any other type of investment ownership or control changes, all of the pre-transfer activity of the transferor associated with the transferred investment during the relevant time period is attributed to the transferee. If the investments were split into multiple parts as a result of a transfer or other change of ownership or control event, the pre-transfer activity will be allocated to the transferee on a pro-rata basis.
- The plaintiffs in the Wurster matter<sup>15</sup> (the "URGE Group"), have requested that the Receiver reallocate the aggregate Receiver's distribution attributable to the URGE Group (approximately \$11.6 million), in accordance with different allocation percentages

<sup>13</sup> Because the funds to be distributed by the Receiver are a fixed amount and represent 100% of the net proceeds from the Estate, the accrual of fictitious interest, profits and the like during the Ponzi Period would only affect which Defrauded Investors get distributions and how much each one receives. It would have no effect on how much the Defrauded Investors receive as a whole.

<sup>14</sup> For tax and other distribution purposes, the Receiver will endeavor to allocate the distribution between the Defrauded Investor's multiple accounts based on each account's relative Net Investment Loss. For further information regarding the aggregation of accounts, please see Article VI.E of the Distribution Plan Motion.

<sup>15</sup> Wurster v. Deloitte, et al., State of Oregon, Multnomah County Circuit Court, Case No. 16cv25920; Wurster, et. al., Arbitration Service of Portland, Inc., Case Nos. 170623-2 (Respondents – Sidley Austin, Tonkon Torp and IBAT) also known as United Recovery Group for Equality ("URGE").

embodied in the URGE Group intra-member agreement, and for the Receiver to make the recalculated distribution directly to the members of the URGE Group. The Receiver has received executed consent forms, solicited by counsel for the URGE Group, from all affected investors. The effect of this reallocation would be to shift some of the \$11.6 million from URGE investors who received lower Pre-Receivership Returns to URGE investors who received greater Pre-Receivership Returns. The reallocation would not affect the amount distributable nor the allocation to any non-URGE Investors. The Receiver takes no position with respect to this reallocation and has agreed to include it in the Distribution Plan as an accommodation to the URGE Group in light of its members' unanimous request and the fact that it does not affect any claimant that is not a member of the URGE Group.<sup>16</sup>

- Investors in certain equity funds<sup>17</sup> (defined as "Pass-through Investors" for purposes of the Distribution Plan), were not defrauded because their moneys were used as represented and used for their intended purposes. Such Pass-through Investors obtained then, and pursuant to the Distribution Plan will retain now, the benefit of their bargain (equity) and the Distribution Plan does not direct any payment to the Pass-through Investors on account of such investment.<sup>18</sup>
- Allowed Professional Claims and Allowed Administrative Claims shall be paid up to the full amount of their Allowed Claims, as approved by the Court.
- Allowed Convenience Class Claims (i.e. an Allowed Creditor Claim equal to or less than \$20,000 or an Allowed Creditor Claim in excess of \$20,000 for which the holder elects to reduce their Allowed Creditor Claim to \$20,000 and waives the balance of their Allowed Creditor Claim) shall be paid an amount equal to twenty percent (20%) of their Allowed Convenience Class Claim.
- Allowed Creditor Claims (i.e. Allowed Creditor Claims that are not Allowed Convenience Class Claims) are junior in priority to the Allowed Claims of Defrauded Investors. If funds are available for distribution for Allowed Creditor Claims, they shall be paid pro-rata from the Qualified Settlement Fund,<sup>19</sup> until paid in full. Current estimates, however, are that holders of Allowed Creditor Claims will not receive a distribution.
- Allowed Claims of the Individual Defendants are subordinated to and junior in priority to all other Allowed Claims and will receive no distribution until all other non-subordinated Allowed Claims are paid in full. Current estimates, however, are that the Allowed Claims

<sup>16</sup> Plaintiffs in the Pommier matter (Appignani v. Deloitte, et al., State of Oregon, Multnomah County Circuit Court, Case No. 16CV36439) have made a similar request and are in the process of providing the Receiver with executed consent forms from the affected investors and related documentation. Based on a preliminary review of the documents provided to date, the Receiver anticipates agreeing to an accommodation similar to that made to the URGE Group.

<sup>17</sup> The following entities are defined as the "Pass-through Entities": Aequitas Capital Opportunities Fund, LP ("COF" n.k.a. CCM Capital Opportunities Fund, LP or "CCM"); Aequitas ETC Founders Fund, LLC ("ETCFF"); Aequitas International Opportunities, LP ("AIO"), Aequitas Income Opportunities Luxembourg, SA ("AIO-Lux"), and ACC Funding Series Trust 2015-5 (the latter three collectively "LUX Entities"); Aequitas WRFF I, LLC ("WRFF"); Aequitas Hybrid Fund, LLC ("AHF"); and Aequitas Partner Fund, LLC ("APF").

<sup>18</sup> Members of the four litigation groups that are parties to the Tort Claims Settlement, which includes the URGE Group, negotiated private distribution schemes of their choosing with their fellow members. Neither the Receiver nor the Court has been asked to assess the equity of whatever private distribution scheme such litigation group members negotiated. As such, the Receiver does not know whether some portion of the Tort Settlement Payment, after payment to the four litigation groups, could by virtue of a private distribution agreement ultimately benefit a Pass-through Investor who is a member of a litigation group.

<sup>19</sup> Dkt. #781. Order Granting Receiver's Motion for Order to Authorize, Approve, and Take Continuing Jurisdiction over a Qualified Settlement Fund, and for Related Relief.

of the Individual Defendants will not receive a distribution.

- The Receiver shall not be required to make a distribution to the holder of an Allowed Claim if the distribution on such Allowed Claim is in an amount less than \$50.

The above Distribution Plan summary is limited in scope. Impacted parties are urged to read the Distribution Plan in its entirety and is available for review at the Aequitas Receiver's website ([www.kccllc.net/aequitasreceivership](http://www.kccllc.net/aequitasreceivership)) and the Receiver's Claims Agent website (<http://www.AequitasClaims.com>).

## **XII. Timeline and Interim 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, organized and facilitated an exhaustive and exceedingly successful mediation process that has resulted in recovery of a significant portion of investor losses, implemented a significant part of the claims process and has filed the proposed Distribution Plan—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.

Assuming the proposed distribution plan is approved by the Court in March of 2020 and such approval is not appealed, the Receiver anticipates making an initial distribution around the middle of 2020. The precise timing of distributions will also depend on the progress of the claims resolution process which is currently underway. The Receiver expects that there will likely be more than one round of distributions. As mentioned above, the mediation sessions will result in direct payments to the plaintiff investor groups, expedited distributions from the Receivership Estate and, ultimately, an expeditious conclusion to the Receivership.

Exhibits

- A. Aequitas Entity Structure
- B. Report of Cash Receipts and Disbursements (Standardized Fund Accounting Report)
- C. Acronyms Glossary