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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. JESENIK; BRIAN A. OLIVER;
and N. SCOTT GILLIS,

Defendants.

No. 3:16-cv-00438-JR

**RECEIVER’S THIRD MOTION TO
APPROVE CLASSIFICATION OF
CERTAIN CLAIMS (ADMINISTRATIVE,
CONVENIENCE CLASS, CREDITORS,
AND DEFRAUDED INVESTORS),
ALLOW AND APPROVE
DISTRIBUTIONS ON ACCOUNT OF
CERTAIN CLAIMS, AND APPROVING
DISTRIBUTIONS TO CLAIMANTS WHO
ELECT RECLASSIFICATION TO
CONVENIENCE CLASS STATUS**



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LOCAL RULE 7-1 CERTIFICATE

On July 6, 2021, counsel for the Receiver circulated to all counsel of record in this action, via e-mail, copies of this motion and the accompanying declaration, both of which were substantially the same as this later filed version. The conferral requested that counsel respond by 12:00 p.m. (PST) on July 13, 2021, as to whether their clients object or consent to the motion. As of the time of filing this motion, the undersigned had received three consents and no objections.

NOTICE

On July 16, 2021, the Receiver mailed notice to the last known mailing address of those Claimants whose Claims are the subject of this motion, as set forth in Exhibits 1 – 4 (collectively, “Specified Claimants”).¹ A copy of the Notice of Motion is attached as Exhibit 5 to the Declaration of Ronald F. Greenspan in Support of Receiver’s Third Motion to Approve Classification of Certain Claims (Administrative, Convenience Class, Creditors, and Defrauded Investors), Allow and Approve Distributions on Account of Certain Claims, and Approving Distributions to Claimants Who Elect Reclassification To Convenience Class Status (the “Receiver’s Declaration”).

MOTION

To further the distribution of funds pursuant to the Court-approved Distribution Plan,² the Receiver moves the Court to enter an order:

¹ All exhibits referenced in this motion are attached to the Receiver’s Declaration.

² Receiver’s Motion to Approve Receiver’s Distribution Plan and Determination of a Ponzi Scheme (the “Distribution Plan”) [Dkt. 787]; Findings of Fact and Conclusions of Law (“FF&CL”) [Dkt. 813] (approving same with minor clarifications and modification, as requested by Receiver). Capitalized terms not otherwise defined in this motion shall have the meanings ascribed to them in the Distribution Plan [Dkt. 787].

(1) Approving the Receiver's classification of the Claims of Specified Claimants listed on the following Exhibits:

- Exhibit 1 Administrative Class Claims
- Exhibit 2 Convenience Class Claims
- Exhibit 3 Creditor Class Claims
- Exhibit 4 Defrauded Investor Class Claims

(2) Approving the Receiver's reclassification of those Allowed Creditor Class Claimants who elect to become Allowed Convenience Class Claimants;

(3) For those Specified Claimants in Exhibits 1 – 3, with Allowed Claims for which distributions may be had under the Distribution Plan, including Claimants who elect reclassification to Convenience Class status, approving the final distribution of amounts (which for some Allowed Claims is zero) in full satisfaction of those Allowed Claims;

(4) For those Specified Claimants in Exhibit 4 with Allowed Claims for which distributions may be had under the Distribution Plan, approving the distribution of amounts as set forth in that exhibit (in the Receiver's Calculated Interim Distribution [Rising Tide] field) in partial satisfaction of those Allowed Claims recognizing that certain Defrauded Investors are members of plaintiff groups with intra-group allocation agreements and, as a result, distributions from the Receivership Estate to those Defrauded Investors may be combined with those of other members of the respective plaintiff group and allocated in accordance with an intra-group agreement, which may ultimately result in those Defrauded Investors receiving more or less than the Receiver's Calculated Interim Distribution [Rising Tide]; and

(5) In relation to the Claims of Goal Financial, LLC ("Goal Financial") and Goal Structured Solutions, Inc. ("Goal Solutions"), (1) rescinding and disallowing the previously Allowed Claim of Goal Financial, (2) approving the classification of Goal Solutions' claim as a

Defrauded Investor Class Claim, (3) approving the Goal Solutions' claim amount, and (4) approving a distribution to Goal Solutions under the Court-approved Distribution Plan.

POINTS AND AUTHORITIES

I. Factual and Procedural History

In March 2016, the U.S. Securities and Exchange Commission ("SEC") filed the above-captioned action, alleging violations of federal securities law by Robert Jesenik, Brian Oliver, and N. Scott Gillis, as well as entities that they controlled (the "Entity Defendants"),³ which were part of the broader Aequitas Enterprise and included over 57 affiliated and controlled entities.⁴ The Court conclusively determined that the Entity Defendants were operated as a Ponzi scheme no later than July 2014.⁵

A. Appointment of Receiver, Claims Procedure, and Approval of Distribution Plan

The Court appointed Ronald F. Greenspan as Receiver for the Entity Defendants and various affiliated entities—initially on an interim basis on March 16, 2016,⁶ and later, on April 14, 2016, on an enduring basis.⁷ Since then, consistent with that role and the powers authorized by the Court, the Receiver has, among other activities, operated the Receivership

³ Complaint [Dkt. 1]. In addition to the Entity Defendants, Jesenik, Oliver, and Gillis controlled various other Aequitas subsidiaries and/or majority-owned affiliates (or their predecessors in interest). For purposes of this motion and events that pre-date the Receivership, the Receivership Defendants and the entities set forth in Exhibit A and Exhibit B to the Order Appointing the Receiver [Dkt. 156], shall be referred to collectively as the "Aequitas Enterprise."

⁴ FF&CL [Dkt. 813] at 5-6.

⁵ *Id.* at 14.

⁶ Stipulated Interim Order Appointing Receiver [Dkt. 30].

⁷ Order Appointing Receiver [Dkt. 156]. The Receivership Estate consisted of the Entity Defendants, as well as 43 other related entities. *Id.* at Ex. A (listing related entities). Nine Extended Entities in which the Aequitas Enterprise had a material investment were also required by Court order to cooperate with the Receiver. *Id.* at Ex. B.

Estate, performed reporting obligations, made records available to Investors for use in litigation, and substantially monetized the assets of the Receivership Estate.⁸

On April 25, 2019, on the Receiver's motion, the Court fixed a Claims Bar Date of July 31, 2019; approved the manner of notice of the Claims Bar Date; and approved the Proof of Claim Form, the Claims Procedure, and associated exhibits and attachments.⁹ The Claims Bar Date operated as "the deadline for Claimants and Administrative Claimants to submit a completed and signed Proof of Claim Form under penalty of perjury, together with supporting documentation against one or more of the Aequitas Entities."¹⁰ Certain Claimants, however, had the option to be treated as having timely asserted claims without actually filing a proof of claim if they agreed with the Receiver as to their claim and the amount thereof. As stated in this Court's order:

The Receiver has determined in his sole and absolute discretion that certain [Claimants and Administrative Claimants] are entitled to an Allowed Claim and will receive a Notice of Receiver's Initial Determination, with attachments containing information and amounts, which together constitute the Receiver's initial determination of the Allowed Claim. [A Claimant or Administrative Claimant] who **AGREES** with the information and amounts in the attachments to the Notice of Receiver's Initial Determination need **NOT** submit a Proof of Claim. [A Claimant or Administrative Claimant] who **DISAGREES** with the information or amounts in the attachments to the Notice of Receiver's Initial Determination and wants to assert a Claim that is different, **MUST** timely and properly submit a Proof of Claim, including supporting documents in compliance with the Notice of Claims Bar Date and Procedures for Submitting a Proof of Claim.¹¹

⁸ See generally the Receiver's Quarterly Reports.

⁹ 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 [Dkt. 683].

¹⁰ *Id.* at ¶ 4.

¹¹ *Id.* at ¶ 10 (emphasis in original).

Such initial determinations, which the Receiver refers to as “NODs” as a shorthand for “Notice of Determination,” form the basis for many of the Claims of the Specified Claimants addressed in this motion.

On December 23, 2019, the Court approved the creation of a Qualified Settlement Fund (“QSF”), over which it would retain jurisdiction and from which distributions would be made on Allowed Claims, including any distributions to the Specified Claimants holding Claims that are the subject of this motion.¹²

On December 31, 2019, the Receiver filed the Motion to Approve Receiver’s Distribution Plan and Determination of a Ponzi Scheme.¹³ That same day, the Receiver moved the Court to approve a notice procedure, briefing schedule, and hearing date.¹⁴

On January 14, 2020, the Court approved the Receiver’s proposed means of providing interested parties notice of the Receiver’s proposed distribution plan and Ponzi determination.¹⁵ The Court set briefing deadlines, including a February 20, 2020 deadline for interested parties to file objections.¹⁶ The Court additionally set March 31, 2020, as the hearing date on the Receiver’s motion regarding a Ponzi determination and Distribution Plan.¹⁷

¹² Order Granting Receiver’s Motion for Order to Authorize, Approve, and Keep Continuing Jurisdiction over a Qualified Settlement Fund, and Related Relief [Dkt. 781].

¹³ [Dkt. 787].

¹⁴ Receiver’s 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].

¹⁵ 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. 790].

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 3.

On March 31, 2020, following the scheduled hearing, this Court concluded that the Aequitas Enterprise operated as a Ponzi scheme.¹⁸ Relatedly, the Court approved the Receiver's proposed Distribution Plan, as modified.¹⁹

B. Resolution and Waiver of Objections

In formulating his proposed distribution plan, the Receiver received numerous inquiries (and a few potential objections to some provisions). The Receiver responded to all of these and ultimately all parties were satisfied with the merits and equity of the Receiver's proposed Distribution Plan and did not file objections. Only one party filed an objection and did so without first communicating with the Receiver. Upon becoming aware of this objection, the Receiver considered the information provided by the objecting party, conducted further research, and resolved the objection by modifying the definition of Non-Officer Former Employee Claim.²⁰ No other objections were asserted before the Court-approved deadline of February 20, 2020, and, as such, all objections to the Distribution Plan have been resolved or waived.²¹

¹⁸ FF&CL [Dkt. 813] at 14.

¹⁹ *Id.* at 18.

²⁰ *See* Receiver's Reply ISO the Distribution/Ponzi Determination Motion [Dkt. 807] (pursuant to Brett M. Brown's Objection [Dkt. 799], the following individuals were omitted from the list of individuals precluded from holding a Non-Officer Former Employee Claim: Brett Brown; Patricia Brown; Bill Malloy; and Thomas Szabo); *see also* FF&CL [Dkt. 813] (approving same).

²¹ *See Garvin v. Cook Invs. NW, SPNWY, LLC*, 922 F.3d 1031, 1034 (9th Cir. 2019) (bankruptcy trustee waived objection by failing to raise it in conjunction with plan confirmation); *see also* FF&CL [Dkt. 813] at 18-19 ("All objections to the Receiver's Distribution/Ponzi Determination Motion that have not been withdrawn, waived, settled, or expressly reserved pursuant to the terms of this Order are overruled.").

The Receiver and this Court have begun implementing the Distribution Plan. For thousands of Claims, this Court has already approved classifications, Allowed Claim amounts, and approved distributions, which the Receiver has issued payments for such distributions.²²

C. The Court-approved Distribution Plan's Treatment of Classes Addressed in this Motion

The Court-approved Distribution Plan establishes, among other classes, the following classes of Claims (which definitions are reiterated in later sections) and related treatments that are pertinent to making distributions pursuant to this motion:

- Allowed Administrative Class Claims. Each such claim shall be paid the full amount of the Allowed Claim from the QSF.²³
- Allowed Convenience Class Claims. Each such Claim shall be paid an amount equal to twenty percent (20%) of the Allowed Convenience Class Claim from the QSF.²⁴
- Allowed Creditor Class Claims. After the holders of Allowed Claims in all other Classes (other than the Individual Defendants Class) have been paid in full, each such Claim shall be paid pro rata from the QSF.
- Allowed Defrauded Investor Class Claims. Allowed Defrauded Investor Class Claims are calculated on the basis of their Total Investment, and each such Claim shall be paid under the rising tide methodology without interest, costs, or fees from the QSF.²⁵

²² See Order Granting Receiver's Motion to Approve Classification, Allowance of the Amount of Claims for Certain Claimants (Administrative Claims, Convenience Class Claims, and Former-Employment Claims), and Approve Distributions to Those Claimants [Dkt. 838]; Order Granting Receiver's (Second) Motion to Approve Classification of Certain Claims (Administrative, Former-Employees, Convenience Class, Defrauded Investors, Creditors, Individual Defendants, and Pass-Through Investors), and Allow and Approve Distribution on Account of Certain Claims [Dkt. 861]. The Receiver sent out distributions pursuant to those orders.

²³ Distribution Plan [Dkt. 787] at 65. See also FF&CL [Dkt. 813] (approving same).

²⁴ Distribution Plan [Dkt. 787] at 65-66. See also FF&CL [Dkt. 813] (approving same). The amount of an Allowed Convenience Class Claim cannot exceed \$20,000.

²⁵ Distribution Plan [Dkt. 787] at 4, 66. See also FF&CL [Dkt. 813] (approving same). Exhibit 4 to Receiver's Declaration, including footnotes, further details the basis and payment to Defrauded Investors.

When seeking Court approval of the Distribution Plan, the Receiver noted that “[c]urrent estimates ... are that holders of Allowed Creditor Class Claims will not receive a distribution” because there would be inadequate funds available for distribution.²⁶ That remains true; the Receiver’s current estimates are that there are insufficient funds to make distributions to the holders of Allowed Creditor Class Claims.²⁷

II. This Court Should Approve the Receiver’s Proposed Classification, Proposed Allowed Claims and Authorize the Receiver’s Proposed Distributions.

This motion is accompanied by the Receiver’s Declaration, which includes Exhibits 1 – 4. For each exhibit,²⁸ the following fields may be included as pertinent to the Class of Claims and the treatment proposed in this motion:

- Name(s). This field specifies the name or names associated with a Claim.
- Receiver’s Classification. This field specifies how the Receiver has classified the Claim if the Receiver is proposing by this motion that this Court classify the claim. For Claims where the Receiver is not in this motion proposing to classify a Claim, the Classification is listed as “TBD.”
- NOD Claim Amount. This field contains the amount specified in NOD(s) for the Claim, if applicable.
- Proof of Claim Amount. This field contains the amount specified in a Proof of Claim(s) submitted by or on behalf of the Claimant. In setting forth a Proof of Claim Amount, the Receiver has made a good faith effort to include the claim amounts quantified by the Claimant but has not endeavored to include any amounts unquantified by the Proof of Claim form and/or the amounts that could not be clearly ascertained based on the provided information that accompanied the Proof of Claim form.
- Proposed Allowed Claim Amount. The amount that the Receiver proposes be determined as the Claimant’s Allowed Claim, if applicable. For Claims where the Receiver is not in this motion proposing an Allowed Claim, the Proposed Allowed Claim Amount is listed as “TBD.”

²⁶ Distribution Plan [Dkt. 787] at 6. *See also id.* at 66 (similar).

²⁷ Receiver’s Declaration, ¶ 4.

²⁸ Exhibit 4 includes some of these fields, but also supplements the Defrauded Investor exhibit with other fields, which are separately summarized in subsection D below.

- Proposed Distribution. The distribution amount calculated pursuant to the Court-approved Distribution Plan.
- Notes. This field contains information regarding some component of or treatment of the Claim. For example, a Claimant may have submitted duplicate copies of a Proof of Claim, which are being treated as a single claim. Another example would be a Proof of Claim that was filed after the Claims Bar Date.

Regardless of whether the Receiver has noted a factual, legal or procedural defense or avoidance of a Claim, the Receiver reserves the right to litigate all defenses (a) in the event the Claimant opposes this motion; or (b) in future motions adjudicating a Claim (*i.e.* litigating issues unresolved by this motion about the Claim's classification, validity, allowance, amount, or distribution). Further, even if a defense or avoidance is not litigated against one or more Claims, the Receiver reserves the right to litigate a similar defense or avoidance against any other Claim.²⁹

Based on the Receiver's reasonable investigation, the classifications and distributions proposed in this motion are consistent with the Court-approved Distribution Plan and, following these distributions, the QSF will have sufficient funds to make distributions to other Claimants with estimated Allowed Claims that may receive distributions, pursuant to the priority provisions of the Court-approved Distribution Plan.³⁰ To the extent the Court's determination of this motion affects any proposed distribution, as reflected in the Exhibits attached to the Receiver's Declaration, the Receiver requests that he be permitted to revise the distributions consistent with the Court's determination, without further notice and motion.

²⁹ In the event that a Claimant files an opposition, the Receiver will decide whether to litigate that opposition now or file an amended Exhibit to this motion that, by removing that Claimant, renders the Claimant's opposition moot as to this motion.

³⁰ Receiver's Declaration, ¶ 11.

A. Claims of Specified Claimants in the Administrative Class

In Exhibit 1, the Receiver identifies certain Specified Claimants holding Claims that are appropriately classified in the Administrative Class, further specifies amounts that should be allowed on those claims, and seeks authorization to distribute specified amounts to them from the QSF. Under the terms of the Court-approved Distribution Plan, an Administrative Claim is:

An Allowed Claim based on: (i) the provision of goods or services for the benefit of the Receivership Estate or at the request of the Receiver beginning on or after March 16, 2016, or related to the administration of the QSF, which remain unpaid, (ii) any taxes arising from or attributable to tax periods beginning on or after March 16, 2016, including those that may be asserted by federal, state, local, or other governmental entities or authorities, which remain unpaid, (iii) an uncashed check issued on or after March 16, 2016, for refund on account of a healthcare account receivable overpayment, student loan account receivable overpayment, or other overpayment, or (iv) any current, future, or contingent contractual obligations (including indemnification obligations) arising from any contract entered into by or on behalf of the Receivership Estate.³¹

As noted above, under the terms of the Court-approved Distribution Plan, Allowed Administrative Claims are paid in full from the QSF.³²

B. Claims of Specified Claimants in the Convenience Class

In Exhibit 2, the Receiver identifies certain Specified Claimants holding Claims that are appropriately classified in the Convenience Class, further specifies amounts that should be allowed on those claims, and seeks authorization to distribute specified amounts to them from the QSF. A Convenience Class Claim is:

An Allowed Creditor Claim (i) equal to or less than \$20,000, or (ii) an Allowed Creditor Claim in excess of \$20,000, where the holder elects to reduce the Allowed Creditor Claim to \$20,000 and waive the balance of the Allowed Creditor Claim.³³

³¹ Distribution Plan [Dkt. 787] at 62-63. *See also* FF&CL [Dkt. 813] (approving same).

³² Distribution Plan [Dkt. 787] at 65. *See also* FF&CL [Dkt. 813] (approving same).

³³ Distribution Plan [Dkt. 787] at 65-66. *See also* FF&CL [Dkt. 813] (approving same).

As noted above, under the terms of the Court-approved Distribution Plan, Allowed Convenience Class Claims are paid an amount equal to twenty percent (20%) of that allowed amount from the QSF.³⁴

C. Claims of Specified Claimants in the Creditor Class

In Exhibit 3, the Receiver identifies certain Specified Claimants holding Claims that are appropriately classified in the Creditor Class and further specifies amounts that should be allowed on those claims.

Under the terms of the Court-approved Distribution Plan (and relating to the Aequitas Enterprise being placed into receivership on March 16, 2016):

A Creditor Claim is a Claim against an Aequitas Entity, including but not limited to transactions based on, related to, arising from, or in connection with: (i) any contract, lease, or other agreement entered into prior to March 16, 2016, for which payment has not been made in whole or in part or for which payment has or will become due prior to, on, or after March 16, 2016, (other than Defrauded Investors or Pass-through Investors), (ii) goods or services provided prior to March 16, 2016, (iii) an uncashed check issued prior to March 16, 2016, for refund on account of a healthcare account receivable overpayment, student loan account receivable overpayment, or any other overpayment, (iv) unpaid wages, compensation, or other employment benefits, that accrued prior to March 16, 2016, that exceed the priority wage claim cap of \$12,850, or (v) taxes payable by an Aequitas Entity arising from or attributable to tax periods beginning prior to March 16, 2016, even if due and payable subsequent to March 16, 2016, including those that may be asserted by federal, state, local, or other governmental entities or authorities. To the extent that a Claim meets the definition of both a Creditor Claim and some other classification of Claim, each Claim shall be determined and treated based on the portion of the Claim that falls within each classification.³⁵

Specified Claimants on Exhibit 3 that hold an Allowed Creditor Class Claim may elect to either (a) retain the classification of the Claim in the Creditor Class; or (b) under the terms of the

³⁴ Distribution Plan [Dkt. 787] at 65-66. *See also* FF&CL [Dkt. 813] (approving same). The amount of an Allowed Convenience Class Claim cannot exceed \$20,000.

³⁵ Distribution Plan [Dkt. 787] at 64. *See also* FF&CL [Dkt. 813] (approving same).

Court-approved Distribution Plan, reduce their Allowed Creditor Class Claim to \$20,000 and waive the balance of the Allowed Creditor Class Claim so as to be reclassified as an Allowed Convenience Class Claim and receive a 20% payment on their reclassified Convenience Class Claim.³⁶

As noted above, the Receiver's current estimates are that *insufficient funds exist to make any distributions* on account of Allowed Creditor Class Claims pursuant to the Court-approved Distribution Plan.³⁷ That is, the Receiver has concluded that a Claimant holding an Allowed Creditor Class Claim in excess of \$20,000 would, as an Allowed Creditor Class Claimant, likely never receive any distribution under the Court-approved Distribution Plan on that Allowed Creditor Class Claim. In the alternative, if that same Claimant elected to reduce their Allowed Creditor Class Claim to \$20,000 and waived the balance of the Allowed Creditor Class Claim, that Claim would be reclassified as a Convenience Class Claim and would entitle the Claimant to a twenty percent (20%) distribution on their Allowed Convenience Class Claim.³⁸

Stated differently, it appears to be in the pecuniary best interests of Claimants holding an Allowed Creditor Class Claim in excess of \$20,000 to obtain classification as a Convenience Class Claim.

To facilitate the reclassification election to Convenience Class status, an election form was sent to the last known mailing address of those Specified Claimants who hold an Allowed Creditor Class Claim in excess of \$20,000, together with the Notice of Motion.³⁹ The election

³⁶ Distribution Plan [Dkt. 787] at 65-66. *See also* FF&CL [Dkt. 813] (approving same).

³⁷ Receiver's Declaration, ¶ 4.

³⁸ Distribution Plan [Dkt. 787] at 65-66. *See also* FF&CL [Dkt. 813] (approving same). The amount of an Allowed Convenience Class Claim cannot exceed \$20,000.

³⁹ A true and correct copy of the election form is attached to the Receiver's Declaration as Exhibit 6.

form provides that each Specified Claimant holding an Allowed Creditor Class Claim in excess of \$20,000 may elect to have their Allowed Claim reclassified as a Convenience Class Claim provided they agree (1) to reduce their Allowed Creditor Class Claim to \$20,000, and agree to waive the balance of their Allowed Creditor Class Claim in order to receive a distribution as an Allowed Convenience Class Claimant. The Specified Claimant must return the election form POST-MARKED no later than August 31, 2021.⁴⁰ The election form identified the consequences of classification of the Creditor Class Claim in the Convenience Class and the likely consequence of retaining classification of the Claim in the Creditor Class.⁴¹ The election form includes instructions on how and when it must be returned to the Receiver to be effective.⁴²

The Receiver anticipates that few (if any) eligible Creditor Class Claimants will choose to remain in the Creditor Class. For those that do—and as indicated on Exhibit 3—the Receiver is not seeking approval of any distribution on Allowed Creditor Class Claims.

In sum, each Claim on Exhibit 3 is properly classified as a Creditor Class Claim and may retain that classification if the holder of such Creditor Class Claim does not return the Election Form to the Receiver POST-MARKED by August 31, 2021.⁴³ Claimants holding an Allowed Creditor Class Claim listed on Exhibit 3 that timely return the election form to the Receiver shall be reclassified as a Convenience Class Claim, deemed to hold an Allowed Convenience Class Claim in the amount of \$20,000, and shall be entitled to a distribution from the QSF under the terms of the Court-approved Distribution Plan and as indicated on Exhibit 3.

⁴⁰ See Exhibit 6 at 4.

⁴¹ See Exhibit 6 at 1-3.

⁴² See Exhibit 6 at 4.

⁴³ Notwithstanding the election form deadline, the Receiver retains the right, in his sole discretion, to accept an election form not otherwise timely received.

D. Claims of Specified Claimants in the Defrauded Investor Class

In Exhibit 4, the Receiver identifies (1) certain Specified Claimants holding Claims that are appropriately classified in the Defrauded Investor Class, (2) information material to calculating their entitlement to a rising tide distribution under the terms of the Court-approved Distribution Plan, and (3) the proposed calculated interim distribution, if any, that the Receiver be authorized to make from the QSF.⁴⁴ Under the terms of the Court-approved Distribution Plan, Defrauded Investors were either Direct Investors or Fund Investors and had an account balance as of July 1, 2014, or account activity during the Ponzi Period.⁴⁵ Further:

Defrauded Investor Claims include all of the Allowed Claims of Defrauded Investors including, without limitation, a Claim based on an investment transaction in, with, or through an Aequitas Entity (excluding Pass-through Entities), including but not limited to transactions based on or related to: (i) promissory notes or other money loaned to an Aequitas Entity, and (ii) investments (by subscription or otherwise) in an Aequitas Entity (excluding Pass-through Entities).⁴⁶

⁴⁴ As addressed in Section E below, the Receiver has reached a proposed compromise of aspects of the Claim of Goal Structured Solutions, a Defrauded Investor. Because the Receiver had not previously proposed a classification, approved claim, or distribution for Goal Structured Solutions, no distribution has previously been made to it.

⁴⁵ Distribution Plan [Dkt. 787] at 13-14 & n. 36, App. A at 5-6 (defining terms and specifying nature of investments and involved entities). *See also* FF&CL [Dkt. 813] (approving same).

⁴⁶ Distribution Plan [Dkt. 787] at 63-64. *See also* FF&CL [Dkt. 813] (approving same). A Defrauded Investor Claim is exclusive of other types of claims. *See* Distribution Plan [Dkt. 787] at 63-64 (“Defrauded Investor Claims exclude any Claim that is otherwise classified herein. If an Investor meets the definition of both a Defrauded Investor and a Pass-through Investor, the Investor’s Distribution shall be calculated based on those portions of the Investor’s Claim that make the Investor a Defrauded Investor with no increase or decrease in that amount in relation to those portions of the Claim that make the Investor a Pass-through Investor.”); *see also* FF&CL [Dkt. 813] (approving same).

As noted above, under the terms of the Court-approved Distribution Plan, Defrauded Investors' claims are calculated on the basis of their Total Investment, and each such claim shall be paid under the rising tide methodology from the QSF.⁴⁷

Three items warrant further comment from the Receiver. First, in addition to the Name(s) field, which contains the main contact name(s), Exhibit 4 also has two fields supplying "Account" information (*e.g.*, name, number, and/or investor ID), which will identify each account associated with the Claim. The "Account" fields may contain multiple accounts if multiple accounts were aggregated for the purpose of determining the Proposed Distribution. As explained in the Court-approved Distribution Plan, "[a] Defrauded Investor in the Aequitas Ponzi scheme is not injured more or less simply by virtue of investing money in multiple Aequitas Entities, multiple accounts, or accounts differently titled" and Defrauded Investors' distributions in general should not be affected by certain Defrauded Investors' method of holding title to multiple accounts."⁴⁸ The Court-approved Distribution Plan details when and how a Defrauded Investor's accounts can be aggregated for the purposes of calculating a distribution.⁴⁹ Following reasonable investigation, the Receiver's proposed treatment of Defrauded Investors complies with those aggregation provisions.⁵⁰

Second, Exhibit 4 includes Investor-specific information that is material to calculating a Defrauded Investor's rising tide distribution pursuant to the Court-approved Distribution Plan—specifically,

⁴⁷ Distribution Plan [Dkt. 787] at 4, 66. *See also* FF&CL [Dkt. 813] (approving same). Exhibit 4 to Receiver's Declaration, including footnotes, further details the basis and payment to Defrauded Investors.

⁴⁸ Distribution Plan [Dkt. 787] at 55. *See also* FF&CL [Dkt. 813] (approving same).

⁴⁹ Distribution Plan [Dkt. 787] at 55-57. *See also* FF&CL [Dkt. 813] (approving same).

⁵⁰ Receiver's Declaration, ¶ 7.

- Total Investment – Allowed Claim. For most Defrauded Investors, this amount is the Defrauded Investor’s book balance as of July 1, 2014 (including prior accrued interest or reinvested amounts) plus any cash the Defrauded Investor conveyed to the Aequitas Entity between July 1, 2014 and March 16, 2016.⁵¹
- Pre-Receivership Return. For most Defrauded Investors, this amount is the sum of cash paid to the Defrauded Investor between July 1, 2014 and March 16, 2016.⁵²
- Prior Interim Distribution. The amount distributed pursuant to the second interim distribution motion, as approved by Court Order.
- Prior Cumulative Return Percentage. This is equal to the sum of Pre-Receivership Return and any prior interim Receivership distribution, expressed as a percentage.
- Proposed Distribution. For Defrauded Investors, the field is titled as “Receiver’s Calculated Interim Distribution [Rising Tide]”.⁵³

Third, the Court-approved Distribution Plan establishes the means by which rising tide distributions are calculated for Defrauded Investors.⁵⁴ For purposes of this motion, the Interim Recovery Threshold is thirty-three percent (33%). If the Receiver is specifying a Receiver’s Calculated Interim Distribution, that amount is the greater of ((Total Investment x Interim Recovery Threshold) – (Pre-Receivership Return + Prior Interim Distribution)) or zero.⁵⁵ The Defrauded Investors with a Pre-Receivership Return Percentage greater than thirty-three percent (33%) may become eligible for a future distribution, subject to the availability of distributable funds.

⁵¹ See Distribution Plan [Dkt. 787] at 39-41, 55. See also FF&CL [Dkt. 813] (approving same). The Court-approved Distribution Plan more fully defines the calculation of Total Investment.

⁵² See Distribution Plan [Dkt. 787] at 39-41, 55. See also FF&CL [Dkt. 813] (approving same). The Court-approved Distribution Plan more fully defines the calculation of Pre-Receivership Return.

⁵³ Exhibit 4 to Receiver’s Declaration, including footnotes, further details the basis and payment amounts for Defrauded Investors.

⁵⁴ Distribution Plan [Dkt. 787] at 45-55. See also FF&CL [Dkt. 813] (approving same).

⁵⁵ Distribution Plan [Dkt. 787] at 45-55. See also FF&CL [Dkt. 813] (approving same).

E. Rescission of the Previously Allowed Goal Financial Claim, and Classification, Allowance and Distribution on the Goal Structured Solutions' Claim

Goal Financial LLC (“Goal Financial”) was the initial recipient of a “Private Note” from Aequitas Commercial Finance, but Aequitas failed to re-register the Private Note when it was transferred to Goal Structured Solutions, Inc. (“Goal Solutions”) in 2014. An NOD was incorrectly sent to Goal Financial and pursuant to the Receiver’s (Second) Motion to Approve Classification of Certain Claims, an order was entered that classified and granted Goal Financial an Allowed Claim (the “Second Distribution Order”).⁵⁶ The error was subsequently discovered and no payment was received by Goal Financial. By this motion, the Receiver asks the court to correct the Second Distribution Order, by disallowing the entirety of the Goal Financial claim.

In a Court approved transaction⁵⁷ that involved the sale of certain Receivership assets (related to EdPlus Holdings, LLC), Goal Structured Solutions, Inc. (“Goal Solutions”), agreed to i) terminate the UCC lien it held on the EdPlus assets, and ii) reduce the outstanding principal balance of the ACF Private Note that was issued to evidence the EdPlus liability from \$750,000 to \$500,000, in exchange for a \$450,000 “service credit” from the buyer of the EdPlus assets. Goal Solutions filed a \$500,000 claim based on the principal reduction and the 2014 transfer of Goal Financial’s Private Note to Goal Solutions, of which the Receiver became aware of only this year.

The Receiver has determined that Goal Solutions’ claim (1) is appropriately classified as a Defrauded Investor Class Claim, (2) should be allowed in the amount of \$500,000.00, and (3)

⁵⁶ Second Distribution Order [Dkt. 851] (approving classification, allowance of claim and distribution to Goal Financial).

⁵⁷ Order (1) Authorizing Receivership Entities to Execute Instruments To Sell Extended Entity Assets, and (2) Approving Compromise of Creditor Claim Against Aequitas Commercial Finance [Dkt. 207].

based on information material to calculating its entitlement to a rising tide distribution under the terms of the Court-approved Distribution Plan, should receive an interim distribution from the QSF.⁵⁸

F. Recipients of Distribution Payments

As set forth in the Court-approved Distribution Plan and the FF&CL, “[a]ccount and claim ownership shall be ... determined as of the Claims Bar Date.”⁵⁹ Where a Specified Claimant informed the Receiver in writing prior to the filing of this motion that the ownership of the Claim had been transferred, the Receiver will make a good faith effort to direct payment to the last known owner of the claim. Where appropriate, distributions may also be made to a Specified Claimant’s investment custodian or counsel. Some Defrauded Investors, for example, have investments relating to their accounts held through custodians or Specified Claimants may be represented by counsel. The Receiver is authorized and has discretion to make distributions to a Specified Claimant’s custodian or counsel.

The Court-approved Distribution Plan provides that the Receiver is not required to pay *de minimis* claims that would result in a distribution of less than \$50.00.⁶⁰ For the purposes of this motion, the Receiver proposes to make distributions on Allowed Claims where the distribution will be \$25 or greater. No distribution will be made on allowed *de minimis* claims where the distribution is less than \$25 because the cost of handling the distribution, including such items as printing, postage, returned checks, and inquiries, is disproportionate to the benefit.

⁵⁸ Because the Receiver had not previously proposed a classification, approved claim, or distribution for Goal Structured Solutions, no distribution has previously been made to it.

⁵⁹ Distribution Plan [Dkt. 787] at 55 n. 170; FF&CL [Dkt. 813] (approving same).

⁶⁰ Distribution Plan [Dkt. 787] at 67. *See also* FF&CL [Dkt. 813] (approving same).

G. Release and Satisfaction

As set forth in the Court-approved Distribution Plan and the FF&CL, except as to Defrauded Investors—for whom the Receiver seeks approval to make an interim distribution—receipt of payment is a release and satisfaction in full of the Claim.⁶¹

CONCLUSION

To further the distribution of funds pursuant to the Court-approved Distribution Plan,⁶² the Receiver moves the Court to enter an order:

(1) Approving the Receiver’s classification of the Claims of Specified Claimants listed on the following Exhibits:

- Exhibit 1 Administrative Class Claims
- Exhibit 2 Convenience Class Claims
- Exhibit 3 Creditor Class Claims
- Exhibit 4 Defrauded Investor Class Claims

(2) Approving the Receiver’s reclassification of those Allowed Creditor Class Claimants who elect to become Allowed Convenience Class Claimants;

(3) For those Specified Claimants in Exhibits 1 – 3, with Allowed Claims for which distributions may be had under the Distribution Plan, including Claimants who elect reclassification to Convenience Class status, approving the final distribution of amounts (which for some Allowed Claims is zero) in full satisfaction of those Allowed Claims;

⁶¹ Distribution Plan [Dkt. 787] at 65 (“Distributions on Allowed Claims is governed by, and subject to the terms of the Court-approved Distribution Plan as implemented through the QSF and shall be in full and complete satisfaction, settlement, and release of all such claims.”); FF&CL [Dkt. 813] (approving same).

⁶² Receiver’s Motion to Approve Receiver’s Distribution Plan and Determination of a Ponzi Scheme (the “Distribution Plan”) [Dkt. 787]; Findings of Fact and Conclusions of Law (“FF&CL”) [Dkt. 813] (approving same with minor clarifications and modification, as requested by Receiver). Capitalized terms not otherwise defined in this motion shall have the meanings ascribed to them in the Distribution Plan [Dkt. 787].

(4) For those Specified Claimants in Exhibit 4 with Allowed Claims for which distributions may be had under the Distribution Plan, approving the distribution of amounts as set forth in that exhibit (in the Receiver’s Calculated Interim Distribution [Rising Tide] field) in partial satisfaction of those Allowed Claims recognizing that certain Defrauded Investors are members of plaintiff groups with intra-group allocation agreements and, as a result, distributions from the Receivership Estate to those Defrauded Investors and/or their portion of the proceeds of the Tort Claim Settlement with the Receivership Entity may be combined with those of other members of the respective plaintiff group and allocated in accordance with an intra-group agreement, which may ultimately result in those Defrauded Investors receiving more or less than the Receiver’s Calculated Interim Distribution [Rising Tide]; and

(6) In relation to the Claims of Goal Financial, LLC (“Goal Financial”) and Goal Structured Solutions, Inc. (“Goal Solutions”), (1) rescinding and disallowing the previously Allowed Claim of Goal Financial, (2) approving the classification of Goal Solutions’ claim as a Defrauded Investor Class Claim, (3) approving the Goal Solutions’ claim amount, and (4) approving a distribution to Goal Solutions under the Court-approved Distribution Plan.

Dated this 19th day of July, 2021.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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