

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.

No. 3:16-cv-00438-JR

NOTICE OF HEARING OF THE RECEIVER’S PROPOSED DISTRIBUTION PLAN,
PROPOSED FINDING OF THE EXISTENCE OF A PONZI SCHEME AND
YOUR RIGHT TO BE HEARD

**TO: ALL KNOWN CLAIMANTS AND OTHER PARTIES IN INTEREST OF THE AEQUITAS
RECEIVERSHIP ENTITIES**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On **January 14, 2020**, the United States District Court for the District of Oregon—Portland Division (the “Court”) entered an 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 (the “Procedures Order”),¹ in relation to the Receiver’s Motion To Approve the Receiver’s Distribution Plan and Determination of a Ponzi Scheme (the “Distribution Plan Motion”).² The Procedures Order approved the form of this Notice. You are receiving this Notice because **your rights may be affected.**

1. WHAT IS A DISTRIBUTION PLAN?

A distribution plan, once approved by the Court, will dictate how the distributable funds of the Receivership Defendants³ in the above-captioned case and all the specified and/or majority owned affiliates they control⁴ will be apportioned among claimants and the process by which such funds will be distributed.

¹ Dkt. #790.

² Dkt. #787.

³ The Receivership Defendants include: Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC.

⁴ The following Aequitas entities (or their predecessors in interest) are now part of and together with the Receivership Defendants comprise the Receivership Estate: AAM Fund Investment, LLC; ACC C Plus Holdings, LLC; ACC F Plus Holdings, LLC; ACC Funding Series Trust 2015-5; ACC Funding Trust 2014-1; ACC Funding Trust 2014-2; ACC Holdings 2, LLC; ACC Holdings 5, LLC; ACC Holdings, LLC; Aequitas Asset Management Oregon, LLC; Aequitas Capital Opportunities Fund, LP; Aequitas Capital Opportunities GP, LLC; Aequitas Corporate Lending, LLC; Aequitas EIF Debt Fund, LLC; Aequitas Enhanced Income Fund, LLC; Aequitas Enterprise Services, LLC;



Further, a distribution plan addresses how claims are calculated, their relative priority once allowed, sources for paying allowed claims, and the methodology for paying claims when funds are inadequate to pay all allowed claims an equal priority and amount.

2. HOW DOES THE RECEIVER PROPOSE TO DISTRIBUTE ASSETS?

On December 31, 2019, the Receiver filed the Distribution Plan Motion. 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.⁵

Aequitas ETC Founders Fund, LLC; Aequitas Hybrid Fund, LLC; Aequitas Income Opportunity Fund, LLC; Aequitas Income Opportunity Fund II, LLC; Aequitas Income Protection Fund, LLC; Aequitas International Holdings, LLC; Aequitas Partner Fund, LLC; Aequitas Peer-to-Peer Funding, LLC; Aequitas Private Client Fund, LLC; Aequitas Senior Housing, LLC; Aequitas Senior Housing Operations, LLC; Aequitas Wealth Management Partner Fund, LLC; Aequitas Wealth Management, LLC; Aequitas WRFF I, LLC; APF Holdings, LLC; Aspen Grove Equity Solutions, LLC; Campus Student Funding, LLC; CarePayment Holdings, LLC; CarePayment, LLC; CP Funding I Holdings, LLC; Executive Citation, LLC; Executive Falcon, LLC; Hickory Growth Partners, LLC; ML Financial Holdings, LLC; Motolease Financial LLC; The Hill Land, LLC; and Unigo Student Funding, LLC.

⁵ 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.

- 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.⁶ 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 matter⁷ (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 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

⁶ 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.

⁷ 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”).

and the fact that it does not affect any claimant that is not a member of the URGE Group.⁸

- Investors in certain equity funds⁹ (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.¹⁰
- 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,¹¹ until paid in full.¹² 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

⁸ 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.

⁹ 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”).

¹⁰ 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.

¹¹ 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.

¹² It is common for distribution plans to prioritize the claims of innocent investors in a Ponzi scheme over other non-secured creditors. *See, e.g., United States CFTC v. Capitalstreet Fin., LLC*, No. 3:09cv387-RJC-DCK, 2010 U.S. Dist. LEXIS 75113, at *4 (W.D.N.C. June 18, 2010) (approving plan giving investors priority over creditors); *SEC v. HKW Trading LLC*, No. 8:05-cv-1076-T-24-TBM, 2009 U.S. Dist. LEXIS 77215, at *8 (M.D. Fla. Aug. 14, 2009) (“Payment to claimants whose property was unlawfully taken from them is given a higher priority than payment to the general creditors.” (Citing Clark, *TREATISE ON THE LAW AND PRACTICE OF RECEIVERS* § 662.1(A), p. 1174, § 667, p. 1198 (3d ed. 1959)); *SEC v. Brian A. Bjork*, No. 4:11-cv-2830 (S.D. Tex. 2013).

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.

Please review the entirety of the Receiver's Distribution Plan Motion as your rights may be affected by provisions that are not addressed in the summary.

A copy of the Receiver's Distribution Plan Motion is available for review at the Aequitas Receiver's website (www.kccllc.net/aequitasreceivership) and the Receiver's Claims Agent website (<http://www.AequitasClaims.com>).

3. HOW CAN YOU BE HEARD?

If you wish to support, oppose, or otherwise respond to the Receiver's Distribution Plan Motion, you must do so **by no later than February 20, 2020**. To comply with that deadline, you must both:

- (a) Serve a copy of your written support, opposition or other response, if any, on counsel for the Receiver at:

Troy Greenfield
Lawrence R. Ream
SCHWABE WILLIAMSON & WYATT
1211 SW 5th Ave., Suite 1900
Portland, OR 97204

- (b) File the original of your written support, opposition or other response, if any, with the United States District Court, District of Oregon, Portland Division, located at 1000 SW Third Ave., Portland, OR 97204.

The Receiver will thereafter file and serve his reply to written support, objections, or other responses on March 20, 2020. The Court will hear the Receiver's Distribution Plan Motion and objections to it on March 31, 2020 at 10:00 a.m. before the Honorable Judge Jolie A. Russo, Room 1027 at the United States District Court, District of Oregon, Portland Division, 1000 SW Third Ave., Portland, OR 97204.

Dated this **23rd** day of **January 2020**.

SCHWABE, WILLIAMSON & WYATT

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