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

Defendants.

No. 3:16-cv-00438-JR

FINDINGS, RECOMMENDATIONS, AND
 ORDER (1) APPROVING COMPROMISES
 OF CLAIMS, (2) APPROVING AND
 AUTHORIZING PERFORMANCE OF
 SETTLEMENT AGREEMENTS, (3)
 ENTERING CLAIMS BARS, and (4)
 REMOVING A RECEIVERSHIP ENTITY
 AND AN EXTENDED ENTITY



This matter having come before the Honorable Jolie A. Russo on the Receiver's Motion for Order (1) Approving Compromises of Claims, (2) Approving and Authorizing Performance of Settlement Agreements, (3) Entering Claims Bars, and (4) Removing a Receivership Entity and an Extended Entity [Dkt. 852] (the "Motion"), and the Court, being fully advised in the premises, now, therefore,

THE COURT FINDS as follows:

A. On March 10, 2016, the Securities and Exchange Commission ("SEC") filed a complaint in this Court against the Entity Defendants¹ and three individual defendants, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

B. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, the Receiver was appointed as receiver for the Entity Defendants and 43 related entities on an interim basis (the "Interim Receivership Order"). On April 14, 2016, pursuant to the Final Receivership Order, the Receiver was appointed as receiver of the Entity Defendants and 43 related entities on a final basis.

C. Due, timely, and adequate notice of the Motion was given, and such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the Motion is or shall be required.

D. It is in the best interests of the Receivership Entity, its creditors, and investors to (1) approve a compromise of the Receivership Entity's claims against various individuals and entities on and pursuant to the terms of the Settlement Agreements, (2) approve and authorize the performance of the Settlement Agreements, (3) enter claims bars, and (4) remove (a) ACC Funding Series Trust 2015-5 from the Receivership Entity, and (b) Aequitas International Opportunities, LP, as an Extended Entity.

¹ Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

E. The terms of the Receivership Entity's compromises, as memorialized in the Settlement Agreements, are the result of good faith negotiations at arm's length after diligent investigation by the Receiver and, in the exercise of the Receiver's business judgment, are in the best interests of the creditors of, and investors in, the Receivership Entity.

F. In relation to the recommendation below to enter the proposed partial judgment, which accompanies these Findings, Recommendations, and Order, the Court further finds that:

- (i) The findings set forth in the proposed partial judgment are supported by the record.
- (ii) Where creditors of a receivership estate may have claims against third parties, including professionals, numerous district courts in receivership actions have barred certain further claims against those professionals in conjunction with authorizing settlements of certain other claims against the professionals. *See, e.g., SEC v. DeYoung*, 850 F.3d 1172, 1183 n.5 (10th Cir. 2017) (collecting examples of such cases).
- (iii) The availability of such orders facilitates settlement, promotes equitable recoveries by creditors, and maximizes assets available to creditors in the aftermath of a Ponzi scheme. *Zacarias v. Stanford Int'l Bank, Ltd.*, 931 F.3d 382, 398-99 (5th Cir. 2019).
- (iv) District courts often set forth claims bars in partial judgments entered pursuant to Rule 54(b). *SEC v. Alleca*, No. 1:12-cv-3261-WSD, 2016 U.S. Dist. LEXIS 64218, at *4-5 (N.D. Ga. May 16, 2016).
- (v) There are multiple claims and parties before this Court and, as set forth in settlement agreements filed by the Receiver, the settlement of claims involving certain parties was conditioned upon the Receiver seeking or obtaining claims bars. In particular, the Receiver seeks to bar:

(a) Any Contribution Claim (as that term is defined in the applicable Settlement Agreements);

(b) Pursued by any Individual Defendant, Director, Officer, Advisory Board Member, or Registered Investment Adviser;

(c) Where such a Contribution claim is against any of the Professional Firms—specifically, Tonkon Torp, LLP (“Tonkon”), Integrity Bank & Trust and Integrity Trust (together, “Integrity”), EisnerAmper LLP (“EisnerAmper”), Sidley Austin LLP (“Sidley”), TD Ameritrade, Inc. (“TD Ameritrade”), Duff & Phelps, LLC (“Duff”) or Deloitte & Touche LLP—or any of the Terrell Parties—specifically, Patrick Terrell, Richard Terrell, Kimberly Terrell, Meagan Terrell, Terrell Group Management, LLC (“TGM”) or PatRick Investments, LLC.

(vi) The proposed claims bar is reasonable and fair. It is tailored to bar only Contribution Claims of parties who were very closely affiliated with Aequitas and/or involved in the efforts to sell Aequitas Securities. Further, the Court accepts the Receiver’s business judgment that the Professional Firms and the Terrell Parties have made reasonable and in many cases generous payments benefiting the Defrauded Investors, the vast majority of whom are members of one of the Investor Litigation Groups, such that the Professional Firms and the Terrell Parties have, in effect, paid their fair share. In addition, if any party subject to the injunction barring Contribution Claims is sued by an Aequitas Investor, that party will receive the benefit of the earlier settlement between that Aequitas Investor and the Professional Firm or Terrell Party that would otherwise be subject to a contribution claim, in the form of a reduction of

any judgment entered against that party. Finally, the Professional Firms have afforded the Individual Defendants, former Directors and Officers, and former Advisory Board Members contingent releases.

- (vii) There is no just reason for delaying entry of a judgment effectuating the claims bars. The issues resolved by entry of the proposed Limited Judgment under Rule 54(b) are sufficiently distinct from those remaining before this Court that, if appellate review were sought, duplicative appellate review is unlikely. Further, entry of the claims bar order as a Limited Judgment under Rule 54(b) will facilitate finality, productively channel any direct attack on the order, and preclude collateral attack.

The Court, having reviewed the Motion, and being duly advised,

IT IS HEREBY ORDERED AND DECREED as follows.

1. The Motion is granted in its entirety as to each issue within the scope of Rule 72(a).
2. The Receivership Entity's compromises of the claims by and against the counterparties to the Settlement Agreements are approved.
3. The Settlement Agreements are approved.
4. The parties to the Settlement Agreements are authorized to perform their obligations thereunder and to take such actions and execute and deliver all documents and instruments required or reasonably contemplated thereby.
5. ACC Funding Series Trust 2015-5 is hereby removed from the Receivership Entity.
6. Aequitas International Opportunities, LP is hereby removed as an Extended Entity under the Final Receivership Order.

7. This Order shall be binding in all respects on all creditors and interest holders of the Receivership Entity and their successors and assigns.

Further, having reviewed the Motion, and being duly advised,

THE COURT RECOMMENDS as follows:

1. The District Court should grant the Motion in its entirety as to each issue within the scope of Rule 72(b).

2. The District Court should adopt the above-stated findings as its own.

3. The District Court should enter the proposed Limited Judgment, which accompanies these Findings, Recommendations, and Order.

Scheduling Order

The Findings and Recommendations will be referred to the Honorable Marco A. Hernández for review. Objections, if any, are due within fourteen (14) days. If no objections are filed, then the Findings and Recommendations will go under advisement on that date.

If objections are filed, then a response is due within fourteen (14) days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendations will go under advisement.

Dated this 10th day of November, 2020.

/s/ Jolie A. Russo
United States Magistrate Judge Jolie A. Russo

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SUBMITTED BY:

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Alex I. Poust
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Finance, LLC, Aequitas Capital Management,
Inc., and Aequitas Investment Management, LLC

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC, *ET AL.*,

Defendants.

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

**AMENDED LIMITED JUDGMENT AS
TO THE PROFESSIONAL FIRMS AND
THE TERRELL PARTIES, INCLUDING
PERMANENT INJUNCTIONS**

This matter was heard and decided on _____, 2020, on the motion of the Receiver Ronald F. Greenspan (“Receiver”) for, *inter alia*, approval of settlement agreements between the Receivership Entity and the following counterparties (the “Claims Bar Settlement Agreements”):

- Tonkon Torp, LLP (“Tonkon”);
 - Integrity Bank & Trust and Integrity Trust (collectively “Integrity”);
 - EisnerAmper LLP (“EisnerAmper”);
 - Sidley Austin LLP (“Sidley”);
 - TD Ameritrade, Inc. (“TD Ameritrade”);
 - Duff & Phelps, LLC (“Duff”); and
 - Deloitte & Touche LLP (“Deloitte”)
- (collectively the “Professional Firms”).
- Patrick Terrell;
 - Richard Terrell;

- Kimberly Terrell;
- Meagan Terrell;
- Terrell Group Management, LLC; and
- PatRick Investments, LLC

(collectively the “Terrell Parties”).

On behalf of the Receivership Entity, the Receiver asked this Court: (i) to determine that the terms of the Claims Bar Settlement Agreements are fair, reasonable, and adequate for the Receivership Entity; and (ii) to determine that a limited judgment should be entered as to the Professional Firms and the Terrell Parties that enjoins the prosecution of any Contribution Claims (as defined herein) by or against any of the Professional Firms or Terrell Parties.

The Court having considered all papers filed and proceedings held herein and otherwise being fully informed,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED

that:

1. This limited judgment (the “Limited Judgment”) shall be final and immediately appealable pursuant to Federal Rule of Civil Procedure 54(b). The Court expressly finds that there is no just reason for delay of its entry and directs the Clerk of the Court to enter this Limited Judgment pursuant to Fed. R. Civ. P. 54(b).

2. The following definitions are incorporated into this Limited Judgment from the Claims Bar Settlement Agreements:

a. **“Advisory Board Members”** means all of the former members of the Aequitas Advisory Board, including without limitation William McCormick, L. Martin Brantley, Patrick Terrell, Edmund Jensen, Donna Miles, William Glasgow, Keith Barnes and Bob Zukis, as well as any family members and affiliates of any of the foregoing who are excluded from the class certified in the matter captioned *Ciuffitelli et al. v. Deloitte & Touche LLP, et al.*, Case No. 3:16-cv-00580-AC, U.S. District Court for the District of Oregon (the “Certified Class”).

b. “**Aequitas Investors**” means: (i) the members of the Certified Class; and (ii) the individually named plaintiffs in the following lawsuits, which are individually and collectively defined as the “Individual Actions”: *Wurster et al. v. Deloitte & Touche LLP, et al.*, Case No. 16CV25920, Multnomah County Circuit Court; *Pommier et al. v. Deloitte & Touche, LLP, et al.*, Case No. 16CV36439, Multnomah County Circuit Court; *Ramsdell et al. v. Deloitte & Touche, LLP, et al.*, Case No. 16CV40659, Multnomah County Circuit Court; *Layton et al. v. Deloitte & Touche, LLP et al.*, Case No. 16CV36439, Multnomah County Circuit Court; *Cavanagh et al. v. Deloitte & Touche LLP, et al.*, Case No. 18CV09052, Multnomah County Circuit Court; *Royal Fund LP, et al. v. Deloitte & Touche LLP*, Case No. 19CV22914, Multnomah County Circuit Court; and *Albers et al. v. Deloitte & Touche, et al.*, Case No. 3:16-cv-02239-AC, U.S. District Court for the District of Oregon.

c. “**Aequitas Securities**” means any security, including but not limited to promissory notes, other debt instruments, and limited partnership interests, issued or sold by any Receivership Entity.

d. “**Contribution Claim**” means any claim of a Former Aequitas-Related Party, whether now existing or hereafter arising, for contribution (including without limitation claims for contribution pursuant to ORS 59.115(3)), for indemnity (including without limitation equitable indemnity and implied indemnity), and/or for reimbursement, that is based upon or arises from a claim or claims against the Former Aequitas-Related Party related in any way to Aequitas Securities.

e. “**Court**” means the U.S. District Court for the District of Oregon in which the SEC Enforcement Action titled *SEC v. Aequitas Management, LLC, et al.*, Case No. 3:16-CV-00438-JR, is pending.

f. “**Directors and Officers**” means all of the former directors and officers of the entities now comprising the Receivership Entity, including without limitation Robert Jesenik, Brian Oliver, Craig Froude, Scott Gillis, Andrew MacRitchie, Olaf Janke, Brian Rice, William Ruh, Steve Hedberg, Brett Brown,¹ Tom Goila, Patricia Brown, Bill Malloy and Thomas Szabo, as well as any family members and affiliates of any of the foregoing who are excluded from the Certified Class.

g. “**Former Aequitas-Related Party(ies)**” means any and all Advisory Board Members, Directors and Officers, Individual Defendants, and Registered Investment Advisors.

h. “**Individual Actions**” shall have the meaning assigned to it in section 2.b.(ii).

i. “**Individual Defendants**” means Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis, each of whom is a defendant in the SEC Enforcement Action.

¹ Mr. Brown was excluded from the Certified Class, in light of his title of Senior Vice President, before the Court found that he should not be precluded from holding a Non-Officer Former Employee Claim. (Dkt. No. 813).

j. “**Receiver**” means Ronald F. Greenspan, the Court-appointed Receiver for the Receivership Entity, pursuant to the Receivership Order.

k. “**Receivership Entity**” means, individually and collectively, Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., Aequitas Investment Management, LLC and each of their 43 subsidiaries and/or majority-owned affiliates, as set forth on Exhibit A to the Receivership Order.

l. “**Receivership Order**” means the Order Appointing Receiver, entered in the SEC Enforcement Action on or about April 14, 2016 (Dkt. 156).

m. “**Registered Investment Adviser**” means any person or firm (including such person or firm’s employees, agents, or representatives) registered as such with either the Securities and Exchange Commission or a state securities regulator, who provided advice, recommendations, reports, or analyses regarding Aequitas Securities to any Aequitas Investor, in exchange for any form of compensation.

n. “**SEC Enforcement Action**” means the lawsuit titled *SEC v. Aequitas Management, LLC, et al.*, Case No. 3:16-CV-00438-JR, currently pending in the U.S. District Court for the District of Oregon.

3. This Court has jurisdiction to enter this Limited Judgment. The Court has subject matter jurisdiction over the SEC Civil Enforcement Action and subject matter jurisdiction over the settlements memorialized in the Claims Bar Settlement Agreements, including for, but not limited to, the reason that the settlements involve the disposition of assets of the Receivership Entity. The Court has personal jurisdiction not only over the persons who have appeared in the SEC Civil Enforcement Action but also over any and all Former Aequitas-Related Parties, for reasons including, but not limited to, the connection of Former Aequitas-Related Parties to entities included within the Receivership Entity, which are Oregon-based, and/or the connection of Former Aequitas-Related Parties to the issuance and/or sale and/or solicitation of the sale of Aequitas Securities by Oregon-based entities.

4. The Court finds that this Limited Judgment is procedurally fair to all Former Aequitas-Related Parties listed in Exhibit 1 hereto, regardless of whether they have appeared in the SEC Enforcement Action. The Motion for Order (1) Approving Compromises of Claims,

(2) Approving and Authorizing Performance of Settlement Agreements, (3) Entering Claims Bars, and (4) Removing a Receivership Entity and an Extended Entity (“Approval Motion” Dkt. ____), the Settlement Agreements, and the Proposed Limited Judgment were mailed to Former Aequitas-Related Parties listed on Exhibit 1, or their attorneys where applicable. A full and fair opportunity to be heard was accorded to all Former Aequitas-Related Parties with respect to the Receiver’s Motion for Approval, which included approval of the Claims Bar Settlement Agreements. Thus, it is hereby determined that the Professional Firms, the Terrell Parties and all Former Aequitas-Related Parties listed on Exhibit 1 hereto are bound by this Limited Judgment.

5. The Claims Bar Settlement Agreements were approved in all respects, upon entry of this Court’s Order (Dkt. ____), and shall be consummated in accordance with their terms and provisions.

6. The Court finds that this Limited Judgment is substantively fair to all Former Aequitas-Related Parties in that: (a) they receive reciprocal injunctions against Contribution Claims being brought against them by any of the Professional Firms or Terrell Parties; and (b) in the event any Former Aequitas-Related Party might otherwise have a Contribution Claim against one or more of the Professional Firms or the Terrell Parties arising from a claim against the Former Aequitas-Related Party by any Aequitas Investor, that Former Aequitas-Related Party will receive a reduction of any judgment against him/her/it in at least the amount that the Aequitas Investor received or is entitled to receive from any settlement with the corresponding Professional Firm or Terrell Party.

7. Each and every Former Aequitas-Related Party and all persons in active concert with them are hereby permanently enjoined from asserting any Contribution Claims against any

of the Professional Firms, including any of their past or present partners, owners, employees, insurers, successors or assigns, or any of the Terrell Parties in any proceeding whatsoever.

8. The Professional Firms, including any of their past or present partners, owners, employees, insurers, successors or assigns, and the Terrell Parties as well as all persons in active concert with them are hereby permanently enjoined from asserting any Contribution Claims against any Former Aequis-Related Party, any Professional Firm or any Terrell Party, in any proceeding whatsoever.

9. If an Aequis Investor obtains a judgment against any Former Aequis-Related Party, that judgment shall be reduced by an amount at least equal to the amount of any settlement payment the Aequis Investor received or is entitled to receive from the corresponding Professional Firm or Terrell Party.

10. Each of the Receivership Entity, Professional Firms, Terrell Parties and Former Aequis-Related Parties shall bear their own costs and attorneys' fees.

11. Without affecting the finality of this Limited Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation and enforcement of the Claims Bar Settlement Agreements; (b) enforcing and administering this Limited Judgment, including the injunctions contained herein; and (c) other matters related or ancillary to the foregoing.

IT IS SO ORDERED.

Dated: _____, 2020

The Honorable Marco Hernández
United States District Court Judge

EXHIBIT 1

Individual Defendants

Brian A. Oliver
N. Scott Gillis
Robert J. Jesenik

Advisory Board Members

Donna Miles
Edmund Jensen
Gillis Management Solutions Inc.
James Von Gremp
Keith Barnes
L. Martin Brantley
Patrick Terrell
Robert Zukis
William Glasgow
William C. McCormick
Andrew S. Craig

Directors and Officers

Alan A. Lordi
Andrew N. MacRitchie
Anthony Buda
Brett Brown
Brian Rice
Brian Zeck
Christopher Crow
Craig Froude
Edward Texeria
James P. Bisenius
James F. Crumpacker
James H. Ganier
Jason MacRae
Jeffrey Mazer
Ekaterina Baron
Keith Gregg
Michael I. Chong
Michelle M. Agostine
Olaf Janke
Patricia Brown
Patty Whittington
Peter Hand
R. Scott Wood
Robert E. Bedtritis
Robert Holmen
Robert Noack
Rory Donnelly
Ryan McDonald
Stanley W. Smith
Steven Hedberg
Tammy Wood
Thomas M. Goila
Thomas P. Reiter
Thomas Sidley
Thomas Szabo
Warren Brasch
Wayne Marschall
William M. Malloy III
William Ruh

Related Parties Excluded from Certified Class**RIAs**

Atherton Capital Holdings, LLC

Edmund and Marilyn Jensen Tenants in Common

Marilyn Jensen

Income Opportunity Capital, LLC

MSSB Cust fbo William McCormick Sep IRA

The William C. McCormick Trust dtd 4/19/2007; William C. McCormick, TTEE

William C. and Jani E. McCormick Foundation

Tracy Oliver

WMI Investments, LLC

Alternative Capital Advisers, LLC

Annadel Capital, Inc.

Ashton Thomas Private Wealth, LLC

Axion Financial Group, LLC

BKS Advisors, LLC

Client 1st Advisory Group, LLC

Concert Wealth Management

Copperstone Partners, LLC

Criterion Wealth Management

De Groote Financial Group

Del Mar Wealth Management

Detalus Advisors, LLC (FKA Hancock Investment Advisors, LLC)

Elite Wealth Management

Encompass Wealth Advisors, LLC

Enviso Capital, LLC

Etesian Wealth Advisors, LLC

Family Office Research, LLC

FourStar Wealth Advisors, LLC (FKA Fieldstone Financial Management)

Fusion Analytics Investment Partners, LLC

GF Capital Management & Advisors, LLC

GM Advisory Group

Good Harbor Financial, LLC

GPS Capital Management, LLC

Gupta Wealth Management

Integrated Financial Solutions Group, LLC

IMS Capital Management, Inc.

Integrity Bank and Trust

International Assets Advisory, LLC

Juetten Personal Financial Planning, LLC

Lebenthal Wealth Advisors, LLC

Lebenthal & Co., LLC

Legacy Consulting Group

Malloy & Co.

Manchester Financial

Matrix Capital Advisors, LLC

Miracle Mile Advisors, LLC

Mirae Asset Wealth Management (USA) Inc.

Morgan Stanley/Graystone Consulting

Ocean Avenue Wealth Management (AKA Ocean Avenue Financial Services, LLC)

Pierpont Investment Group

Private Advisory Group LLC
Wacker Wealth Partners, LLC
Scottsdale Wealth Planning, Inc.
Sica Wealth Management, LLC
Steel Peak Wealth Management, LLC
Strategic Capital Group
VanClef Financial Group