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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 MOTION TO APPROVE THE RECEIVER'S DISTRIBUTION PLAN AND DETERMINATION OF A PONZI SCHEME

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I. INTRODUCTION

This proceeding arises from a Ponzi scheme perpetrated against Investors. In March 2016, the U.S. Securities and Exchange Commission ("SEC") filed the above-captioned action, alleging violations of federal securities law.[1] The SEC[2] alleged that, following failed investments in 2014, Robert Jesenik, Brian Oliver, and N. Scott Gillis transformed entities that they controlled[3] into a "Ponzi-like" scheme and, by the end of 2015, those entities owed approximately 1,500 Investors[4] more than $300 million but "had virtually no operating income to repay them."[5] To date, two individuals have pleaded guilty to crimes involving securities fraud and the Receiver believes additional individuals have or will be indicted in connection with the Ponzi scheme perpetrated through the Aequitas Enterprise.

Receiver Ronald F. Greenspan was appointed by this Court pursuant to its equitable powers as a "necessary and appropriate" measure to "marshal[] and preserv[e] all assets of [the Receivership Estate]."[6] Since then, consistent with his Court-authorized powers and duties, the Receiver has marshalled and liquidated assets of the Receivership Estate and its interests in the

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[1] Complaint [Dkt. 1].

[2] Capitalized terms are defined in Appendix A hereto, or, if not set forth there, shall have the meanings ascribed to them in the Forensic Report. [Dkt. 663]. Additionally, Appendix B is a chart of acronyms used herein.

[3] In addition to the Aequitas entities named as Defendants in the SEC Enforcement Action, 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] The terms "investor," "invested," "invest," and "investment" are used interchangeably throughout the Forensic Report and this Motion to mean money loaned as debt or invested in equity vehicles.

[5] Complaint [Dkt. 1] at ¶¶ 3, 5, 56.

[6] Order Appointing the Receiver [Dkt. 156] at preamble & ¶¶ 6, 26.

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Extended Entities, investigated and litigated claims, facilitated Investors' third-party litigation and settlement of claims against attorneys and accountants that performed work for the Aequitas Enterprise pre-Receivership, and timely reported to this Court about the prior operations and current status of the Receivership Estate. Those reports show that the liabilities of the Receivership Estate exceed its assets by hundreds of millions of dollars.

Insolvency is the shrouded reality of any Ponzi scheme. As such, investors typically cannot be "made whole" from available assets, even when investors augment those recoveries by litigating claims against third parties alleged to have aided and abetted in the fraud. Here, the Receiver anticipates that, owing in part to the combined efforts of the Receiver and counsel for Investors to maximize recoveries from third parties,[7] the aggregate combined recovery by Defrauded Investors in the Aequitas Enterprise's Ponzi scheme—that is, from a combination of Pre-Receivership Returns, distributions under the proposed plan, and recoveries from third parties—may on average exceed 95-cents for each invested dollar.[8] With the combined efforts of the parties, this proceeding is now ripe for the challenging decision regarding how to allocate amongst the many deserving claimants the distributable funds overseen by this Court in connection with the Receivership.

Since the eponymous Ponzi scheme, courts have been guided by the "principle that equality is equity."[9] That simple maximum, however, presents hard choices when distributing limited assets to those victimized by the fraudulent scheme and requires significant compromises. Stated differently, while a given distribution plan contains many granular choices, whether the plan

[7] Third-party litigation recoveries and the allocation method those parties are utilizing are discussed below.

[8] This figure includes only Defrauded Investors who received less than 100% of their principal back pre-Receivership and are determined as eligible under the proposed Distribution Plan. Defrauded Investors not participating in third party litigation will receive less than the average.

[9] *Cunningham, Trustee of Ponzi v. Brown*, 265 U.S. 1, 20 (1924).

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ultimately achieves its equitable ends is a function of the plan as a whole.

The Receiver's Distribution Plan achieves that goal and, for the reasons stated herein, the Court should approve it. Provided below is an overview of the Distribution Plan, followed by background information regarding the Aequitas Enterprise, and a summary of this Court's equitable authority to enter and administer the plan. The Receiver next establishes that the Aequitas Enterprise was operated as a Ponzi scheme, further supporting the Receiver's equitable Distribution Plan. The Receiver then addresses the substantial authority supporting the major components of the Distribution Plan. Finally, this motion details the classification of claims and their treatment.

II. SUMMARY OF DISTRIBUTION PLAN

The Receiver, among other duties, was 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.[10] In formulating a plan, the Receiver has solicited input from the SEC and the Investor Advisory Committee members, who number in excess of 57 and represent all of the major groups of Investors. Based on this input and the Receiver's forensic investigation, the Receiver has formulated a Distribution Plan that contains interrelated components and compromises to provide the most equitable treatment of Allowed Claims. Those interrelated components and compromises identified by the Receiver are the result of significant consideration and analysis of various distribution plan models and the effects those models have on claimants. The Receiver's study of these models reveals that each discrete change to a plan, even if ostensibly rectifying some concern of a claimant at the granular level, necessarily cascades through the plan, creating an overall plan that is less equitable than what the Receiver proposes. Ultimately—and notwithstanding self-serving objections that some claimants have previewed to the Receiver—the

[10] Order Appointing the Receiver [Dkt. 156], ¶ 38.

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proposed Distribution Plan should be adopted by the Court in whole. A change to any single provision, many of which are already the result of considered compromises, would necessarily require the Receiver to reexamine the equitable balance of the plan as a whole and likely require changes in other provisions. Out of fairness, some modifications would also necessitate the institution of substantial claw back or other disgorgement litigation with numerous parties, whose treatment under the proposed plan abrogates the need for such litigation.

The major components of the Distribution Plan are:

- 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.[11]

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[11] 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

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- 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.[12] 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 accounts will be treated as separate accounts and not be aggregated.

- The plaintiffs in the Wurster matter[13] (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

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much each one receives. It would have no effect on how much the Defrauded Investors receive as a whole.

[12] 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.

[13] *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").

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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.[14] have made a similar request, but have not net obtained ex

- Investors in certain equity funds specified later in this Motion (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.[15]

- 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 ("QSF"),[16] until paid in full.[17] Current estimates, however, are that holders of Allowed Creditor

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[14] Plaintiffs in the Pommier matter (Appignani (Pommier) v. Deloitte, et al., State of Oregon, Multnomah County Circuit Court, Case No. 16CV36439) have made a similar request, but have not yet provided the Receiver with executed consent forms from the affected investors.

[15] 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.

[16] Order Granting Receiver's Motion for Order to Authorize, Approve, and Take Continuing Jurisdiction over a Qualified Settlement Fund, and for Related Relief (the "QSF Order") [Dkt. 781].

[17] 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-

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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 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 selection of the rising tide method in particular has a direct and consequential impact on the amount of distributions to be received by many Defrauded Investors (although it has no effect on the aggregate distribution to all investors). As noted, many courts have found rising tide to be more equitable than alternatives, the most common of which is the net loss method. Whereas the rising tide method endeavors to equalize the percentage of invested funds that are returned to each investor (during the Ponzi period and by the receiver), the net loss method seeks to allocate receivership distributions pro rata based solely on the investors' ending "balances" as of the date of the receivership. The net loss approach does not differentiate between those investors who received distributions during the Ponzi period (which came from funds obtained from later investors) and those who received nothing or relatively little during the Ponzi period. That is, the net loss method is detrimental to those fraud victims who received little or nothing prior to the receivership because they must split limited receivership assets with those investors who already benefited from their pre-Receivership receipt of other fraud victims' money. Every distribution methodology is imperfect; however, the Receiver, having weighed all alternatives, including the interrelated aspects of the proposed Distribution Plan, follows the many courts that have concluded

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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).

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that rising tide is the most equitable distribution model in the aftermath of a Ponzi scheme.[18]

In all likelihood, some parties will parse through the Distribution Plan trying to assess how individual components increase or decrease their distribution. That information may lead them to object to this Court about those provisions that do not further their self-interests. Respectfully, however, the Receiver notes—as he has in all dealings with the various Investors and creditors—that no individual or individuals' interests drive this Receiver's or this Court's analysis. Rather, the Receiver and this Court must simultaneously consider the interests of all Investors and Claimants and the touchstone is the overall equity of the distribution plan, consistent with the satisfaction of due process and individual property rights.

Together, the many discrete decisions that comprise the Receiver's proposed Distribution Plan achieve an equitable distribution of assets that are too limited to satisfy the otherwise legitimate claims of all Investors and other Claimants. Indeed, the proposed Distribution Plan is the most fair and equitable plan for the resolution and treatment of such Investors and Claimants. The Receiver urges the Court to view the proposed Distribution Plan as a whole and to approve the plan in its entirety.

III. THIS COURT HAS "EXTREMELY BROAD" POWER IN AN EQUITABLE RECEIVERSHIP.

As this Court knows, a receivership is appropriate where, for example, there is a need to "marshal and preserve assets from further misappropriation and dissipation" and "clarify the financial affairs of an entity for the benefit of investors."[19] This Court possesses "extremely broad"

[18] The rising tide method, because it accounts for funds returned to investors prior to the receivership, has the added benefit of reducing the need for the Receiver to evaluate whether funds returned to Defrauded Investors in this matter were made in good faith and then pursue avoidance actions for the recovery of those transfers determined not to be in good faith.

[19] *SEC v. Schooler*, No. 12-2164, 2012 U.S. Dist. LEXIS 188994, at *11 (S.D. Cal. Nov. 30, 2012).

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power when "determin[ing] the appropriate action to be taken in the administration of the receivership."[20] That "authority derives from the inherent power of a court of equity to fashion effective relief," and the exercise of that power is particularly appropriate "where a federal agency seeks enforcement in the public interest."[21]

This Court's power and its related "wide discretion" extend to "determin[ing] the appropriate relief in an equity receivership."[22] In part, because every fraudulent situation is different, "[t]here are no hard rules governing a district court's [distribution] decisions in [federal equity receiverships]."[23] That is, a distribution plan is subject to approval if it is "fair and reasonable."[24] Indeed, the Ninth Circuit will uphold any "'reasonable procedures instituted by the district court that serve the purpose' of orderly and efficient administration of the receivership for the benefit of creditors."[25] Such broad deference is warranted, according to the Ninth Circuit, because "most receiverships involve multiple parties and complex transactions."[26]

Those circumstances are clearly present here. As described in the next section, there were more than 57 interconnected legal entities in the Aequitas Enterprise's web and more than $1.3 billion of intercompany cash transfers just during the period January 2014 to March 2016.

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[20] *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986).

[21] *SEC v. Wencke*, 622 F.2d 1363, 1369, 1371 (9th Cir. 1980).

[22] *SEC v. Lincoln Thrift Ass'n*, 577 F.2d 600, 606 (9th Cir. 1978). *See also SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (quoting same).

[23] *SEC v. Enter. Tr. Co.*, No. 08 C 1260, 2008 U.S. Dist. LEXIS 79731, at *10 (N.D. Ill. Oct. 7, 2008).

[24] *See SEC v. Copeland*, No. CV 11-8607-R, 2014 U.S. Dist. LEXIS 195315, at *5 (C.D. Cal. May 19, 2014) ("With respect to the motion to approve the distribution of CWM Realty, 'the primary job of the district court is to ensure that the proposed plan of distribution is fair and reasonable.'" (Quoting *S.E.C. v. Wealth Management LLC*, 628 F.3d 323, 332 (7th Cir. 2010))).

[25] *CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (quoting *Hardy*, 803 F.2d at 1037-38).

[26] *Hardy*, 803 F.2d at 1037.

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IV. BACKGROUND

As detailed in the Forensic Report[27] and described in the summary below, the Receiver's investigation revealed that the Aequitas Enterprise was an orchestrated and sprawling Ponzi scheme. The Receiver has endeavored to maximize the Receivership Estate's assets for distribution to those people and businesses defrauded by the scheme. Further, the Receiver has facilitated recovery from third parties (*e.g.*, pre-Receivership attorneys and accountants) by, for example, making the past operations of Aequitas Enterprise transparent—even beyond the Receiver's Forensic Report, the Receiver made a massive trove of documents available to interested parties. The net effect is that, as noted in the introduction, the estimated combined recovery by Defrauded Investors[28] as a whole —that is, from the aggregate Pre-Receivership Returns, distributions under the Receiver's proposed plan, and recoveries from third parties—may likely exceed 95-cents for each dollar invested. Still, that relative achievement does not eclipse the fact that the Ponzi-scheme orchestrated through the Aequitas Enterprise harmed thousands of people and businesses who will not be "made whole."

A. Overview of Aequitas Enterprise

The Aequitas Enterprise dates to 1993, when Aequitas Capital Management, Inc. ("ACM," f.k.a. JMW Capital Partners, Inc.) was founded.[29] By the time this Court instituted this receivership proceeding, the Aequitas Enterprise had grown to include over 57 affiliated and controlled entities.[30] The broad array of entities were generally presented as arms of a diversified financial

[27] Forensic Report [Dkt. 663] at 11 and as supported throughout the Forensic Report. (Note: all page references are to the document page of the filed Forensic Report).

[28] This figure includes only Defrauded Investors who received less than 100% of their principal back pre-Receivership and are determined as eligible under the proposed Distribution Plan. Defrauded Investors not participating in third party litigation will receive less than the average.

[29] *See* Complaint [Dkt. 1] ¶ 18.

[30] *See generally* Appendix C (Aequitas Organization Chart).

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services company that created alternative investments including private equity, private credit, and specialty finance. The purposes of these entities were generally described as:

(1) Acquiring consumer loan portfolios, including, for example, healthcare and student loan receivables;

(2) Acquiring equity interests in operating companies;

(3) Providing fund raising and finance vehicles in the furtherance of items 1 and 2; and

(4) Providing asset management and wealth management services to those in its network, primarily Registered Investment Advisors ("RIAs").

The use of investor funds often deviated significantly from the official narrative. Notwithstanding the many involved entities, consolidated operational expenses of the enterprise (*e.g.*, facilities, equipment, employees, etc.) were paid primarily by two entities, ACM and Aequitas Enterprise Services, LLC ("AES").

As of March 2016, consumer receivables portfolios were held by various single-purpose entities. Oftentimes, a receivables portfolio was owned by one such single-purpose entity (an "asset" company), which in turn was owned by a further single-purpose entity (a "holding" company). Such a structure allowed the holding company to take on debt, often funds "lent" by Investors, and transfer these loan proceeds to its subsidiary as an equity investment. This mechanism both converted the Investors' loans into inter-company equity investments and precluded the holding company's creditors (the Investors) from obtaining security interests in the asset company's assets (*e.g.*, the consumer loan receivables). These holding companies, and their subsidiaries, the asset companies, were generally subsidiaries of Aequitas Commercial Finance, LLC ("ACF") or its parent, Aequitas Holdings LLC ("AH"), both of which are named defendants in the SEC Enforcement Action. The following table identifies the most significant holding companies, their asset company subsidiaries and the nature of the consumer receivables they

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owned:[31]

Entities	Receivables Type
CarePayment Holdings, LLC, CarePayment, LLC ("CPLLC"), CP Funding I Holdings, LLC, CP Funding I Trust ("CPFIT")[32]	Healthcare receivables
Campus Student Funding, LLC ("CSF")	Student loan receivables
ML Financial Holdings, LLC, MotoLease Financial, LLC ("MLF")[33]	Secured motorcycle and power sport equipment subprime leases
ACC F Plus Holdings, LLC, ACC Holdings 1, LLC, ACC Funding Trust 2014-1 ("ACCFT-1") ACC C Plus Holdings, LLC, ACC Holdings 2, LLC, ACC Funding Trust 2014-2 ("ACCFT-2") ACC Holdings 5, LLC, ACC Funding Series Trust 2015-5 ("ACCFST-5")[34]	Receivables from unsecured debt consolidation and credit rehabilitation loans originated by Freedom Financial

As of March 2016, the Aequitas Enterprise also held ownership interests in various companies engaged in multiple business activities, referred to as Portfolio Companies.[35] In

[31] *See generally* Appendix C (Aequitas Organization Chart).

[32] Of these entities, CPLLC and CPFIT held consumer receivables. CPFIT is an Exhibit B Extended Entity, which must cooperate with the Receiver.

[33] Of these entities, MLF held consumer receivables.

[34] Of these entities, ACCFT-1, ACCFT-2, and ACCFST-5 held consumer receivables.

[35] The Portfolio Companies and their operational role included CarePayment Technologies, Inc. ("CPYT") (healthcare receivables origination and servicing), EDPlus (student loans), Marketing Services Platform, Inc. ("MSP") and its wholly owned subsidiary Ivey Performance Marketing, LLC (advertising agency) ("Ivey"), Skagit Gardens, Inc. (retail nursery), Syncronex, LLC (technology solutions to the publishing industry) and non-controlling positions in SCA Holdings, LLC (back office integration to third-party investment management firms), MotoLease, LLC (motorbike and power sport receivables origination and servicing), QuarterSpot, Inc. (peer-to-peer small- to mid-size business loan originator), ETC Global Group (clearing, settlement and custodial services to securities industries participants); MOGL Loyalty Services, Inc. (restaurant

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addition to acquiring equity ownership interests in the Portfolio Companies, the Aequitas Enterprise would often provide financial advances to the Portfolio Companies for their many operational needs. That is, the Aequitas Enterprise was providing both equity and debt financing. Loans by the Aequitas Enterprise to the Portfolio Companies went almost exclusively towards paying the working capital needs of these companies (which often operated at significant losses) or providing them liquidity they needed to pay interest or fees (on prior loans) back to the Aequitas Enterprise. As will be addressed further, the Aequitas Enterprise was positioned to (and did) manipulate the value of its Portfolio Companies on the Aequitas financial statements by (a) exaggerating (or "writing up") the value of its equity interests in the Portfolio Companies, and (b) generally failing to "write down" the value of the loans receivable owed by the Portfolio Companies back to other parts of the Aequitas Enterprise, which would be necessary to reflect the reality that such loans were unlikely to be repaid.

The Aequitas Enterprise principally obtained funds from a combination of commercial lenders and Investors. Commercial lenders typically provided credit facilities to the single-purpose entities (*e.g.*, ACCH1 or ACCH2), which loans were often guaranteed by the Aequitas Enterprise (ACF, generally) and secured by the single-purpose entities' assets (*i.e.*, consumer receivables). All loans from commercial lenders have already been satisfied pursuant to orders of this Court and therefore are not dealt with in this Distribution Plan.

For purposes of describing the Distribution Plan and its effects, the Receiver has identified two categories of Defrauded Investors: Direct Investors and Fund Investors (while the Receiver finds it analytically helpful to describe these two categories of investors as they have different

rewards programs), Cloudward, Inc. (web service company), Certified Security Solutions, Inc. (digital identity security solutions), Pipeline Health Holdings, LLC (telepharmacy) and Independence Bankshares, Inc. (a bank holding company).

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investment characteristics, the Distribution Plan itself treats them the same without differentiation).

- Direct Investors: Investors who received promissory notes issued directly by a single-purpose entity that was a subsidiary to ACF or AH.[36]
- Fund Investors: Investors who received promissory notes or other securities issued by fund raising vehicles, specifically: Aequitas Enhanced Income Fund, LLC ("EIF"), Aequitas Private Client Fund, LLC, ("PCF"), Aequitas Income Opportunity Fund, LLC ("IOF"), Aequitas Income Protection Fund, LLC ("IPF") or Aequitas Income Opportunity Fund, II, LLC ("IOFII"). Fund Investors also includes Investors who received promissory notes issued by ACF (also referred to as "Private Note Investors"). These fundraising vehicles and ACF generally invested in or lent funds to subsidiaries of ACF or AH and the same single-purpose entities to which Direct Investors lent money.

As noted in the Summary of the Distribution Plan, *supra*, Pass-through Investors were not defrauded with respect to the use of their funds and their investments were not commingled with funds from other Investors. Pass-through Investors were those who acquired equity interests in certain entities—specifically Aequitas Capital Opportunities Fund, LP ("COF" n.k.a. CCM Capital Opportunities Fund, LP or "CCM"); Aequitas ETC Founders Fund, LLC ("ETCFF"); Aequitas Income Opportunities Luxembourg, SA, Aequitas International Opportunities, L.P., and ACC Funding Series Trust 2015-5 (the latter three referred to collectively as the "LUX Entities"); Aequitas WRFF I, LLC ("WRFF"); Aequitas Hybrid Fund, LLC ("AHF"); and Aequitas Partner Fund, LLC ("APF") (collectively, the "Pass-through Entities").

The Aequitas Enterprise business model often involved transferring funds received by an entity from Defrauded Investors to other entities in the Aequitas Enterprise, usually through intercompany loans or journal receivables. The credit facilities provided by commercial lenders

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[36] Direct Investors lent money to, for example, the subsidiaries of ACF such as CarePayment Holdings, LLC ("CPH"); MLF and ML Financial Holdings, LLC ("MLFH"), and subsidiaries of AH, such as ACC C Plus Holdings, LLC ("ACCCPH"); ACC F Plus Holdings, LLC ("ACCFPH"); Aequitas Corporate Lending, LLC ("ACL"); and Aequitas Peer-To-Peer Funding, LLC ("AP2PF").

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were expressly senior to these intercompany loans and, because the commercial lenders were typically secured by the assets of the lowest subsidiary, they were also structurally senior to (a) the parent's equity interests in the subsidiary and, relatedly, (b) any inter-company credit extended to the subsidiary's parent. While the Aequitas Enterprise's promotional material represented that "there may be from time to time certain assets held in consolidated entities that are pledged to other lenders on which the note holders hold a junior lien,"[37] the reality was far different. In actuality, the majority of the entities that held the receivables were leveraged by commercial lenders and/or had pledged their net assets as security for obligations owed to Direct Investors.[38] Consequently, the Fund Investors (and the funds in which they invested) generally held no interests that were actually secured by the Aequitas Enterprise's tangible principal assets, consumer and other third-party receivables,[39] and their interests, as well as the interests of the Direct Investors, in the entities that owned those assets were generally structurally or legally subordinate to institutional lenders.[40]

The following illustrates the investment structure as typically existed for consumer loan receivables and healthcare receivables.

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[37] Forensic Report [Dkt. 663] at 91.

[38] *Id.*

[39] Late in the Ponzi Period, the Aequitas Enterprise transferred security interests in some consumer receivables (associated with the Motolease business) to some Direct Investors.

[40] Forensic Report [Dkt. 663] at 91.

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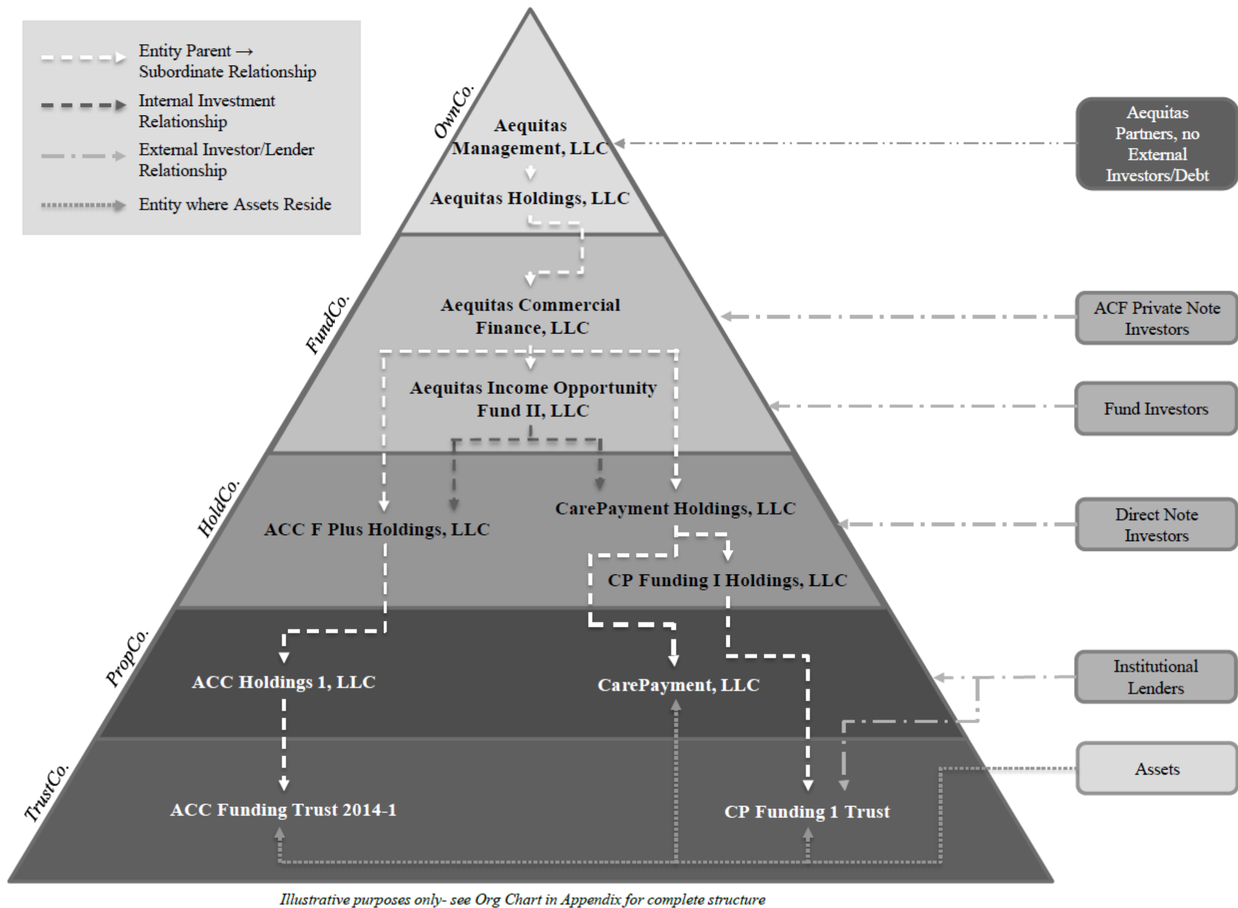

Illustrative purposes only- see Org Chart in Appendix for complete structure

B. The SEC Enforcement Action and the Appointment of the Receiver

As noted in the introduction, in March 2016, the SEC filed the above-captioned action, alleging violations of federal securities law by certain individuals who controlled the Aequitas Enterprise. Those Individual Defendants are:

- Robert Jesenik — Chief Executive Officer
- Brian Oliver[41] — Executive Vice President Product & Business Development
- N. Scott Gillis — Executive Vice President, Chief Operating Officer & Chief Financial Officer

[41] Brian Oliver recently plead guilty to conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349 and conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). Additionally, the former Chief Financial Officer, Olaf Janke, recently plead guilty to the same charges. The Receiver and others anticipate additional former directors and officers will be charged.

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The SEC alleged that these individuals—through the Aequitas Enterprise for which they were principals—executed a "Ponzi-like" scheme.[42] The Individual Defendants, according to the SEC, defrauded Investors, who were led to believe that they were purchasing indirect interests in consumer credit receivables.[43] Rather than purchasing such indirect interests, the Defendants were misusing the bulk of raised funds to pay operating expenses and to repay earlier Investors.[44] The SEC further alleged "[b]y the end of 2015, [Aequitas] owed Investors $312.0 million and had virtually no operating income to repay them."[45] The SEC Enforcement Action against the Receivership Entities has been resolved as to the liability claims in the complaint, but unresolved as to monetary relief.[46] The Individual Defendants have offered settlement terms to the SEC that counsel for the SEC are willing to recommend to their client. The offers of settlement are contingent only upon ultimate approval by the SEC.[47]

The Receiver was appointed for the Entity Defendants and various affiliated entities—initially on an interim basis on March 16, 2016,[48] and later, on April 14, 2016, on an enduring basis.[49] The Receivership Estate consists of the Entity Defendants as well as 43 other related entities,[50] and interests in the additional 9 Extended Entities in which Aequitas had a material investment, that are required by Court order to cooperate with the Receiver.[51]

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[42] Complaint [Dkt. 1], ¶¶ 3, 56.

[43] *Id*. at ¶¶ 1-7.

[44] *Id*.

[45] *Id*. at ¶ 5.

[46] Dkt. 192.

[47] Dkts. 769 and 770.

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

[49] Order Appointing Receiver [Dkt. 156].

[50] Collectively defined in the Appendix as the "Aequitas Entities."

[51] *See* Dkt. 156, Exhibit B.

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Consistent with that role and the powers authorized by the Court, the Receiver has among other activities, operated the Receivership Estate, performed reporting obligations, made records available to Investors for use in litigation, and substantially monetized the assets of the Receivership Estate. Those efforts and the resulting benefit to the Receivership Estate are described immediately below in Section IV.C. Still, the Receivership Estate's liabilities, summarized by category in Section IV.D, are extensive. Further, the Receiver has investigated the Aequitas Enterprise's pre-Receivership conduct of its financial and business affairs. The findings of that investigation—which are detailed in the Receiver's Report Regarding the Investigation of the Receivership Entity's Business Conduct (the "Forensic Report")[52]—are summarized below in Section IV.E. The Forensic Report is publicly available and has been quoted extensively in numerous parties' pleadings as well as discussed extensively with several governmental entities.

C. The Receiver Stabilized Operations, Resolved Several Claims, Performed Reporting Obligations, Made Records Available to Investors for Litigation Purposes, and Substantially Monetized the Assets of the Receivership Estate.

The Receiver's initial focus was to stabilize the Receivership Estate to preserve value and facilitate asset monetization. As established in the Receiver's Reports,[53] when he was appointed, many of the operating companies were experiencing extreme levels of financial distress—they were devoid of operating capital, often operating at losses, unable to make payroll, and on the verge of collapse. The receivership proceeding provided the Receiver time to perform necessary functions, without which the value of several entities would have been diminished or eliminated and, relatedly, losses to Investors would have been amplified. When the Receiver was appointed, the Aequitas Enterprise was under extreme pressure from senior secured creditors that were intent

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[52] [Dkt. 663].

[53] The Receiver provides broad summaries of some information without citation to specific Reports.

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on enforcing the default provisions of their loan agreements, including foreclosing on their collateral. Such actions would have decreased the value of the Receivership Estate and hindered the Receiver's efforts to maximize the assets available for distribution to Investors and other Claimants. As importantly, the ongoing viability and continued value of the most valuable collection of assets within the Aequitas Enterprise, CarePayment Technologies, Inc. (as servicer) as well as CarePayment Holdings, LLC and its affiliates (as holders of the medical receivables), was dependent upon two financial institutions, Bank of America and Wells Fargo, continuing to fund on delinquent revolving credit facilities in amounts up to $2 million per day. The Receiver's efforts to stave off foreclosure and maintain funding by the financial institutions ultimately allowed the sale of these assets for tens of millions of dollars in excess of what was owed to the institutional lenders. Moreover, the Receiver negotiated discounts from almost every pre-Receivership lending institution, thereby saving the Receivership Estate (and therefore Investors and other Claimants) millions of dollars of fees and default interest, preserved the Receivership Estate's control of assets, and, relatedly, retained value for the Receivership Estate. To date the Receiver has also successfully resolved significant individual claims, including some held by Direct Investors, against the Receivership resulting in a release of $26.4 million in purportedly secured claims against the Receivership and a return of $4.4 million in cash to the Estate.[54]

Separately, the Receiver addressed regulatory actions by federal and state agencies. The Receiver avoided a potentially costly and extended litigation by reaching a partial settlement with the SEC regarding its complaint against the Receivership Estate.[55] The Receiver also negotiated extensively and ultimately entered into and substantially implemented a settlement with the

[54] *See, e.g.*, Receiver's Report, April 30, 2019 [Dkt. 700] at 9-11 (which describes the resolution of claims and the disgorgement of transfers).

[55] Judgment of Permanent Injunctive Relief [Dkt. 192] (addressing Entity Defendants).

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Consumer Financial Protection Bureau and fourteen state Attorneys General in connection with the Corinthian Colleges student loan portfolio held by CSF.[56] Those implementation steps include modification or cancellation of approximately 47,000 loans, and corresponding notification to each borrower under the terms of the settlement.[57]

The Receiver has worked to sequence and resolve private claims against the Aequitas Enterprise economically. For example, the Receiver promptly enforced the stay of litigation against Enviso Capital Group, LLC, which had filed suit in California against parties within the Receivership Estate (among others), thereby avoiding litigation costs which would have depleted the Receivership Estate.[58] The Receiver later obtained on behalf of the Receivership Estate defense and indemnity against Enviso's claims in conjunction with resolving certain other claims.[59] Likewise, the Receiver enforced the stay of litigation against American Student Financial Group, Inc., which was prosecuting a suit in California against ACM.[60] Relatedly, the Receiver secured an order requiring the court clerk to disburse to the Receiver approximately $2.5 million held by that court, which funds are held in a segregated account pending resolution of the matter.[61] During the pendency of the stay, the Receiver has tried, unsuccessfully, to negotiate a resolution of the matter and therefore the Receiver anticipates resolving this claim against the Estate pursuant to the terms of the Distribution Plan and, to the extent necessary, prosecuting additional claims for

[56] Receiver's Report, April 30, 2019 [Dkt. 700] at 7.

[57] *Id.*

[58] Receiver's Report, Sept. 14, 2016 [Dkt. 246] at 8-9; Receiver's Report, Jan. 31, 2017 [Dkt. 559] at 16.

[59] Receiver's Report, Oct. 21, 2017 [Dkt. 559] at 13 (describing settlement of claims involving Private Advisory Group, LLC).

[60] Receiver's Report, Sept. 14, 2016 [Dkt. 246] at 8-9.

[61] *Id.*

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recompense against American Student Financial Group, Inc. and its principals.

When the Receiver was appointed, the Aequitas Enterprise was operating with significantly reduced staffing and without basic accounting support to the operating companies and the investor groups.[62] The Receiver undertook significant efforts to bring current the books and records of the Aequitas Enterprise, including hiring contract staff and retaining ordinary-course tax and audit professionals to comply with reporting requirements, which necessitates the filing of over 100 tax returns annually.[63]

The Receiver has endeavored to maximize recovery under the various insurance policies while, at the same time, clearing a path for Investors to pursue recovery against third-party professionals on claims that are not held by the Receivership Estate. To facilitate prosecution of those claims, the Receiver consolidated all digital data within his control into a centralized, organized, searchable database, which the Receiver has made available to interested parties.[64]

Additionally, the Receiver and his team coordinated and participated in mediation sessions with the Receivership Estate's insurers, the Individual Defendants, and counsel for the investor groups in an effort to broker settlement of claims that, absent an early negotiated resolution, would diminish the insurance proceeds available to pay a portion of the Investors' claims against the Receivership Estate and the Individual Defendants.[65] As an outgrowth of those negotiations, but

[62] Receiver's Report, Sept. 14, 2016 [Dkt. 246] at 9.

[63] *Id.* at 9, 17.

[64] Receiver's Report, October 31, 2019 [Dkt. 776] at 14-15. That database contains approximately 17.5 million documents/emails. *Id.* Not only has it been effectively utilized to respond to requests for production from governmental agencies, but the Receiver has provided access to the centralized database to counsel for litigants and other appropriately authorized parties, including more than 275 users representing or affiliated with various interested parties. *Id.* at 14-15 & n. 15.

[65] Receiver's Report, April 30, 2019 [Dkt. 700] at 14.

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subject to this Court's approval,[66] the Receiver entered into an agreement with four Investor groups to resolve certain tort claims for an aggregate of $30 million, with estate funds payable to the groups' respective attorneys trust accounts for further distribution to their clients. The Receiver is litigating claims against certain insurers to recover amounts payable by the Receivership under the Tort Claims Settlement.[67]

The Receiver and his team have shepherded settlement of various investor groups' claims against Tonkon Torp LLP, which alleged that, when it provided legal services to the Aequitas Enterprise, it aided and abetted in the fraud.[68] In relation to one investor group, on May 29, 2019, Judge Hernández granted preliminary approval of the partial class settlement with Tonkon Torp.[69] Tonkon Torp's resolution of claims against it will provide a total $18.5 million to Investors.[70]

Similarly, the Receiver has expended considerable time and effort in organizing and facilitating mediation of claims among investor groups, Deloitte & Touche, Eisner Amper, Sidley Austin, Duff & Phelps, TD Ameritrade, as well as the Individual Defendants and Receivership Estate.[71] Certain other investor groups' claims are unresolved but hold significant promise for further direct payments to those investor groups.[72]

As of September 30, 2019, the Receiver was able to monetize assets generating

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[66] By separate motion, the Receiver will seek approval of that agreement to settle certain tort claims with those four Investor groups.

[67] Receiver's Report, July 31, 2019 [Dkt. 749] at 14, 20-21 (addressing same).

[68] *Id*. at 8.

[69] *Ciuffitelli v. Deloitte & Touche*, Case No. 3:16-cv-00580-AC, Order, Dkt. 481 (D. Or. May 29, 2019).

[70] *Ciuffitelli v. Deloitte & Touche*, Case No. 3:16-cv-00580-AC, Order, Dkt. 585 (D. Or. Aug. 7, 2019) (order approving the Tonkon settlement).

[71] Receiver's Report, October 30, 2019 [Dkt. 776].

[72] The settlements are anticipated to include a release of all of the professional firms' contribution claims against the Receivership Estate.

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$402 million in gross receipts, which resulted in $170 million in net receipts (after discounted retirements of perfected senior secured debt and related asset expenses) to be used to fund the Receivership and, ultimately, a distribution to the Defrauded Investors who qualify under the proposed Distribution Plan.[73] A summary of the monetization of the Receivership Estate's assets as of September 30, 2019 appears in Appendix D.

D. The Receivership Estate's Liabilities Involve Many Classes of Claimants.

The Receivership Estate's liabilities far exceed its assets. For present purposes, it is sufficient to note the following classes of Claimants have asserted claims against the Receivership Estate or received a Notice of Receiver's Initial Determination, and are treated as holding an Allowed Claim against the Receivership Estate:

- Defrauded Investors (composed of Direct Investors and Fund Investors)
- Pass-through Investors
- Non-Officer Former Employee Claims
- Taxing authorities
- Creditor Claims
- Claims of the Individual Defendants

Further, there are claims associated with the operation of the Receivership:

- Administrative Claims
- Professional Claims

The Receiver estimates Total Investment from Defrauded Investors totaling approximately

[73] Amounts based on Receiver's Report, October 30, 2019, which includes proceeds and expenses of all Receivership Entities shown in the Standardized Fund Accounting Report, plus the amounts associated with CPFIT, an Exhibit B entity. The figures reported here only include external transactions, and do not include movements of funds between Receivership Entities. [Dkt. 776].

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$557 million[74] and other total non-duplicative, non-Defrauded Investor Claims asserted against the Receivership Estate are estimated to exceed $89 million.[75]

E. The Receiver's Investigation

The Receiver investigated the operations of the Aequitas Enterprise for the period from January 1, 2014 through March 10, 2016.[76] That investigation, which is detailed in the Forensic Report and summarized below, supports a finding that the Aequitas Enterprise operated as a Ponzi scheme.[77]

Because a Ponzi scheme is an escalating series of fraudulent transfers, the terms "investment," "principal," "interest," "earnings" and the like are misnomers and, while such terms may be used for convenience, these terms at most refer to defrauded persons' expectations; to the extent used herein, such terms convey no admission as to the character of the payments between Defrauded Investors and the Aequitas Enterprise and the fashion in which such payments were recorded on the books of the Aequitas Enterprise pre-Receivership.[78]

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[74] The estimate includes Total Investment associated with the 1,809 deemed Defrauded Investors, as described in this Plan. Therefore, it does not include any funds received or returned from Pass-Through Investors (unless transferred into the Commingled Pool Entity), Investors who have been returned more than 100% of their Total Investment balance during or prior to the Ponzi Period, or Investors who have been removed from the Distribution Plan through Receiver negotiations.

[75] 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. Based on an initial review of the filed claims, the Receivership team has eliminated what it believes are duplicative claims. Therefore, the amount of estimated Non-duplicative Claims is less than the sum of the filed claims and NODs issued.

[76] Forensic Report [Dkt. 663] at 5.

[77] *See infra*, § V.

[78] As one resource explains, "[f]or the most part, courts have and should disregard labels for the money paid to investors as the source of those monies were likely from new investor funds obtained as part of the fraudulent scheme. The funds paid out by the Ponzi debtor are all fraudulent funds and, in reality, there should be no distinction based on what label the debtor or a creditor

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As detailed below, most Investors are Defrauded Investors who were induced to lend money to the Aequitas Enterprise. Instead of being used for the purposes represented—namely, investment in consumer receivables portfolios—the perpetrators of the Ponzi scheme moved funds from one investment vehicle to another, where the funds were actually used to perpetuate the appearance of the Aequitas Enterprise's fiscal health, including to support operating expenses in excess of disclosed fees, to transfer moneys among entities to satisfy those entities' obligations, and, predominantly, to transfer newly invested moneys to pre-existing Investors.

As shown in the Forensic Report, the Receiver found that the cash flow into and out of the Aequitas Enterprise was significant and involved a large number of Defrauded Investors—and that the internal Aequitas Enterprise money transfers in furtherance of the Ponzi scheme were more than three times as large.[79] From January 1, 2014, to March 10, 2016, the Aequitas Enterprise's indebtedness to Investors exploded from $369.0 million to $617.6 million; however, the investment net of institutional debt by Aequitas in consumer receivables actually decreased from the fourth quarter of 2013 to the first quarter of 2016.[80] That contrast is material—each of the hundreds of millions of dollars that came into the Aequitas Enterprise as new investor debt was sloshed around multiple times while being spent on overhead and paying off existing Investors rather than on any assets to support these new obligations to Investors.

The Receiver also found—again, based on his review of the books and records as detailed in the Forensic Report—that between January 1, 2014, and March 10, 2016, Defrauded Investor funds were frequently transferred between Aequitas Enterprise's bank accounts at the direction

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gives to those funds." *See* Kathy Bazoian Phelps & Hon. Steven Rhodes, *The Ponzi Book: Unraveling Ponzi Schemes* § 20.02 (2012).

[79] Forensic Report [Dkt. 663] at 8.

[80] Forensic Report [Dkt. 663] at 8 and 91.

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and discretion of Aequitas Enterprise's management (rather than Investors' instructions).[81] During this period, at least $1.3 billion in intercompany cash transfers were completed.[82] Additionally, funds from the vast majority of Investors in IOFII were commingled at least twice—first at the IBAT[83] level (which acted as a consolidator for Aequitas investments) and again at the Aequitas Enterprise level.[84]

Between January 1, 2014, and March 10, 2016, according to the Receiver's findings, the Aequitas Enterprise:

- Was dependent on continued infusion of new money from Defrauded Investors to pay operating expenses;
- Did not use Defrauded Investor money for the purposes represented by the Aequitas Enterprise;
- Used a significant portion of new money from Defrauded Investors to execute transfers to earlier Investors, supposedly in the form of returns and principal;
- Did not generate sufficient (any) profits to pay the promised returns to Investors;
- Created numerous, self-described "Manufactured Notes," which purported to create liabilities among the entities and which frequently did not reflect the actual receipt of funds by the entities issuing such notes; and
- Converted liabilities between entities—*i.e.*, undertook a non-cash journal entry, intended to transfer an asset or liability from one Aequitas Entity to another without cash consideration—to favor specific Investors even when the new obligors did not receive any material benefit from assuming such liability.[85]

The Aequitas Enterprise was insolvent from at least July 3, 2014, onward.[86] Yet the

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[81] *Id*. at 8.

[82] *Id*. at 8 and 9, n.13.

[83] Affiliate of Integrity Bank and Trust.

[84] Forensic Report [Dkt. 663] at 8.

[85] *Id.* at 8 and 9, n.16.

[86] *Id.*

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enterprise continued raising funds.[87] In September 1, 2015, the recently hired General Counsel began inquiring about issues regarding raising further Investor funds and later advised management that Aequitas could no longer properly raise funds in the "ordinary course."[88] Even after that, Aequitas Enterprises continued to actively engage in fundraising.[89]

The Aequitas Enterprise's accounting records misrepresented its income, assets, and net worth, including by (i) failing to reflect appropriate reserves for uncollectable assets and (ii) including inflated "mark-ups" to asset valuations.[90] Each of these failures (among others) contributed to the perpetuation of the fraud. Aequitas falsified its reported financial condition by creating paper equity utilizing improper accounting methods and inflated valuations.[91] Aequitas then took that phantom equity and used it to justify taking in funds from additional Defrauded Investors, thereby leveraging the enterprise without any increase in actual assets. Moreover, with no material invested equity (as opposed to debt), Aequitas could only be solvent to the extent profits exceeded losses (or assets were legitimately "marked up"), and thus it had a constant need for additional investor funds. In fact, during the Ponzi Period, Aequitas was insolvent by virtue of: (a) excessive spending by Aequitas using money collected from Defrauded Investors, which outlays it improperly capitalized as an asset rather than charged as expenses[92] and (b) an inherently flawed business model that was not profitable.[93]

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[87] *Id.* at 8.

[88] *Id.*

[89] Forensic Report [Dkt. 663] at Ex. C.11 (annual cash flow for 2015-2016).

[90] *Id.*

[91] Such improper valuations are at the heart of litigation by the Investor groups against the Aequitas Enterprise's financial professionals, including Deloitte & Touche, Eisner Amper and Duff & Phelps. *See generally Ciuffitelli v. Deloitte & Touche*, No. 3:16-cv-00580 (D. Or.)

[92] Forensic Report [Dkt. 663] at 8 and 9, n.18.

[93] *Id.* at 39.

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Aequitas Enterprise's funds were used between January 1, 2014, and March 10, 2016, to make payments of $5.7 million to or for the benefit of Jesenik (and his relatives), Oliver, Gillis, and related entities.[94] In addition to making payments to existing Investors, $75.4 million of Defrauded Investor funds were also used to pay:

- $12.4 million in commissions and consulting fees to further the scheme, often to unlicensed salespeople.[95]
- $11.7 million to establish a network of registered investment advisors and service providers to further the scheme.[96]
- At least $51.3 million for overhead and compensation *in excess of* the 2% asset management fee and Administrative Services Agreement fees permitted by the offering documents.[97]

As detailed further in the Forensic Report, the Aequitas Enterprise suffered periodic liquidity crunches as early as 2011.[98] Because, as noted above, the Aequitas Enterprise had no material invested equity and many of its portfolio companies were hemorrhaging cash (and

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[94] *Id.* at 8 and 9, n.18.

[95] *See* Receiver's Report, Jan. 31, 2019 [Dkt. 674] at 12-13 (correcting figure included in Forensic Report).

[96] Forensic Report [Dkt. 663] at 9, n.19. As another extension of the Aequitas Enterprise's "business model," the enterprise created a wealth management branch to target RIAs, purporting to provide a complete wealth management platform to help them grow their business through the provision of "intellectual, financial and human capital." *Id*. at 79. Aequitas also acquired equity interests in several RIAs nationally and lent millions of dollars to others. *Id*. at 76. This was all done as an incentive for the RIAs to sell the Aequitas Enterprise's products to their network of individual investors. *Id*. at 79-80. In addition to offering the RIAs membership in Aequitas Capital Partners, the Aequitas Enterprise targeted RIAs through a program called Aequitas Financial Services Network, stating that program could provide member RIAs with benefits such as access to banks, insurance companies, institutional consultants, hedge funds, etc. *Id*. Through a third entity, Aequitas Wealth Management, Inc., the Aequitas Enterprise acquired or invested in various RIAs in order to encourage their clients to put money into "ACM Products" such as Private Notes. *Id*.

[97] *Id.* at 9.

[98] *Id. See also infra* § V.B (describing structural inability to turn a profit because of, *inter alia*, high capital costs from Investors' money, high management fees, and lack of equity).

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overvalued), the Aequitas Enterprise could only be solvent if it actually earned sufficient profits to offset the losses generated by virtually all of its investments.[99] In fact, rather than profits exceeding losses, the Forensic Report details that at least as far back as 2011, the Aequitas Enterprise was hemorrhaging cash and absent flawed fair value adjustments, lost money each year.[100] It therefore is no surprise that, with no material invested equity, it had a constant need for additional Investor funds, especially to make promised Investor payments, dating as far back as 2011.[101]

Compounding its other vulnerabilities, the Aequitas Enterprise's largest external investment was Corinthian Colleges' student loan receivables.[102] As of at least July 3, 2014, the following had impacted the carrying value and likelihood of repayment of these student loan receivables:

- The United States Department of Education and Corinthian Colleges, Inc. ("CoCo") announced an operating plan requiring CoCo to either close or sell all campuses over the next six months;
- CoCo ceased to honor its obligation to repurchase the many defaulted student loans in the portfolio; and
- There was a well-publicized ongoing Consumer Financial Protection Bureau investigation of CoCo, involving CoCo's abusive lending practices.[103]

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[99] Forensic Report [Dkt. 663] at 9.

[100] *Id.* at 39-40.

[101] *Id.* at 9.

[102] *Id.* As of July 1, 2014, those receivables had a face value of $241 million. *Id.*

[103] *Id*. The Forensic Report attached a timeline of events preceding Corinthian Colleges' closure. (*See* Forensic Report [Dkt. 663] at Ex. C.12.) Based on what was known (or should have been known) by Aequitas management, one could reasonably conclude that the financial instability of CoCo, and its inability and/or unwillingness to honor its guaranty, should have been questioned significantly before July 3, 2014. *Id.* at 9, n.20. That is, even before that date, one could argue about the reasonableness of the carrying value and likelihood of repayment of these receivables. *Id*.

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At least from July 3, 2014, forward, with the Aequitas Enterprise's business model dependent upon the performance of $241 million of increasingly delinquent CoCo student debt, the overwhelming weight of the evidence is that the Aequitas Enterprise was intractably insolvent.[104]

V. THE COURT SHOULD FIND THAT THE AEQUITAS ENTERPRISE WAS OPERATED AS A PONZI SCHEME.

A. Legal Standard

The Ninth Circuit describes a Ponzi scheme as "a phony investment plan in which monies paid by later investors are used to pay artificially high returns to the initial investors, with the goal of attracting more investors."[105] The term "Ponzi scheme" is more than simply descriptive. In practice, a finding that a Ponzi scheme was perpetrated creates a so-called "Ponzi presumption," by which a court may infer the perpetrator's intention to hinder, delay, or defraud for purposes of voiding transfers.[106] That is because, at its inception, a Ponzi scheme is insolvent.[107]

Proof of a Ponzi scheme is commonly understood to involve proof that "(1) deposits were made by investors; (2) the Debtor conducted little or no legitimate business operations as

[104] *Id.* at 9. While the Aequitas Enterprise was likely insolvent substantially prior to July 3, 2014, the Receiver did not consider it a beneficial use of Receivership resources to undertake the extensive analysis necessary to support or refute a hypothesis of insolvency prior to July 2014. *Id.* With respect to the exact date of insolvency at or near the time of the CoCo default, there are comprehensive financial statements as of June 30, 2014, and therefore the Receiver has used those balances in connection with his analysis and finding of insolvency at least as of July 3, 2014. *Id.*

[105] *Santa Barbara Capital Mgmt. v. Neilson (In re Slatkin)*, 525 F.3d 805, 809 n.1 (9th Cir. 2008) (quoting *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 759 n.1 (9th Cir. 2000)).

[106] *See, e.g.*, *In re Slatkin*, 525 F.3d at 814 ("We hold that once the existence of a Ponzi scheme is established, payments received by investors as purported profits—*i.e.*, funds transferred to the investor that exceed that investor's initial 'investment'—are deemed to be fraudulent transfers as a matter of law.").

[107] *See, e.g., Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (Posner, J.) (remarking that the perpetrator's Ponzi scheme was "insolvent from the outset"); *In re Independent Clearing House*, 77 B.R. 843, 871 (D. Utah 1987) ("By definition, an enterprise engaged in a Ponzi scheme is insolvent from day one."); *In re Randy*, 189 B.R. 425, 441 (N.D. Ill. 1995) ("Having been convicted of a Ponzi scheme, Randy was insolvent from its inception as a matter of law.").

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represented to investors; (3) the purported business operations of the Debtor produced little or no profits or earnings; and (4) the source of payments to investors was from cash infused by new investors."[108] That said, there are many other factors courts will often consider, including many that are commonly recognized as badges of fraud.[109]

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[108] Phelps, *The Ponzi Book* at § 2.03 (quoting *Rieser v. Hayslip (In re Canyon Sys. Corp.)*, 343 B.R. 615, 630 (Bankr. S.D. Ohio 2006) (citation omitted). *See also Hayes v. Palm Seedlings Partners-A (In re Agric. Research & Tech. Grp., Inc.)*, 916 F.2d 528, 536 (9th Cir. 1990) ("Distributing funds to earlier investors from the receipt of monies from later investors is the hallmark of Ponzi schemes.").

[109] The author of *The Ponzi Book: Unraveling Ponzi Schemes* § 2.03 (2012), identified the following:

> (1) The Ponzi perpetrator did not have any legitimate business operation to which its alleged investment program is connected.
>
> (2) The Ponzi perpetrator made unrealistic promises of returns on their investments.
>
> (3) "[N]ew investor money was being used to pay old investors' and 'money was commingled."
>
> (4) The perpetrator recruited agents to sell its products and paid commissions to perpetuate the scheme.
>
> (5) The perpetrator paid the brokers high commissions to induce them to continue the sales and keep the cash flowing in.
>
> (6) The commission structure with the sales people provided incentives "to discourage investors from requesting withdrawals."
>
> (7) Excessively large fees were taken by the perpetrator from the customers' "investment" funds.
>
> (8) There were inconsistencies between debtors' bank statements and "false statements issued to customers."
>
> (9) The perpetrator failed to invest all of the investors' funds in promised investments.
>
> (10) The perpetrator used customer funds "for non-customer purposes."
>
> (11) Later investors received lower returns than earlier investors.
>
> (12) Investors were encouraged to roll over or extend their investments rather than receive back their principal.

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B. Argument

Ponzi schemes are doomed from their inception, even when augmented by some legitimate business.[110] Such was the case for the Aequitas Enterprise.

It is incontrovertible with respect to the Aequitas Enterprise that: (i) moneys were transferred to it by Defrauded Investors as putative investments; (ii) the Aequitas Enterprise acquired significant portfolios of consumer accounts receivable, (iii) the Aequitas Enterprise acquired significant and sometimes controlling interests in numerous businesses both related to and independent of the consumer accounts receivable, and (iv) that due to the exceptionally high leverage, high cost of capital, high operating, overhead and marketing costs, and generally poor performance of these various investments, a substantial portion of the transfers back to Investors (purportedly as principal and interest) between January 1, 2014, and March 10, 2016, was possible only because of new funds from Defrauded Investors.[111] Moreover, as discussed in the Forensic Report, at least since July 2014, the Aequitas Enterprise was insolvent, and the actual financial condition of the Aequitas Enterprise and activities undertaken were not accurately disclosed to

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> (13) The perpetrator "mischaracterize[s] the nature of the … investment opportunities and any risk associated with making an investment."
>
> (14) The perpetrator overstated its investment returns and understated its losses.
>
> (15) Investors' monies were commingled.

(Footnotes omitted.)

[110] *Cf. Ritchie Capital Mgmt., LLC v. Stoebner*, 779 F.3d 857, 859 (8th Cir. 2015) (voiding transfers of Polaroid's assets undertaken in furtherance of Ponzi scheme even though "Polaroid operated as an independent, stand-alone corporation and engaged in legitimate business operations"); *In re Bonham*, 251 B.R. 113, 131 (Bankr. D. Alaska 2000) (observing that "[m]any Ponzi schemes … have some legitimate business operation").

[111] Forensic Report [Dkt. 663] at 11.

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Defrauded Investors.[112]

The Aequitas Enterprise's collapse was all-but inevitable after July 3, 2014, for at least four interrelated reasons—each consistent with the existence of a Ponzi scheme. First, as described above, the Aequitas Enterprise had inadequate funds to pay existing Investors as of at least July 3, 2014, which led the perpetrators to obtain new investments from Defrauded Investors.[113] Second, in relation to the representations made to Defrauded Investors about how their moneys would be used, the Aequitas Enterprise used little of their moneys for those purposes.[114] Third, the Aequitas Enterprise's numerous actual business operations generally produced no profits or, more often, produced significant losses, especially on an after debt-service basis because entities were capitalized almost entirely with debt.[115] And fourth, indebtedness to earlier Investors (as well as operating expenses) were being paid with cash infused by new Defrauded Investors.[116]

The conclusion that the Aequitas Enterprise was a Ponzi scheme is further cemented by considering additional factors commonly considered by courts in assessing whether a Ponzi scheme was being operated.

First, Defrauded Investors' moneys were commingled,[117] a factor consistent with a Ponzi scheme.[118] Within the Aequitas Enterprise, cash was transferred between entities on an "as

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[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id*. The exception for entities are those in which Pass-through Investors contributed moneys to Pass-through Entities (as identified in Appendix A). The Receiver is not proposing to treat these Pass-through Investors nor their investments as part of the Ponzi scheme.

[116] *Id.*

[117] *Id* at 11-37.

[118] *See, e.g., Cunningham*, 265 U.S. at 12-13 (holding that under circumstances involving multiple victims and commingled funds, tracing should not be utilized and that, instead, equity demands that all victims of the fraud be treated equally); *Neilson v. Chang (In re First T.D. & Inv.*

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needed" basis rather than pursuant to any investment criteria.[119] Such transfers were facilitated by what the Aequitas Enterprise actually called "Manufactured Notes."[120] The Manufactured Note process was established to retroactively justify the transfer of Defrauded Investor cash throughout the Aequitas Enterprise for the specific needs of a particular Aequitas Entity at the time.[121] As the Forensic Report explains, "[a]s new Investor funds were deposited or transferred into the individual Aequitas Funds …, the money would generally be swept regularly (daily or weekly) out of the Aequitas Fund into [the ACF Operating bank account] for various ACF or subsidiary … needs."[122] Later, between about 3 and 8 weeks after month-end, management would examine a "Product Menu" in a spreadsheet that indicated which of the Aequitas Enterprise's special purpose entities had "available collateral," and "notes payable would be created … and backdated to the first of the month following deposit [of Defrauded Investor funds], and book entries would be created to reflect the instruments so created[,]" and corresponding changes in intra-enterprise liabilities.[123] Further, "[i]n many cases, the subsidiary which incurred the note payable would never receive the cash consideration—as the cash primarily went to ACF for use as needed, and the liability was booked at whichever entity had 'available collateral.'"[124] As the Receiver explained in the Forensic Report:

Inc.), 253 F.3d 520, 524 (9th Cir. 2001) ("FTD … commingled funds received from investors and borrowers, using funds from any source for any and all purposes to continue its operations. FTD frequently used payments from one investor to pay interest and other payments to another investor—a classic Ponzi scheme.").

[119] Forensic Report [Dkt. 663] at 11-12.

[120] *Id.* at 9 n.15 and 30-31.

[121] *Id.* at 12.

[122] *Id.* at 30-31.

[123] *Id.* at 31.

[124] *Id.*

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> Unlike when an entity gives an "in-the-money" note in exchange for the receipt of cash, which has no effect on the borrower's net worth …, incurring an obligation without receipt of comparable consideration decreases net worth (and thus the investment value of those Investors whose funds had been invested as equity) and the cushion for existing investor creditors. … Effectively, management was stripping out equity and value from certain entities in an effort to fund needs at other entities. Moreover, often the ostensible net asset value which was supposed to back the Manufactured Notes did not in fact exist, thereby creating a deficit capital situation and harming all existing and subsequent Investors and creditors (and certainly the reported collateral value would not be expected to exist in the event of an orderly liquidation as has been conducted by the Receiver and was inevitable given the insolvency of the overall entity).[125]

In sum, notwithstanding that the Aequitas Enterprise maintained separate bank accounts,[126] the effect of management's practice of transferring cash on an "as needed" basis was to commingle Defrauded Investor moneys in furtherance of the Ponzi scheme.[127]

Second, even though the Aequitas Enterprise supplied the appearance of legitimate business operations, the operations were both money losing and rendered illegitimate because they were sustained only by moneys from Defrauded Investors.[128] As set forth in the Forensic Report:

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[125] *Id.* at 31.

[126] *Id.* at 12.

[127] *See Wing v. Williams*, No. 2:09-CV-399, 2011 U.S. Dist. LEXIS 25607, at *11 (D. Utah Mar. 11, 2011) (finding commingling because "when there wasn't enough money in one account to satisfy one entities' obligations, Mr. Southwick would transfer money between accounts in order to meet VesCor's obligations"); *Sell v. Zions First Nation Bank*, No. CV-05-0684-PHX-SRB, 2006 U.S. Dist. LEXIS 6558, at *8 (D. Ariz. Feb. 9, 2006) (observing that "the Receivership Entities were not independent but were controlled by the Insider Defendants and operated as a common enterprise with commingled assets").

[128] *See, e.g.*, *Scholes*, 56 F.3d at 757 ("It is no answer that some or for that matter all of [the investor's] profit may have come from 'legitimate' trades made by the corporations [owned by the debtor]. They are not legitimate. The money used for the trades came from investors gulled by fraudulent representations."); *Wyle v. C.H. Rider & Family (In re United Energy Corp.)*, 944 F.2d 589, 590 n.1 (9th Cir. 1991) (describing the Ponzi scheme's purported "profitmaking business opportunity" as "an illusion"); *In re Slatkin*, 525 F.3d at 816 ("Further, that Slatkin may have invested a small percentage of the funds he received from investors, and may have received a profit

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> Many, if not all, of the Aequitas operating companies and portfolios lost money (after accounting for bad debt and the cost of Investor capital). As predominantly consumer financing portfolios and companies, their profitability is substantially determined by the "spread" between their cost of funds and the rate they earn on their receivables (net of bad debt losses, overhead and assessed management fees). The high cost of Aequitas' Investor funds and management fee charges, coupled with no equity other than on account of the same high-cost Investor liabilities, meant that the enterprise was structurally unable to turn a profit.
>
> …
>
> ACF was shown as solvent (positive book value) and capable of producing a profit only because of partial consolidation (which did not eliminate [a] related party [note between ACF and AH] and the frequent "write-up" of the value of its equity ownership interests. In addition, the $180.3 million [note between ACF and AH] (as of December 31, 2015) was carried without meaningful reserve for doubtful payment, although there was significant evidence (including internal spreadsheets) showing repayment in full was very unlikely.[129]

In the Forensic Report, the Receiver further established that the appearance of solvency was driven by loans between entities within the Aequitas Enterprise and the capitalization of operating expenses.[130] Further, the operating companies were in fact performing poorly but there was no corresponding write-down of the investment within the Aequitas Enterprise.[131] The enterprise ascribed valuations to various entities, including CPYT, EdPlus, Marketing Services Platform, Inc. ("MSP") / Ivey Performance Marketing, LLC, ETC Global Group, LLC, that were, for multiple reasons, unrealistically high.[132] Further, the enterprise's portfolios of receivables

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from such investments, does not create a genuine issue of material fact as to the actual existence of the Ponzi scheme.").

[129] Forensic Report [Dkt. 663] at 38-39.

[130] *Id.* at 39-40.

[131] *Id.* at 40-42.

[132] *Id.* at 42-54.

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performed poorly due to its financial structure.[133]

Third, Defrauded Investors received unrealistic promises of returns.[134] As the Forensic Report establishes:

> [T]he operating companies in which Aequitas invested had a demonstrated history of unprofitability, which losses continued under Aequitas ownership. … [T]he consumer debt portfolios were afflicted with material structural defects to the extent that there were little to no net proceeds available to pay Investor returns at the operating/holding company level or at ACF. Given the lack of profitability at the subsidiary and portfolio levels, the only remaining source for most repayments was from new Investors. It is an unrealistic proposition that investor returns (at a rate determined by Aequitas, not based on the risk/creditworthiness of the investment) would be funded in such a non-sustainable way. This untenable arrangement is a hallmark of a Ponzi scheme, and an ever-increasing flow of money from new Investors is its lifeblood.[135]

Fourth, agents were recruited to sell the Aequitas Enterprise's products and commissions, consulting fees, bonuses, and other consideration were provided to agents to perpetuate the Ponzi scheme.[136] Relatedly, the Aequitas Enterprise furthered the Ponzi scheme by "expend[ing]

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[133] *Id*. at 54-60.

[134] *See, e.g., Donell v. Kowell*, 533 F.3d 762, 767 n.2 (9th Cir. 2008) ("A Ponzi scheme is a financial fraud that induces investment by promising extremely high, risk-free returns, usually in a short time period, from an allegedly legitimate business venture."); *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 759 n.1 (9th Cir. 2000) ("Generically, a Ponzi scheme is a phony investment plan in which monies paid by later investors are used to pay artificially high returns to the initial investors, with the goal of attracting more investors."); *Jobin v. Youth Benefits Unlimited (In re M&L Bus. Mach. Co.)*, 59 F.3d 1078, 1080 (10th Cir. 1995) ("Extremely high interest rates are paid to early investors and there may be a return of principal. … By actually paying excessive 'profits' to earlier investors ..., the sham organization is able to attract more investors.").

[135] Forensic Report [Dkt 663] at 71.

[136] *Id*. at 76-80. *See, e.g.*, *Cuthill v. Greenmark, LLC (In re World Vision Entm't, Inc.)*, 275 B.R. 641, 657 (Bankr. M.D. Fla. 2002) (recruited agents and paid high commissions to perpetuate the Ponzi scheme); *Smith v. Suarez (In re IFS Fin. Corp.)*, 417 B.R. 419, 440 (Bankr. S.D. Tex. 2009) ("The high interest rates promised and the promoter commission structure are hallmarks of a classic Ponzi scheme. … The commissions gave promoters an incentive to discourage investors from requesting withdrawals.").

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significant Investor funds on the creation of [Aequitas Wealth Management]," which was "intended as a complete wealth-management platform that would provide intellectual, financial and human capital to fuel growth-oriented [registered investment advisors] with a focus on alternative investments (with an incentive to sell [Aequitas Enterprise] product)."[137]

Fifth, Defrauded Investors' moneys were not invested as promised.[138] Examples of such conduct include the conversion of assets in a manner that limited the upside to Defrauded Investors while maintaining the risk of decline in the assets' values.[139] Further, the operating entities—ACM, ACF, Aequitas Investment Management, LLC, and Aequitas Enterprise Services, LLC, spent far more than the management fees that had been authorized by Investors, which difference was covered by new moneys from Defrauded Investors (particularly through ACF and its subsidiaries) being ostensibly lent to AH and contributed to its subsidiary operating entities.[140]

Sixth, Defrauded Investors were misled, for example, about the nature of investments and associated risk, investment returns, and losses as well as whether Defrauded Investor money was primarily being used to purchase receivables.[141]

Taken together, the evidence overwhelmingly supports the conclusion that the Aequitas

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[137] Forensic Report [Dkt. 663] at 79-80.

[138] *See, e.g.*, *United States v. Turner*, 897 F.3d 1084, 1090 (9th Cir. 2018) (perpetrator "told victims that he would use their investment to pay for the purchase or manufacture of goods, and then use the profit from reselling the goods to repay them at a specified rate of return" but, in fact, he "used the victims' money to enrich himself and to make payments of interest and principal to other victims so as to continue his Ponzi-like scheme"); *Scholes v. Lehmann*, 56 F.3d at 757 ("It is no answer that some or for that matter all of [the investor's] profit may have come from 'legitimate' trades made by the corporations [owned by the debtor]. They are not legitimate. The money used for the trades came from investors gulled by fraudulent representations.").

[139] Forensic Report [Dkt. 663] at 81-86 (describing conversion of assets to Aequitas Partner Fund, LLC and Private Client Fund, LLC).

[140] *Id.* at 88-90.

[141] *Id.* at 90-93.

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Enterprise was operated as a Ponzi scheme. The enterprise was insolvent no later than July 3, 2014 and continued to induce Defrauded Investors to transfer hundreds of millions of dollars to it, ostensibly to fund legitimate business activities. In fact, such moneys were principally used to fund the appearance of legitimate business operations and to fund transfers to prior Investors. Many factors—insolvent entities, increasing indebtedness, decreasing net investment, and the loss in value of the CoCo student debt—as well as many other factors addressed in the Forensic Report meant that, after July 3, 2014, it was reasonably certain that the Receivership Entity's indebtedness to Investors as a class would never be repaid in whole.[142] The Court should find that the Aequitas Enterprise operated as a Ponzi scheme at least as early as July 3, 2014.

VI. THIS COURT SHOULD ADOPT THE RECEIVER'S DISTRIBUTION PLAN, WHICH INCLUDES INTERRELATED DECISIONS TO QUANTIFY AND PRIORITIZE CLAIMS AND DISTRIBUTE THE RECEIVERSHIP ESTATE'S ASSETS EQUITABLY.

A. The Distribution Plan Follows Ninth Circuit Precedent to Preclude "Benefit of the Bargain" and Other Recoveries Beyond Total Investment.

In an ordinary breach of contract case involving a promissory note, the creditor may have claims beyond recovering the outstanding loan principal, including for interest, default interest, attorney fees, and other costs. In the aftermath of a Ponzi scheme, however, that ordinary course is properly superseded by equitable considerations. Here, the Receiver has concluded that equity and the collective interests of Defrauded Investors are best served by precluding "benefit of the bargain" recoveries and, instead adopting the rising tide methodology for purposes of calculating distributions to the Defrauded Investors.

[142] That conclusion has been furthered with the Receiver's filing of each quarterly report and the Forensic Report, all of which disclose that the Receivership Entity's indebtedness, including to Investors, was many times greater than its assets. In contrast to its $617.6 million in indebtedness to Investors on March 10, 2016, the most recent quarterly report reflects that the Receivership Entity "had cash balances of approximately $120.9 million as of September 30, 2019." Receiver's October 31, 2019 Report [Dkt. 776] at 39.

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The Ninth Circuit recognized that equity can displace an investor's claim to "benefit of the bargain" recoveries in *In re Tedlock Cattle Company, Inc.*[143] There, when a Ponzi scheme involving cattle feedlots collapsed, early investors contended that their fraud claims entitled them to "benefit-of-the-bargain" damages.[144] That argument was rejected by the bankruptcy trustee, then the bankruptcy court, and ultimately the Ninth Circuit. Equity cannot sanction early investors, who may already have been repaid their principal with later investors' money to recover paper profits that were "never earned," when those "false profit[s]" would "unfairly" reduce and defeat claims of later investors who had received none of their principal back.[145] Instead, equity allowed the receiver in that case to craft a formula for investor claims that relied on how much money each investor paid in and received back.[146]

For purposes of calculating the investment portion of the claim and the payment portion on the claim, the Receiver notes that:

- "Total Investment" is the sum of:
    - Investment Balance as of 7/1/2014:[147] The book balance of a Defrauded Investor's accounts as of July 1, 2014, which includes any interest that was accrued and reinvested to the investment account on or prior to July 1, 2014, including for the second quarter of 2014.
    - Cash Invested by a Defrauded Investor: The total amount of cash received from a Defrauded Investor between July 1, 2014, and March 16, 2016. This excludes non-cash transactions that involved transfers of a Defrauded Investor's investments between the Commingled Pool Entities.
    - The amount of any conversion of a Pass-Through Investor's investment in a Pass-Through Entity into an investment in a Commingled Pool Entity.

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[143] 552 F.2d 1351 (9th Cir. 1977).

[144] *Id.* at 1352.

[145] *Id.* at 1353.

[146] *Id.* at 1352, 1354 (upholding what that trustee described as a "cash-in-cash-out plan").

[147] Based on an insolvency date that was not later than July 3, 2014, the Receiver chose for accounting purposes to use account balances as of July 1, 2014.

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- "Pre-Receivership Returns" is the sum of:
  - Cash Interest/Return Payments to a Defrauded Investor: The total amount of cash paid to a Defrauded Investor between July 1, 2014, and March 16, 2016, irrespective of the characterization by Aequitas of such payments. This excludes all non-cash transactions that involved transfers of a Defrauded Investor's investments between the Commingled Pool Entities.
  - The total amount of cash paid to or for the benefit of a Defrauded Investor from commissions, advisory, and consulting fees or other payments as detailed in E-4.3.1 of the Forensic Report (see pages 76-77).
  - The amount of any conversion of a Pass-Through Investor's investment out of a Commingled Pool Entity into an investment in a Pass-Through Entity.

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.

Total Investment less Pre-Receivership Returns equals a Defrauded Investor's "Net Investment Loss." Any Defrauded Investor who received more than 100% of their Total Investment in Pre-Receivership Returns has no Net Investment Loss, as defined by this Plan.

B. The Distribution Plan Follows Ninth Circuit Precedent Allowing Assets to be Combined for Distribution to Defrauded Investors Where the Ponzi Scheme Commingled Assets.

As noted above, Ponzi schemes often feature a commingling of investor funds—which can occur by virtue of moneys deposited into unsegregated accounts or the transfer of moneys between entities such that moneys are used to meet the cash flow needs of the entire enterprise.[148] Indeed, given the fungible nature of money and intrinsic misuse of moneys in a Ponzi scheme, such

[148] *See supra* § V.B.

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commingling is, as a practical matter, assured. Still, some defrauded individuals will often argue, as a matter of self-interest, that a court should "trace" their transferred money—whether to a particular account, entity, collateral, or asset—to provide them recourse at the expense of other Ponzi victims for whom "tracing" is impossible or yields a less favorable distribution. In the aftermath of a Ponzi scheme, demands to "trace" by those investors it would benefit at the expense of other defrauded investors do not comport with equity.[149]

Whether an attempt to "trace" funds transferred by an investor leads that investor to a particular account, entity, collateral, or asset, the result is the same in equity receiverships arising out of Ponzi schemes: tracing is to be rejected because it creates inequitable priority among defrauded investors. Instead, federal equity receiverships generally support equitable pooling of the receivership entities' assets to enable equal treatment of all defrauded investors.[150]

Indeed, even if feasible, tracing is disfavored when the effect of doing so would cause an investor's distribution to turn on happenstance. Courts generally "will not indulge in tracing when doing so would allow one fraud victim to recover all of his losses at the expense of other victims."[151]

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[149] *See Cunningham*, 265 U.S. at 12-13 (rejecting "tracing" in Ponzi scheme because equity demands that all victims of the fraud be treated equally).

[150] *See, e.g.*, *S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 328 (5th Cir. 2001) (rejecting investor's argument that its funds could be traced to a segregated account); *United States v. Durham*, 86 F.3d 70, 72 (5th Cir. 1996) (rejecting tracing where investment was in commingled account); *S.E.C. v. Elliott*, 953 F.2d 1560, 1569, 1570 (11th Cir. 1992) (rejecting tracing because "[a]s all of the former securities owners occupied the same legal position, it would not be equitable to give some of them preferential treatment in equity"); *S.E.C. v. Bivona*, No. 16-cv-01386-EMC, 2017 U.S. Dist. LEXIS 148575, at *3 (N.D. Cal. Sep. 13, 2017) (ordering consolidation for purposes of distributing receivership assets without reference to bankruptcy case law); *Commodity Futures Trading Comm'n v. Eustace*, No. 05-2973, 2008 U.S. Dist. LEXIS 11810, at *17 (E.D. Pa. Feb. 15, 2008) (holding that bankruptcy authority regarding substantive consolidation is not controlling in equitable receivership).

[151] *United States v. Wilson*, 659 F.3d 947, 956 (9th Cir. 2011). *See also United States v. Real Prop. Located at 13328 & 13324 State Highway 75 N.*, *Blaine Cty., Idaho*, 89 F.3d 551, 553

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To justify pooling, "[c]ommingling need not necessarily be systematic."[152] Indeed, "courts have held that *any* commingling is enough to warrant treating all the funds as tainted."[153] "[E]ven the 'presence of some tainted funds in [a] commingled account is sufficient to taint' legitimately-acquired funds …."[154] To hold otherwise in a post-Ponzi scheme distribution plan would inequitably elevate the role of coincidence and happenstance.[155]

Relying on these principles, district courts overseeing equitable receiverships regularly reject individual investors' arguments to "trace" funds in aid of increasing their distributions at the expense of other similarly defrauded investors. Indeed, "[t]racing analysis … has been almost universally rejected by courts as inequitable."[156]

Here, while the Receiver recognizes that pooling of assets is a proper predicate to equitably

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(9th Cir. 1996) ("tracing fictions should not be utilized under circumstances involving multiple victims and commingled funds"); *S.E.C. v. Capital Consultants, Inc.*, No. 00-1290-KI, 2002 U.S. Dist. LEXIS 27399, at *5 (D. Or. Dec. 4, 2002) ("the case law disfavors a tracing approach when the Ponzi scheme made the value of a client's investment, and which vehicle the client was invested in when the receivership started, a matter of chance").

[152] *SEC v. Sunwest Mgmt.*, No. 09-6056-HO, 2009 U.S. Dist. LEXIS 93181, at *34 (D. Or. Oct. 1, 2009) (citing *Eustace*, 2008 U.S. Dist. LEXIS 11810).

[153] *Sunwest*, 2009 U.S. Dist. LEXIS 93181 at *34 (emphasis added; citing *SEC v. Byers*, 637 F. Supp. 2d 166 (S.D.N.Y. 2009), which in turn cites *United States v. Garcia*, 37 F.3d 1359, 1365-66 (9th Cir. 1994), *S.E.C. v. Better Life Club of Am., Inc.*, 995 F. Supp. 167, 181 (D.D.C.1998), and *S.E.C. v. Lauer*, No. 03-80612-Civ-MARRA/JOHNSON, 2009 U.S. Dist. LEXIS 23510, at *4 (S.D. Fla. Mar. 25, 2009)).

[154] *Bivona*, 2017 U.S. Dist. LEXIS 148575, at *27 (in receivership proceeding, quoting favorably *Garcia*, 37 F.3d at 1365-66, which the district court noted related to money laundering).

[155] *Byers*, 637 F. Supp. 2d at 179.

[156] *Byers*, 637 F. Supp. 2d at 177. *See also Bivona*, 2017 U.S. Dist. LEXIS 148575 at *12 (declining to "trace" investor funds because such funds were "regularly commingled" among the various entities, including using one entity's funds to cover obligations of other entities and funding one entity's investments with another entity's funds); *Sunwest,* 2009 U.S. Dist. LEXIS 93181 at *25-26, 34-36 (rejecting "tracing" even though all intra-company transfers "were faithfully recorded" because commingling occurred such that separately administering the various entities "would allow greater recovery by certain [i]nvestors on the arbitrary basis of the actions of the Sunwest Enterprise control parties").

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distributing funds to Defrauded Investors, not all assets associated with the Aequitas Enterprise should be combined for all purposes. First, Pass-through Investors' moneys were both used for their stated purpose and not commingled. Second, Pass-through Investors made equity (not debt or quasi-debt such as preferred equity) investments and thus have no stated principal balance (as would a loan) and, as such, expected to benefit or suffer losses from the change in value of such investment. Therefore, under the proposed Distribution Plan, equity investments in, and the assets of, COF/CCM, ETCFF, LUX Entities, WRFF, AHF, and APF *will not* be consolidated for purposes of distributing assets. The Pass-through Investors in those entities received exactly what was represented, their moneys were used as represented and used for their intended purposes, and such Pass-through Investors expected an equity profits interest rather than a stated rate of return. As such, those entities—COF/CCM, ETCFF, LUX Entities, WRFF, AHF, and APF—should not be consolidated for purposes of monetary distributions and the Pass-through Investors in those entities will receive no distribution from the QSF.

Notably, Defrauded Investors who are Direct Investors—that is, Investors who acquired promissory notes issued directly by a single-purpose entity—also will obtain distributions from the QSF rather than the single-purpose entity that issued the promissory note to the Direct Investor. All Defrauded Investors' moneys, including those from Direct Investors were commingled such that siloing assets within single-purpose entities would both disregard the fraud inherent in the operational realities of the Aequitas Enterprise and generally cause the Direct Investor to profit at the expense of other Defrauded Investors.[157] For purposes of making distributions to all Defrauded

[157] The Receiver considered providing for separate treatment of Direct Investors if the entity in which they invested met certain criteria under an equitable protocol he formulated—specifically, that a Direct Investor would be eligible for payment from a specific entity prior to pooling of Receivership Assets if (1) the funds provided by the Direct Investor/noteholder actually went to the entity that issued the note and (2) there were surplus funds available after all the intercompany notes, liabilities, and net equity (contributions/distributions only) were fully repaid.

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Investors, both Direct Investors and Fund Investors, the assets of the Receivership Estate should be combined.

C. The Distribution Plan Uses the Equitable Rising Tide Method to Allocate Distributions to Defrauded Investors.

The distribution method determines the amount of the distribution to a given investor. Any proposed distribution plan (and associated methodology) needs to choose how the limited funds will be allocated amongst the Defrauded Investors. There are two generally recognized distribution methodologies---net loss and rising tide. Net loss is based solely on the investors' ending balance whereas rising tide considers distributions that were made to investors pre-receivership during the Ponzi Period. Here, the Receiver proposes to utilize the rising tide method."[158]

As Judge Posner, writing for the Seventh Circuit, has observed, "[r]ising tide appears to be the method most commonly used (and judicially approved) for apportioning receivership assets."[159] Under this method, distributions are made with the purpose of equalizing the percentage of invested funds that are returned to each Ponzi-scheme investor without regard for whether those funds were returned by the perpetrators of the fraud before the scheme collapsed or as part of a

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Based on the Receiver's forensic investigation, none of the entities which issued notes to Direct Investors satisfies the "Receiver Protocol" conditions. Stated differently, no single purpose entity that issued Direct Notes could have owned the assets it did when the Receivership proceeding was instituted *but for* the funds supplied by *both* Direct Investors *and* other Defrauded Investors and repayment to Direct Investors from these entities (ahead of other Defrauded Investors) would necessarily be made with assets purchased with other Defrauded Investors' funds; thus, the Direct Investors are similarly situated to other Defrauded Investors and should not be beneficiaries of the fraudulently obtained funds, notwithstanding that their promissory notes were issued by identifiable, asset owning entities.

[158] As noted above and subject to Court approval, $30 million is to be distributed to four Investor groups to resolve tort claims. The Receiver does not control how such funds will be shared within those discrete Investor groups. The Receiver intends to account for the $30 million in a manner that preserves equity to Defrauded Investors as a class, as some Defrauded Investors are not members of any of the four Investor litigation groups. His method for doing so is addressed later in this section.

[159] *SEC v. Huber*, 702 F.3d 903, 906 (7th Cir. 2012) (Posner, J.) (citing authority).

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distribution plan. Stated differently, the goal is for all investors to ultimately receive a distribution equal to the same percentage of their cumulative investment, irrespective of whether the distribution was made directly by the Ponzi scheme or by a receiver from the assets remaining from the Ponzi scheme.

The rising tide method is perhaps most readily understood in contrast with the net loss method. Under the latter methodology, funds are allocated to investors pro rata according to each investor's total net investment loss at the end of the Ponzi scheme irrespective of how much was distributed to such investor during the pendency of the Ponzi scheme. Under such a net loss distribution methodology, investors who received the largest return of funds prior to a receivership, often from the funds of subsequent defrauded investors, receive a higher cumulative return than do investors who received lower (or no) distributions from the Ponzi scheme since the net loss approach does not take into account the differences in funds returned to investors prior to a receivership.

The rising tide method, on the other hand, does not distinguish between pre-receivership distributions (after the presumed start of the Ponzi scheme) and receivership distributions. Instead, the rising tide method addresses each investor's overall return of its investment and seeks to equalize that percentage to the extent that funds are available to do so. In other words, under the rising tide method, assets are distributed to the extent they are available to those investors who lost the greatest percentage of their investment until they reach parity with other investors who lost a smaller percentage of their investment due to distributions made during the Ponzi scheme before the appointment of a receiver.

Here, the Receiver has modeled both distribution methodologies (net loss and rising tide) based on an assumed total distribution of $120 million and the other terms of the proposed

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Distribution Plan.[160] As modeled, the rising tide distributions (including Pre-Receivership Returns and distributions that would be made under the Distribution Plan) reach approximately at least 38% for all Defrauded Investors. That is, Defrauded Investors who received Pre-Receivership Returns from Aequitas of less than 38% of their Total Investment would receive distributions from the Receivership such that their cumulative distributions would equal approximately 38% of their Total Investment. Under a rising tide methodology, this recovery percentage, or "Recovery Threshold," would be uniform across Defrauded Investors who receive funds under the Distribution Plan. And, unlike the net loss distribution method, under the rising tide method, Defrauded Investors who lost the greatest percentage of their Total Investment receive a proportionately greater distribution from the Receivership Property than Defrauded Investors who were already proportionally closer to being whole as a result of Pre-Receivership Returns. Stated differently, the rising tide method equalizes distributions to all Defrauded Investors, including those Defrauded Investors who received disproportionate distributions from Aequitas (made with later Defrauded Investors' money); those Defrauded Investors who received payments from the Ponzi scheme do not benefit at the expense of those who did not.[161]

The following paragraphs illustrate the differences between the two distribution methods

[160] The Receiver notes that these models are illustrative. The ultimate distributions could differ if the Court, for example, determines material provisions of the Receiver's proposed Plan should be revised, the amounts available for distribution are greater or less than assumed in the models based on the monetization of assets and the completion of litigation, or further information changes the extent to which accounts were aggregated in the models. The figures supplied in this section reflect the Receiver's reasonable efforts to provide the Court and Defrauded Investors an adequate basis to address whether the rising tide method is equitable under the circumstances of this case. Despite these reasonable efforts, figures provided in this section remain preliminary and subject to change and should be treated as illustrative rather than predictive.

[161] *See e.g.*, *Huber*, 702 F.3d at 909 (approving use of "rising tide" distribution plan); *CFTC v. Hojjberg*, No. 93-cv-3106, 1993 WL 441984, at *3 (N.D. Ill. Oct. 28, 1993) (adopting a "rising tide" plan); *CFTC v. Equity Financial Group, LLC*, No. 04-1512, 2005 WL 2143975, at *25 (D.N.J. Sept. 2, 2005) (same).

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utilizing four hypothetical Ponzi-scheme investors, each of whom invested $100,000. The illustrations, however, assume the four were paid different amounts before the Ponzi-scheme was discovered. Investor A was paid $10,000; Investor B, $20,000; Investor C, $30,000; and Investor D, $40,000, which leave them with different net investment loss amounts ranging from $90,000 to $60,000 (with total net investment losses of $300,000). In this illustration, we assume the receivership estate has $100,000 available for distribution.

NET LOSS METHODOLOGY

	Total Investment	**Pre-Receivership Returns**	**Return %**	**Net Investment Loss $**	**Distribution from Estate**	**Total Recovery $**	**Total Recovery %**
	a	*b*	*b / a*	*a - b*	*c*[162]	*b + c*	*(b + c) / a*
A	$100,000	$10,000	10%	$90,000	$30,000	$40,000	40%
B	$100,000	$20,000	20%	$80,000	$26,667	$46,667	46%
C	$100,000	$30,000	30%	$70,000	$23,333	$53,333	53%
D	$100,000	$40,000	40%	$60,000	$20,000	$60,000	60%
Total	**$400,000**	**$100,000**	**25%**	**$300,000**	**$100,000**	**$200,000**	**50%**

RISING TIDE METHODOLOGY

	Total Investment	**Pre-Receivership Returns**	**Return %**	**Net Investment Loss $**	**Distribution from Estate**	**Total Recovery $**	**Total Recovery %**
	a	*b*	*b / a*	*a - b*	*d*[163]	*b + d*	*(b + d) / a*
A	$100,000	$10,000	10%	$90,000	$40,000	$50,000	50%
B	$100,000	$20,000	20%	$80,000	$30,000	$50,000	50%
C	$100,000	$30,000	30%	$70,000	$20,000	$50,000	50%
D	$100,000	$40,000	40%	$60,000	$10,000	$50,000	50%
Total	**$400,000**	**$100,000**	**25%**	**$300,000**	**$100,000**	**$200,000**	**50%**

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[162] Net loss methodology calculates distributions from a receivership estate as investors net investment loss (a – b) divided by all estate net investment losses ($300,000) multiplied by the receivership distribution amount ($100,000).

[163] Rising tide methodology calculates distributions from a receivership estate that bring cumulative returns of all of the investors eligible for receivership distribution to the same total recovery percentage (the Recovery Threshold).

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Similarly, the net loss methodology also produces inequities between the hypothetical investors' total recoveries (as a percentage of total investment) even when the net investment loss for each investor is the same but the total investments are different.

NET LOSS METHODOLOGY

	Total Investment	**Pre-Receivership Returns**	**Return %**	**Net Investment Loss $**	**Distribution from Estate**	**Total Recovery $**	**Total Recovery %**
	a	*b*	*b / a*	*a - b*	*c*	*b + c*	*(b + c) / a*
A	$110,000	$10,000	9%	$100,000	$25,000	$35,000	32%
B	$120,000	$20,000	17%	$100,000	$25,000	$45,000	38%
C	$130,000	$30,000	23%	$100,000	$25,000	$55,000	42%
D	$140,000	$40,000	29%	$100,000	$25,000	$65,000	46%
Total	**$500,000**	**$100,000**	**20%**	**$400,000**	**$100,000**	**$200,000**	**40%**

RISING TIDE METHODOLOGY

	Total Investment	**Pre-Receivership Returns**	**Return %**	**Net Investment Loss $**	**Distribution from Estate**	**Total Recovery $**	**Total Recovery %**
	a	*b*	*b / a*	*a - b*	*d*	*b + d*	*(b + d) / a*
A	$110,000	$10,000	9%	$100,000	$34,000	$44,000	40%
B	$120,000	$20,000	17%	$100,000	$28,000	$48,000	40%
C	$130,000	$30,000	23%	$100,000	$22,000	$52,000	40%
D	$140,000	$40,000	29%	$100,000	$16,000	$56,000	40%
Total	**$500,000**	**$100,000**	**20%**	**$400,000**	**$100,000**	**$200,000**	**40%**

When comparing the differences of the net loss method versus the rising tide distribution methodology within the context of the Receivership, the most significant differences are (i) the treatment of those Defrauded Investors who contributed cash towards the end of 2015 and thereafter ("Late Stage Defrauded Investors") and (ii) Defrauded Investors who received substantial distributions from Aequitas during the Ponzi Period (generally from funds obtained

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from Late Stage Defrauded Investors).[164] Late Stage Defrauded Investors received little or no returned money; therefore, their Pre-Receivership Returns are close to 0% and their total Net Investment Loss is roughly equivalent with their Total Investment.

One such Late Stage Defrauded Investor who received almost no returns from Aequitas, Investor 578, invested for the first time in October of 2015, by investing $5.5 million into the Aequitas Enterprise. During the five months before the establishment of the Receivership, Investor 578 received payments totaling $104,000, or 2% re-payment of his Total Investment. Assuming a $120 million distribution and a hypothetical Recovery Threshold of approximately 38%, the rising tide methodology would apportion $2.0 million to Investor 578, which would equal an additional 36% distribution, bringing him (and all other Defrauded Investors) up to the Recovery Threshold of 38%. Alternatively, if the net loss methodology were adopted, all Defrauded Investors would receive some percentage of the net loss distribution, irrespective of whether their Pre-Receivership Return was 2% or 97%. Assuming the same $120 million was available to distribute, the net loss model would apportion to Investor 578 approximately $1.5 million, about $532,000 less than under rising tide, and amounting to a final recovery of only 28%.

In contrast to Investor 578, there are Defrauded Investors who received large cash payments from the Aequitas Enterprise during the Ponzi Period. One such Investor is Investor 151, who first invested in 2013, and had a beginning balance of $8.0 million as of July 1, 2014. During the Ponzi Period, Investor 151 contributed another $2.9 million into the Aequitas Enterprise, for a Total Investment of $10.9 million. However, since July 1, 2014, Investor 151 received $3.8 million in cash payments from Aequitas Entities, and as a result has a Pre-Receivership Return of 35% of his Total Investment. The net loss methodology would distribute approximately $1.9 million to

[164] The contributions from these Defrauded Investors were used to pay distributions to other, existing Defrauded Investors.

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Investor 151, the second highest distribution out of all Defrauded Investors. Combined with his Pre-Receivership Returns, that would equal a recovery of 53% of his Total Investment. However, the rising tide model would distribute $331,000 to Investor 151, equaling a further 3% of his Total Investment and providing him the same 38% recovery as all other Defrauded Investors who had not otherwise already received Pre-Receivership Returns above the Recovery Threshold. The particular distribution methodology adopted by the Receiver and the Court does not change the amount of funds in the aggregate that the Receiver will distribute; rather, it affects how much of the distribution a particular investor receives.

Based on the information analyzed by the Receiver to date, the Receiver has identified 1,809 total Defrauded Investors[165] active during the Ponzi Period, of which 240 Defrauded Investors lost 100% of their Total Investment, and another 1,453 Defrauded Investors (or 80% of the total Defrauded Investor population) got some Pre-Receivership Return but lost at least 62% of their Total Investment. Under a rising tide model which currently estimates a 38% Recovery Threshold, such Defrauded Investors representing 94% of all Defrauded Investors (1,693 of 1,809) would receive payment from the Receiver under a rising tide distribution plan. Only 116 Defrauded Investors, about 6%, all of whom already received distributions from Aequitas greater than the 38% Recovery Threshold but less than their Total Investment, would not receive any additional distribution from the Receiver. The following chart illustrates this stratification of Investor returns:

[165] This figure excludes Pass-through Investors. For purposes of further analysis in this section of Pre-Receivership Returns (that is, losses or gains during the Ponzi Period), Pass-through Investors are excluded.

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Pre-Receivership Returns	**Percent of Loss (Inverse of Pre-Receivership Returns)**	**Number of Defrauded Investors**
0%	100%	240
>0% to 15%	85% to <100%	753
>15% to 38%	62% to <85%	700
>38% to 50%	50% to <62%	30
>50% to 90%	10% to <50%	82
>90% to <100%	0% to <10%	4
Grand Total		**1,809**

These 1,809 Defrauded Investors losses range from $800 to $9.8 million. Under a net loss distribution method, each of these 1,809 Defrauded Investors would be apportioned a share of the $120 million distribution in direct proportion to their Net Investment Loss. Distributions in the net loss model would range from $214 to $2.6 million. If those net loss distributions were combined with Pre-Receivership Returns, individual recoveries for these 1,809 Defrauded Investors would range from 27% to 99%, with 137 of these Defrauded Investors receiving recoveries exceeding 50% of their Total Investment.

In contrast, a rising tide method provides the opportunity to reduce significantly the disparity in recoveries—under the modeled assumption, the Receiver would apportion distributions to 1,693 (94%) of these Defrauded Investors, which, if added to Pre-Receivership Returns, would amount to a recovery of 38% of their Total Investment. The other 6% of these Defrauded Investors would have already received Pre-Receivership Returns greater than 38% of their Total Investment from Aequitas (over which the Receiver has no control).

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Comparing Total Recovery Under Each Distribution Method

Percent Recovery (Post Distribution)	**Number of Defrauded Investors**		
	Net Loss	**Rising Tide**	
Qualifies for Receivership Distribution Under Method?	Yes	Yes	No
27% to <37%	992		
~38%	33	1,693	
>38% to 50%	647		30
>50% to 90%	130		82
>90% to <100%	7		4
Total	**1,809**	**1,809**	

To be sure, *either* distribution method would result in some Defrauded Investors obtaining a total return that, in relation to some other Defrauded Investors, is disproportionately large. That is the practical reality of a Ponzi Scheme; some Defrauded Investors were nearly whole before the scheme collapsed and, in the aftermath, there are inadequate funds to make all Defrauded Investors whole, and the Receiver, even if he wanted to, is not empowered to claw back Pre-Receivership Returns above the Recovery Threshold from good faith Defrauded Investors who suffered a Net Investment Loss.[166] But the rising tide methodology is *more equitable* in its treatment of Defrauded Investors. The Receiver's modeling shows the distribution of $120 million under the rising tide methodology apportions distributions to 1,693 Defrauded Investors, which—in combination with

[166] Addressing the rising tide method specifically, the Recovery Threshold does not rise high enough to reach some innocent Investors who received sufficient funds prior to the Receivership that, even without a further distribution under the distribution plan, they are already proportionally better off than those Defrauded Investors that the Recovery Threshold does reach. Without more funds to raise the Recovery Threshold, the alternative means of achieving full parity would be to bring some Investors down to the existing Recovery Threshold level by disgorging funds from innocent Investors whose recovery exceeded the existing Recovery Threshold level, even when those Investors did not receive "profits." Such disgorgement, however, would be improper because, in the aftermath of a Ponzi scheme, innocent investors are entitled to retain distributions up to the amount of their investment. *See Donell*, 533 F.3d at 772 (disgorgement from investors that did not receive "profits" is improper because they have valid "claims for restitution or rescission against the [entity through which the Ponzi scheme operated] up to the amount of the initial investment").

Pre-Receivership Returns—amounts to an approximate net 38% recovery for those Defrauded Investors. In contrast, under a net loss distribution methodology of the same $120 million, 1,025 of the Defrauded Investors would obtain a net recovery of only between 27% and 38% of their Total Investment, while 784 of the Defrauded Investors would receive a disproportionately large recovery in excess of 38%. Under a rising tide distribution plan, only 116 of these Defrauded Investors would receive a disproportionate recovery greater than 38% (all such funds paid by Aequitas and not the Receiver) and no Defrauded Investor would receive less.

Consistent with the Receiver's conclusion in this case, numerous courts have found that the rising tide distribution method is more equitable than the net loss method in the aftermath of a Ponzi scheme.[167] This is because, under a net loss method, "investors who received payments over the course of the Ponzi scheme that exceed their proportionate share are permitted … to keep those payments *and* share in a distribution of the estate," which has the inequitable effect of allowing such investors to recover a greater proportion of their investment than "other investors who did not receive any payments over the course of the scheme."[168] The net loss method "suffers from serious flaws and produces inequitable results because it ignores the illegal activities of the defendants"—namely, that money paid to investors during the course of the scheme "came from other victims of the fraud."[169]

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[167] *See, e.g.*, *United States CFTC v. Wilson*, No. 11-cv-1651-GPC-BLM, 2013 U.S. Dist. LEXIS 99992, at *18-20 (S.D. Cal. July 17, 2013) ("the Rising Tide Method is the most equitable remedy available"); *CFTC v. Equity Fin. Grp., LLC*, No. 04-1512-RBK-AMD, 2005 U.S. Dist. LEXIS 20001, at *84 (D.N.J. Sep. 2, 2005) ("The Court agrees with the Receiver that the rising tide method is the most equitable."); *United States v. Cabe*, 311 F. Supp. 2d 501, 509-510 (D.S.C. 2003); *SEC v. Parish*, No. 2:07-cv-00919-DCN, 2010 U.S. Dist. LEXIS 11757, at *27 (D.S.C. Feb. 10, 2010) ("the court concludes that Rising Tide is the more equitable distribution method").

[168] *Wilson*, 2013 U.S. Dist. LEXIS 99992, at *19.

[169] *Cabe*, 311 F. Supp. 2d at 509-510.

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Here, the Court should approve the Receiver's proposed Distribution Plan, which uses the rising tide method to make distributions to Defrauded Investors.

D. The Mechanics of the Rising Tide Calculation

Calculation of Allowed Defrauded Investor Claims[170] is based on the beginning balance of the account(s) as of the Ponzi Period, plus subsequent investments during the Ponzi Period to determine the Total Investments. The rising tide distribution to a given Defrauded Investor is the sum of Pre-Receivership Returns, plus the amount that the Receiver will distribute pursuant to the Distribution Plan. The rising tide distribution divided by Total Investment equals the rising tide recovery percentage (*i.e.*, the Recovery Threshold) for a given Defrauded Investor. Each Allowed Defrauded Investor Claim will be paid up to the Recovery Threshold based on the ratio of the Pre-Receivership Return received by a given Defrauded Investor to such Defrauded Investor's related Total Investment. If the Defrauded Investor received Pre-Receivership Returns that exceed the final rising tide Recovery Threshold, the Defrauded Investor will not receive a further distribution, unless and until all other Allowed Defrauded Investors Claims are paid the same rising tide Recovery Threshold and there are additional sums to distribute to Defrauded Investors.

E. The Distribution Plan Authorizes the Receiver to Equitably Consolidate Multiple Accounts or Claims of a Defrauded Investor for Purposes of Calculating Claim Amounts and Distributions.

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 other Defrauded Investors should not suffer or benefit on account of another Defrauded Investor's method of holding title to multiple accounts. As such, it is equitable to consolidate accounts of a given Defrauded Investor to prevent disparate outcomes between that Defrauded Investor and similarly situated Defrauded Investors.

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[170] Account and claim ownership shall be the determined as of the Claim Bar Date.

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Stated with greater precision:

- The Receiver has reviewed and will continue to review the Receivership Estate's account records (and those of IBAT) to identify TINs associated with accounts.

- To the extent that a TIN is associated with multiple accounts, those accounts and associated claims will be aggregated for purposes of calculating that Defrauded Investor's claim and distribution amounts.

    - An exception to this rule may apply for trust accounts (even those that may share a TIN with other trust or non-trust accounts) when the Receiver reasonably believes those trust accounts and associated claims represent separate trust interests. In such circumstance, the trust accounts and associated claims will not be aggregated for purposes of calculating the claim and distribution amounts for those accounts.

    - A second exception to this rule may apply when commercial transactions resulted in the change of ownership or control of investments, such transactions were executed between unrelated parties, and where the Receiver reasonably believes that cash was exchanged between the parties as part of such transactions. The affected claims will be reviewed to determine whether those transactions should be treated as if still held by the original holders for the purposes of calculating the current holder's claim and Distribution Plan amounts.

- Claimants are responsible for providing the necessary tax identification information to the Receiver and following the related information submission procedures that will be established by the Receiver at his sole discretion. Only one TIN associated with a given investment account will be used by the Receiver for the purpose of calculating distribution amounts and tax reporting (if applicable).

    - In the event multiple TINs are located or are provided in connection with the investment accounts which accounts bear names of more than one party, the Receiver will utilize the TIN that matches that of another investment account that had investment activity during the Ponzi Period.

    - In the event that multiple TINs match more than one other TIN of an investment account that had investment activity during the Ponzi Period or if there is not a match with another investment account, the Receiver will utilize the TIN associated with the first party named on the account, as applicable.

- Investors have expressed a strong preference to receive distributions on an "account by account" basis, particularly for accounts held by custodians (such as IRA accounts). Therefore, while claim amounts and total distribution amounts to a given Defrauded Investor will be determined at the TIN level, if multiple investment accounts share the same TIN, the Receiver would then allocate the resulting distribution amount attributable to a given Defrauded Investor across individual accounts that share the same TIN, with such allocation to be made pro-rata based

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on the account-level Net Investment Loss amount. In the event such allocation may not be feasible despite the Receiver's reasonable efforts, the Receiver will make distributions to the Defrauded Investor based on the TIN level attribution.

- The Receiver will determine in his sole discretion whether distribution payments will be made directly to Defrauded Investors or to the account custodians, as applicable. The Receiver is not responsible for compliance with investors' individual investment account rules and tax consequences.

Other courts have recognized that consolidating "accounts" is equitable. In *Equity Financial Group*,[171] the district court recognized that consolidating an investor's accounts, even when held in different capacities, was equitable. On that issue, the receiver argued that failing to consolidate "would permit an investor who used different investment vehicles and received funds in one account to obtain a disproportionately large distribution when compared to other single account investors."[172] Not only did the district court agree, but it found that the lone objecting party was, in effect, seeking just such a disproportionately large distribution; that investor had, prior to the court instituting the receivership, already withdrawn the entire principal from an account he held through his IRA.[173]

Here, for the same reasons as recognized by the district court in *Equity Financial. Group,* this Court should authorize the above procedures such that the Receiver may consolidate related accounts, as appropriate to serve equitable ends.

F. The Distribution Plan Accords Priority to Non-Officer Former Employee Claims with Allowed Claims Up to $12,850.

The classification and priority of claims is addressed with greater detail below. However, the Receiver proposes that Non-Officer Former Employee Claims[174] receive a priority claim

[171] 2005 U.S. Dist. LEXIS 20001, at *68 (D.N.J. Sep. 2, 2005).

[172] *Id*. at *88.

[173] *Id*. at *88-89.

[174] The definition of "Non-Officer Former Employee Claims" excludes the past officers and directors of the Aequitas-affiliated companies, including without limitation, Robert Jesenik,

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commensurate with how they would be treated under both federal bankruptcy law and the Oregon Receivership Code.[175] Non-Officer Former Employee Claims that accrued prior to the Aequitas Enterprise being placed in receivership will be paid from the QSF, to the extent allowed, up to $12,850 per employee.

VII. THE CLAIMS PROCESS[176]

Pursuant to and in compliance with this Court's Order (1) Establishing Claims Bar Date,

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Brian Oliver, Craig Froude, Scott Gillis, Andrew MacRitchie, Olaf Janke, Brian Rice, William Ruh, Steve Hedberg, Brett Brown, Tom Goila, Patricia Brown, Bill Malloy, and Thomas Szabo.

[175] Under 11 U.S.C. § 507(4), wage claims have administrative priority:

> but only to the extent of [$12,850] for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—
>
> (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
>
> (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(Dollar amount modified per Judicial Conference of the United States, by notice dated Feb. 16, 2016, 81 F.R. 8748, effective Apr. 1, 2016.)

The Oregon Receivership Code, set forth at O.R.S. Ch. 37, also places a high priority on wage claims. Under O.R.S. § 37.370(g), priority is afforded:

> claims for wages, salaries or commissions, including vacation, severance and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within 180 days of the earlier of the date of appointment of the receiver and the cessation of the estate's business, but only to the extent of $12,850 in aggregate for each claimant.

[176] In this section, capitalized terms are used as they were defined in the Receiver's Motion for 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. 681].

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(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"),[177] the Receiver implemented the claims process.

A. Claims Process Noticing – Known Potential Claimants

The Receiver undertook extensive efforts to provide notice and other documents to various categories of known potential claimants consistent with the requirements of the Claims Procedures Order. Such categories included:

i. All parties that have appeared in the SEC Enforcement Action;

ii. Claimants that the Receiver has determined, upon reasonable review of the Books and Records, have or may likely assert a Claim against an Aequitas Entity or have asserted claims against the Receivership Estate during the pendency of the SEC Enforcement Action;

iii. Former Employees;

iv. Investors;

v. Creditors;

vi. Administrative Claimants;

vii. Federal, state, local or other governmental entities or authorities that may assert a Claim for taxes arising from or attributable to tax periods ending on or before March 16, 2106, even if the taxes are due and payable subsequent to March 16, 2016; and

viii. Counsel for parties in at least 20 civil actions related to Aequitas.

Through staff and the Receivership's claims agent, notices that included the Court-approved Notice of Claims Bar Date and Procedures for Submitting a Proof of Claim and Proof of

[177] Dkt. 683.

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Claim Form were mailed to 6,982 recipients. The vast majority of the notices were mailed out via first class mail by the Receiver's Claims Agent, Epiq Corporate Restructuring, LLC ("Epiq"), between May 31, 2019 and June 4, 2019, in compliance with the timeframe established by the Claims Procedures Order.

B. Notice of Receiver's Initial Determination

To facilitate the claims process, to ease the burden on known claimants and consistent with the provisions of the Claims Procedures Order, the Receiver exercised his discretion to provide an additional Notice of Receiver's Initial Determination ("NOD") to the vast majority of the Investors and likely Creditors in the various Aequitas Entities. The Receiver developed the NOD process after extensive research and analysis. NODs were sent to claimants to confirm the accuracy of the Aequitas data and eliminate the need for claimants to file a proof of claim if the claimant agreed with the information provided in the NOD. For Investors, the NODs included a detailed record and a summary of all the Investor's transactions on both "book" and cash basis starting from July 1, 2014. Where relevant, the NODs also identified activity associated with investments that subsequently transferred to an Investor from another Investor.[178] When mailed, the NOD and attachments were included in the same packet as the general claims process notices described above.

In total, the following number of NODs and other notices about the claims process were sent out:

[178] For Investors who acquired or otherwise received a pre-existing Aequitas investment after July 1, 2014, the NOD's included a Schedule A and Schedule B attachment that included relevant account activity that pre-dated their acquisition of the investment.

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Investors who received an NOD	2,060
Other pre-Receivership Creditor/Vendors who received an NOD	2,040
Former Employees who received an NOD	84
Administrative Claimants who received an NOD	646
Potential Claimants who received Claims Process notices but did not receive an NOD	2,152
Total Notices	**6,982**

C. Disseminating Information about the Claims Process

1. Notice by Publication

The Receiver placed ads containing information about the claims process in 15 newspapers, including the Austin American-Statesman, Dallas Morning News, Fort Worth Star-Telegram, Houston Chronicle, Los Angeles Times, Sacramento Bee, San Antonio Express-News, San Diego Union-Tribune, San Francisco Chronicle, San Jose Mercury News, Miami Herald, Portland Oregonian, Seattle Times, Tampa Bay Times, and USA Today National Edition. Consistent with the terms of the Claims Procedures Order, two placements were made in each publication within approximately two weeks from each other, with the first placement around May 20-22, 2019, and the second around June 3, 2019.

2. Notice by Press Release

The Receiver also issued a press release explaining the claims process and posted it on the main Aequitas Receivership website at http://www.kccllc.net/aequitasreceivership, where key information about the claims process can also be located (in addition to the dedicated claims website). On May 20, 2019, the Receiver disseminated the press release through PR Newswire. Based on the report provided by PR Newswire, the press release was picked up by 121 media

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outlets, including multiple digital media sources, with the total estimated potential audience of approximately 91 million visitors.

3. Dedicated Website for the Aequitas Receivership Claims Process

The Receiver worked with Epiq to set up a dedicated website for the Aequitas Receivership claims process, www.AequitasClaims.com. Through December 12, 2019, the website has been visited by 464 unique visitors and 132 returning visitors and has received a total of 936 page views. The website contains detailed information about the claims process and instructions about filing a claim, provides access to key documents, functionality to submit an inquiry, contact phone numbers, and includes an extensive FAQ section with 38 questions and answers.

4. Receiver's Additional Actions in Support of the Claims Process

While the following actions were not specifically required by the Claims Procedures Order, the Receiver undertook these steps to increase the reach of the claims process and to assist potential claimants' understanding of and compliance with the Claims Procedures Order. The Receiver established a dedicated call center operated by Epiq to field inquiries related to the claims process. Through December 20, 2019, the call center handled 63 calls.

VIII. CLASSIFICATION AND TREATMENT OF CLAIMS

The priority and source of payment for each Allowed Claim will be determined according to its classification, as indicated below.

A. Classification

1. Administrative Claims

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,

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(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.

2. *Professional Claims*

Professional Claims include those based on professional services provided and fees and costs incurred after March 16, 2016, by the Receiver and his professionals for the benefit of the Receivership Estate or the QSF. The Receiver will continue to satisfy Professional Claims in the ordinary course and in accord with prior or future court orders, as appropriate to the claim.

3. *Non-Officer Former Employee Claims*

Non-Officer Former Employee Claims are Claims that accrued on behalf of a Non-Officer Former Employee prior to the Aequitas Enterprise being placed in receivership for services provided in accordance with the terms of employment, including for the amount of paid time off that accrued and was unused as of the separation date ("Accrued PTO"); amounts owing under the provisions of the Worker Adjustment and Retraining Notification Act ("Warn Act"); and amounts owing pursuant to contract, including but not limited to severance pay, retirement pay, expense reimbursement, and relocation or other bonus as of the separation date.

4. *Claims of Defrauded Investors*

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).

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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.

5. Non-Administrative Tax Claims of Taxing Authorities and Other Governmental Entities

Claims of taxing authorities and other governmental entities that are not an Allowed Administrative Claim or otherwise entitled to priority payment.

6. Creditor Claims

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.

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7. Claims of the Individual Defendants

Any Claim filed by any of the Individual Defendants against the Receivership Estate, or to any assets of the Receivership Estate, or for any interest in any entity now part of the Receivership Estate.

8. Claims of Pass-through Investors (COF/CCM, ETCFF, LUX Entities, WRFF, AHF, and APF)

Pass-through Investors are those Investors whose Claims are predicated on their investment transactions in, with, or through COF/CCM, ETCFF, LUX Entities, WRFF, AHF, and APF.

9. Claims of Equity Interest Holders and Intercompany Claims

All equity interests in the Aequitas Entities (other than Pass-through Investors), including, but not limited to, all issued, unissued, authorized, or outstanding shares or membership interests together with any warrants, options, or contract rights to purchase or acquire such interests at any time and any Claim among and between Aequitas Entities.

B. Treatment of Claims/Allowance Methodology

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.

1. Allowed Claims Payable from Distributable Funds

Allowed Claims in the following classes are payable with the following priority from the Qualified Settlement Fund:

(a) First, holders of Allowed Professional Claims and Allowed Administrative Claims shall be paid up to the full amount of their Allowed Claims from the QSF.

(b) Second, holders of an Allowed Non-Officer Former Employee Claim shall be paid the full amount of their Allowed Claim (which shall not exceed $12,850) from the QSF.

(c) Third, holders of an Allowed Convenience Class Claim (*i.e.*, the holder of an

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Allowed Creditor Claim equal to or less than $20,000 or the holder of an Allowed Creditor Claim in excess of $20,000 who 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 from the QSF.

(d) Fourth, holders of an Allowed Defrauded Investor Claim shall be paid under the rising tide methodology until such claims are paid in full without interest, costs, or fees from the QSF.

(e) Fifth, but after the payment in full of all holders of (i) Allowed Professional Claims, (ii) Allowed Administrative Claims, (iii) Allowed Non-Officer Employee Claims, (iv) Allowed Convenience Class Claims, and (v) Allowed Defrauded Investor Claims, the holders of Allowed Non-Administrative Tax Claims (that are not Allowed Administrative Tax Claims) shall be paid pro rata from the QSF, until paid in full. Current estimates are that holders of Allowed Creditor Claims will not receive a distribution.

(f) Sixth, but after the payment in full of all holders of (i) Allowed Professional Claims, (ii) Allowed Administrative Claims, (iii) Allowed Non-Officer Employee Claims, (iv) Allowed Convenience Class Claims, (v) Allowed Defrauded Investor Claims, and (vi) Allowed Non-Administrative Tax Claims, the holders of Allowed Creditor Claims (that are not Allowed Convenience Class Claims) shall be paid pro rata from the QSF, until paid in full.[179] Current estimates are that holders of Allowed Non-Administrative Tax Claims will not receive a

[179] 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).

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distribution.

(g) 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 are that the Allowed Claims of the Individual Defendants will not receive a distribution.

2. *Claims of Pass-through Investors*

Pass-through Investors shall retain their respective ownership interests in the Pass-through Entities. If an Investor is the holder of an Allowed Pass-through Investor Claim and the holder of an Allowed Defrauded Investor Claim, the Investor's rights as a Pass-through Investor, if any, shall not be affected by those portions of the Investor's Claim that make that Investor a Defrauded Investor.[180]

3. *De minimis Claims*

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.

4. *Claims of Equity Interest Holders and Intercompany Claims*

The Claims of Equity Interest Holders (other than those of the Pass-through Investors) and Intercompany Claims shall receive no distribution under the Distribution Plan.

IX. TAX CONSIDERATIONS AND MEANS OF EFFECTING DISTRIBUTIONS

The Court granted the Receiver's motion authorizing the creation of the QSF on

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[180] Based on current information available to Receiver, Pass-through Investors holding an ownership interest in AHF and APF will not realize a cash payment on account of such interests as those entities are insolvent and the equity interests have no resulting value. With approval of this Distribution Plan, the Receiver and his staff and advisors can dissolve AHF and APF at Receiver's discretion.

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December 23, 2019.[181] As authorized by the Court, the QSF will be the entity from which the Receiver effectuates distributions on Allowed Claims. The Receiver incorporates by reference that motion and the Court's order thereon.

A. Identification of Claims

On April 15, 2019, this Court entered an Order (1) Establishing the Claims Bar Date, (2) Approving the Form and Manner of Notice, and (3) Approving the Proof of Claim Form, Procedures and Other Related Relief. In that Order, this Court set a deadline of July 31, 2019, 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 (the "Claims Bar Date"). The Claims Bar Date has passed.

1. Disputed Claims

Unless otherwise ordered by the Court after notice and a hearing, the Receiver shall have the right to make and file objections to Claims if the parties are unable to resolve disputes about the Claim. The written objection shall include: (i) a detailed statement of the reasons for the objection, and (ii) copies of any document or other writing upon which the objection relies ("Disputed Claim"). Unless otherwise ordered by this Court, the response to the claim objection shall be filed with the Court and a copy served on the Receiver (and Trustee) and his counsel, within thirty (30) calendar days of the date on which the written objection to the Claim was filed with the Court. The Receiver (and Trustee) shall have thirty (30) calendar days to file and serve his reply.

2. Estimation of Claims

The Receiver or the Trustee may at any time request the Court estimate any contingent,

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

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unliquidated, or Disputed Claim regardless of whether any objection to such Claim has been filed and the Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Court.

3. Disallowance of Claims of Entities Liable to the Receivership Estate

Except as otherwise ordered by the Court, in every instance, no holder of an otherwise Allowed Claim who is liable for Disgorgement of Ill-Gotten Gains, Avoidance Actions, other Third Party Claims, or any other obligation to the Receivership Estate shall receive any Plan Distribution until full payment to the Receiver of the liability.

B. Distributions from the QSF

1. Timing of QSF Distributions

The QSF Trustee[182] shall distribute the QSF assets in accordance with the Court-approved Distribution Plan. The timing and amount of distributions, including interim distributions, shall be determined solely by the Trustee, as approved by the Court.

The Trustee shall make a final distribution only after: (i) all Receivership and QSF assets have been fully administered; (ii) all Claims have been resolved by Final Order of the Court; and (iii) after approval of a final report and accounting.

The QSF may be terminated upon the earliest of: (i) the QSF no longer satisfies the requirements under Treasury Regulation Section 1.468B-1; (ii) when the QSF no longer has any assets and will no longer receive any more transfers of assets; or (iii) a final order of this Court

[182] Pursuant to the QSF Order, the Receiver has been appointed as the Trustee and Administrator of the QSF. Reference to the Trustee, Administrator, and Receiver may be used interchangeably and shall be applicable as the circumstances require.

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terminates the QSF.

2. *Cash Payments*

Payments made pursuant to the Distribution Plan shall be made by the Trustee in cash and by (i) checks drawn on or (ii) wire transfer from a domestic bank selected by the Trustee. Any cash distributions required under the Distribution Plan to a foreign Claimant may be made, at the option of the Trustee, by such means as are necessary or customary in a particular foreign jurisdiction.

3. *Interim Distributions/Reserves*

The Trustee will distribute interim cash payments from time to time, subject to the Trustee's discretion and as further set forth in the QSF, when material amounts are available and as far as is reasonably practicable. The QSF will continue making such interim cash distributions until such time as the Receivership is closed and the Receiver is discharged.

Prior to making an interim distribution, the Trustee shall hold cash reserves in relation to Disputed Claims, taking into account the classification and proposed treatment of claims. The amount of such cash reserves is to be determined, solely for the purposes of establishing reserves and for maximum distribution purposes, to be the lesser of (i) the asserted amount of the Disputed Claim, as set forth in the non-duplicative Proof of Claim, (ii) the amount, if any, established by the Court pursuant to a claims estimation process, or (iii) the amount otherwise agreed to by the Trustee in consultation with the holder of such Disputed Claim for distribution purposes. Further, the Trustee shall also estimate the professional, administrative, operational, and Third Party Claim expenses associated with fully administering the Receivership Estate and the QSF and retain appropriate reserves to cover those estimated expenses.

4. *No De Minimis Distributions Required*

The Receiver or Trustee 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 $50.00.

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5. No Distributions Pending Allowance

Notwithstanding any other provision of the Distribution Plan to the contrary, no payments or distributions of any kind or nature shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order and the Disputed Claim has become an Allowed Claim.

6. Distributions on Account of Disputed Claims Once They Are Allowed

If a Disputed Claim becomes an Allowed Claim, the Trustee, consistent with the terms and conditions of the Distribution Plan and the QSF, shall be authorized to cause a distribution to be made on account of such Disputed Claim based on the amount as Allowed, as soon as reasonably practicable consistent with the terms and conditions for making distributions under the Distribution Plan and the QSF.

7. Disposition of Unclaimed Property

Any holder of an Allowed Claim who has not negotiated (cashed) its distribution check on or before six (6) months following the date of distribution, at the discretion of the Trustee, shall be deemed disallowed and forfeited as to such distribution and all further distributions on account of such Allowed Claim. In such cases, any cash that otherwise would have been distributed on account of such an Allowed Claim shall become the property of the QSF free of any restrictions thereon and notwithstanding any federal or state escheatment laws to the contrary and such funds shall be available for distribution to other holders of Allowed Claims. The Receiver emphasizes that nothing contained in the Distribution Plan or the QSF shall require the Receiver or Trustee to attempt to locate any holder of an Allowed Claim and that it is the responsibility of Allowed Claim holders to comply with this Court's prior order to provide the

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Receiver with a current address.[183]

C. Binding Effect of Distribution Plan

On and after Court approval, the provisions of the Distribution Plan shall, and shall be deemed to, bind each holder of a Claim, and each of their respective successors, heirs, legal representatives, and assigns, whether or not the holder has filed a Proof of Claim or objected to the Distribution Plan.

X. MISCELLANEOUS PROVISIONS

This Distribution Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Distribution Plan. The headings used in this Motion are inserted for convenience only and neither constitute a portion of the Distribution Plan nor in any manner shall affect the provisions or interpretation(s) of the Distribution Plan.

Any discrepancy between the terms of this motion to approve the Distribution Plan and the terms of the QSF shall be controlled by the terms of the QSF.

A. Liquidation of Certain Aequitas Entities

After entry of a Final Order Approving the Distribution Plan, the Aequitas Entities can be liquidated pursuant to the Distribution Plan, as determined by the Receiver. A certificate of cancellation or dissolution, as applicable, will be filed with the appropriate Secretary of State or the other appropriate authority.

B. Intercompany Receivership Claims

Notwithstanding anything in the Distribution Plan to the contrary, the Intercompany Receivership Claims shall be, at the option of Receiver or Trustee, as applicable, recognized or discharged and satisfied by contributions or otherwise.

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[183] Claimants, Investors, and Creditors are reminded that the Bar Date Order establishes that Claimants are required to keep the Receiver updated of their current address.

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C. Injunction

Except as otherwise provided in the Distribution Plan or in any document, instrument, release, or other agreement entered into in connection with the Distribution Plan or approved by order of the Court, the Final Order approving the Distribution Plan shall provide, among other things, that all persons or entities who have held, hold, or may hold Claims against or Equity Interests in an Aequitas Entity are permanently enjoined from taking any of the following actions against the Receivership Estate or the QSF:

(i) commencing or continuing, in any manner or in any place, any action or other proceeding to enforce, attach, collect, or recover in any manner any judgment, award, decree, or order;

(ii) creating, perfecting, or enforcing any Lien or encumbrance;

(iii) asserting a setoff or right of subrogation of any kind against any debt, liability, or obligation due to the Receivership Estate or the QSF; and

(iv) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Distribution Plan; provided, however, that nothing contained herein shall preclude such persons or entities from exercising their rights pursuant to and consistent with the terms of the Distribution Plan and the QSF and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with the Distribution Plan, the QSF, or approved by order of the Court.

D. Severability

If any term or provision of the Distribution Plan or the QSF is determined by the Court to be invalid, void or unenforceable, the Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Distribution Plan or QSF, as the case may be, will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration, or interpretation.

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E. Disassociation of Extended Entities

For each of the below Extended Entities, the Receivership Estate disposed of its equity interest in or loan(s) to such Extended Entities and, if applicable, transferred its management interest to a new third-party manager. The Receivership Estate no longer has any interest in these Extended Entities and, if they are still in existence, they will continue to be owned, managed and operated by their third-party owners and managers. As part of the Distribution Plan, these Extended Entities will no longer be associated with or be Extended Entities of the Receivership Estate.

- CarePayment Technologies, Inc.
- Syncronex, LLC
- Aequitas International Opportunities, LP

For each of the below Extended Entities, the assets of such Extended Entities were disposed of either in coordination with the Receiver and his staff and advisors or some other legal process (*e.g.*, bankruptcy). As part of the Distribution Plan, to the extent any assets from these Extended Entities are available and can be legally distributed to the Aequitas Entities, such assets will be distributed and then transferred to the QSF. As part of the Distribution Plan, these Extended Entities will no longer be associated with or be Extended Entities of the Receivership Estate.

- CP Funding I Trust
- EDPlus Holdings, LLC
- Skagit Gardens, Inc.
- Marketing Services Platform, Inc.
- Ivey Performance Marketing, Inc.
- Gridbox Media, LLC

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F. Dissolution of Aequitas Entities

As part of the Distribution Plan, COF/CCM,[184] ETCFF,[185] ACCFST-5,[186] and WRFF[187]

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[184] In March 2017, each Aequitas Entity that was a limited partner of CCM sold their CCM limited partnership interest to CSC CL Special Situations Fund, LP ("Cedar Springs LP"). In addition, the Aequitas Entity that was the general partner of CCM sold its general partner interest to CSC CL GP, Ltd. ("Cedar Springs GP") and the Aequitas Entity that was the investment advisor to CCM was replaced with an investment advisor selected by Cedar Springs GP. Each third-party limited partner of CCM was given the opportunity to sell their limited partnership interest to Cedar Springs LP for the same pro rata price paid to the Aequitas Entities. Following the sale, the Aequitas Entities had no ownership or management interest in CCM and each third-party limited partner was, at their election, either bought out by Cedar Springs LP or remained a limited partner of CCM under the management of Cedar Springs GP.

[185] In July 2017, in addition to other transactions involving ETCFF and its investment in ETC Global Group, LLC, and after formal consent by the ETCFF Pass-through Investors and Court approval [Dkt. 485], the Aequitas Entity that was the manager, investment advisor, and special member of ETCFF resigned as investment advisor and manager and was replaced by Doug Maurer. The Aequitas Entity also transferred its special member interest to Mr. Maurer. Following the transaction, a different Aequitas Entity remained a member of ETCFF, holding approximately 16% of the membership interests of ETCFF. The ETCFF Pass-through Investors remained members of ETCFF under the management of Doug Maurer. In September 2019, the Receiver was advised by ETC Global Group that a further financing transaction took place resulting in the total loss of all of the ETCFF Pass-through Investors equity interest in ETC and no further payment to the Receivership Estate. Because the Receivership Estate does not control ETCFF, as part of the Distribution Plan, the Aequitas Entity's membership interest in ETCFF will be transferred to the QSF.

[186] In 2019, the Aequitas Entity that was the general partner of AIO resigned as the general partner and was replaced by a general partner selected by Aequitas Income Opportunities (Luxembourg) S.A. ("AIO-Lux"). In addition, the Aequitas Entity that was the grantor of ACCFST-5 (which was the primary entity that AIO invested in) resigned and was replaced by a grantor selected by LUX Entities. All other obligations between the Aequitas Entities, on the one hand, and ACCFST-5, AIO or AIO-Lux, on the other hand, were resolved and terminated. Following the transactions, the Aequitas Entities had no ownership or management interest in AIO or ACCFST-5 and each third-party indirect investor in AIO and ACCFST-5 remained an indirect investor in AIO and ACCFST-5 under the management of AIO-Lux and its designees. As part of the Distribution Plan, ACCFST-5 will be formally removed from the Receivership Estate and AIO will be formally removed as an Extended Entity of the Receivership Estate.

[187] In March 2017, the Aequitas Entity that was the manager and special member of WRFF was bought out by the general partner of Window Rock Recovery Fund C, L.P. (the "Master Fund"), which was the sole entity WRFF invested in. Each third-party member of WRFF converted their membership interest in WRFF into an equivalent limited partnership interest in the Master Fund. Following the transaction, the Aequitas Entity remained the manager of WRFF, which no longer had any third-party members, and a Court order authorized the dissolution of WRFF.

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will be formally removed from the Receivership Estate. All other Aequitas Entities (except those being transferred to the QSF) will be dissolved.

Except for the Aequitas Entities that are to remain in existence and have 100% of their equity interest transferred to the QSF, the Receiver and his staff and advisors can dissolve any Aequitas Entity after all of its assets have been transferred to the QSF. Such dissolutions will include the filing of articles of dissolution where necessary, compliance with applicable state and local laws and procedures related to entity dissolution, and the filing of final tax returns.

G. Notice

All notices, requests, and demands to or upon the Receiver to be effective shall be in writing (including, without limitation) addressed as follows:

Ronald F. Greenspan
c/o FTI Consulting, Inc.
350 S. Grand Ave.
Suite 3000
Los Angeles, CA 90071

with a copy to:

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

And

Ivan B. Knauer
SNELL & WILMER LLP
1101 Pennsylvania Ave., N.W., Suite 300
Washington, DC 20004

XI. RETENTION OF JURISDICTION

The Court shall have and retain exclusive jurisdiction of matters arising out of, and related to the Receivership and the Distribution Plan for, among other things, the following purposes:

- To resolve the Receiver or Trustee's pursuit of Disgorgement of Ill-Gotten Gains, Avoidance Actions, and Third Party Claims suitable for resolution by the Court.

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- To consider any amendments or modifications of the Distribution Plan or the QSF requested by the Receiver, Trustee, or Administrator.
- Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of this Distribution Plan and the QSF.
- To hear and determine all objections or other disputes with respect to Claims.
- To protect the property of the Receivership Estate and the QSF from adverse claims or interference inconsistent with the Distribution Plan or the QSF, including the issuance of injunctions or other such action as may be necessary or appropriate to restrain interference with the implementation or enforcement of the Distribution Plan or the QSF.
- To cure any defect or omission, or reconcile any inconsistency in the Distribution Plan, the QSF, or any order of the Court.
- To issue such orders in aid of execution of the Distribution Plan or the QSF as may be necessary and appropriate.
- To hear and determine all applications for compensation and reimbursement of expenses of professionals related to the Receivership, the Distribution Plan, and the QSF.
- To hear and determine all litigation, causes of action and all controversies, suits and disputes that may arise in connection with the interpretation, implementation, or enforcement of this Distribution Plan, the QSF, and any settlements or compromises reflected herein.
- To recover all assets of the Receivership Estate, wherever located.
- To enter a Final Order closing the Federal Receivership Case and discharging the Receiver, the Trustee, and the Administrator.

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- To hear and determine all litigation, causes of action and all controversies, suits, and disputes that may arise in connection with any action sought to be taken against the Receiver, the Trustee, or the Administrator and his professionals or advisors.

Dated this 31st day of December, 2019.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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Attorneys for Receiver for Defendants Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC

Appendix A—Definitions

Unless the context otherwise requires, the following terms have the following meanings when used in their capitalized form in this Distribution Plan. Such meanings are equally applicable to both the singular and plural form of the term.

Accrued PTO. The amount of paid time off that a Non-Officer Former Employee accrued and was unused as of the separation date.

Administrative Claimant. An individual or entity (including, without limitation, partnerships, corporations, joint ventures, estates, trusts, and governmental entities or authorities) asserting or who believe they are entitled to assert an Administrative Claim.

Administrative Claim. A Claim based on: (i) the provision of goods or services for the benefit of the Receivership Estate or the QSF or at the request of the Receiver or Trustee beginning on or after March 16, 2016, 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 or the QSF.

Aequitas Enterprise. The collective representation of the "Entity Defendants" and their subsidiaries and/or majority-owned affiliates (as set forth in Exhibit A and the "Extended Entities" set forth in Exhibit B of the Order Appointing the Receiver [Dkt. 156]) for the purposes of this motion and events that pre-date the Receivership.

Aequitas Entities. The following entities (or their predecessors in interest) are part of, and together comprise, the Receivership Estate:

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Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC (the "Receivership Defendants") and their subsidiaries and/or majority owned affiliates as follows:

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 1, 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; 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.

Aequitas Entity. Any one or more of the Aequitas Entities as the context may require.

Aequitas-Related Claim. A Claim against any Aequitas Entity based on conduct by: (i) any individual employed by an Aequitas Entity arising from any action of the employee undertaken in the course and scope of that employment, or (ii) members of the Aequitas Advisory Committee and any officer or director of an Aequitas Entity (including without limitation, the Individual Defendants) arising from any actions undertaken by that person prior to March 16, 2016, in relation

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to that role. Without limiting the generality of the foregoing, an Aequitas-Related Claim also includes, but is not limited to a Claim based on an investment transaction in, with, or through an Aequitas Entity, 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.

Allowed Claim. A Claim or a portion thereof based on a Proof of Claim, Notice of Receiver's Initial Determination, or agreement by the Receiver (or Trustee), which by a Final Order of the Court approves (i) the amount, (ii) Classification, and (iii) treatment of such Claim consistent with the Court-approved Distribution Plan, unless such Claim has been paid in full, withdrawn, or otherwise satisfied in full.

Avoidance Actions. All rights, claims, and causes of action, whether equitable or legal, that could have been brought by the Receivership Estate or any of its Investors or other Claimants, against all persons arising under any provision of state or federal law, including those for the recovery of avoidable fraudulent conveyances or other transfers or under any other state or federal law are reserved for and may be assigned and transferred to the QSF to the full extent allowed by law. Avoidance Actions include actions for the Disgorgement of Ill-Gotten Gains.

Bar Date Order. The Court's order establishing the Claims Bar Date and the Administrative Claims Bar Date.

Books and Records. The financial and other data obtained from the Aequitas Entities' books and records and the financial and other data provided to the Receiver by Integrity Trust Company, LLC (and its affiliates) ("IBAT"). The financial and other data provided by IBAT were utilized and relied upon by the Receiver in the analysis of the transactions associated with IBAT. The Receiver had no or very limited direct records related to the funds aggregated by IBAT and placed with an Aequitas Entity(ies) in the name of IBAT. The Receiver has not subjected the

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information obtained from Aequitas or received from IBAT to an audit in accordance with generally accepted auditing or attestation standards or the Statement on Standards for Prospective Financial Information issued by the AICPA. Further, the work involved so far did not include a detailed review of all transactions, and cannot be expected to identify all errors, irregularities or illegal acts, including fraud or defalcations that may exist.

Claim. Any (i) potential or claimed right to payment, whether or not such right is based in equity or by statute, reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) a potential or claimed right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Claims Agent. Epiq Corporate Restructuring, LLC.

Claimant. An individual or entity (including, without limitation, partnerships, corporations, joint ventures, estates, trusts, and governmental entities or authorities) asserting or that believes they are entitled to assert a Claim against the Receivership Estate or an Aequitas Entity.

Claims Bar Date. The deadline for Claimants and Administrative Claimants to submit a Proof of Claim Form.

Claims Procedures Order. This Court's 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].

Commingled Pool Entities. Entities that were part of the Aequitas Enterprise for which assets were substantially commingled during the Ponzi Period and for which the Receiver proposes pooling assets for distribution under the Distribution Plan.

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Convenience Class Claim. 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.

Court. The United States District Court for the District of Oregon, Portland Division, presiding over Case No. 3:16-cv-00438-JR, titled *Securities and Exchange Commission v. Aequitas Management, LLC, et al*.

Creditor. An individual or entity (including, without limitation, partnerships, corporations, joint ventures, estates, trusts, and governmental entities or authorities) asserting or that believes they are entitled to assert a Creditor Claim.

Creditor Claim. 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, (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 (which are not a Non-Officer Former Employee Claim or exceed the $12,850 limit), 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.

Defrauded Investors. Investors that are Direct Investors or Fund Investors that had an

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account balance as of July 1, 2014, or had account activity during the Ponzi Period.

Disallowed Claim. A Claim or a portion thereof that has been disallowed pursuant to (i) a Final Order, (ii) an agreement between the Receiver and the Claimant, or (iii) the terms of a Court-approved distribution plan.

Disgorgement of Ill-Gotten Gains. The right of Receiver to recover commissions, fees, distributions, and profits from parties who participated in the solicitation of or defrauding of Investors.

Disputed Claim. A Claim that has not been allowed or disallowed and as to which a Proof of Claim has been filed and the Receiver, Trustee, or another party in interest (authorized by the Court) has filed an objection to the Claim.

Direct Investors. Investors who received promissory notes issued directly by a single-purpose entity that was a subsidiary to ACF or AH that had an account balance as of July 1, 2014, or had account activity during the Ponzi Period.[188]

Distribution Plan. The Court-approved terms that address how, when, by what method, and in what priority Plan Distributions of Receivership Estate assets on Allowed Claims will be equitably distributed, through the QSF, in partial or full satisfaction of Allowed Claims.

Entity. Any individual, partnership, corporation, limited liability company, estate, or trust.

Entity Defendants. Collectively, Aequitas Management, LLC; Aequitas Holdings, LLC; Aequitas Commercial Finance, LLC; Aequitas Capital Management, Inc.; and Aequitas Investment Management, LLC, listed as Defendants in the SEC Enforcement Action complaint.

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[188] These Direct Investors transferred money to, for example, the subsidiaries to ACF such as CarePayment Holdings, LLC ("CPH"); MLF and ML Financial Holdings, LLC ("MLFH"), and subsidiaries of AH, such as ACC C Plus Holdings, LLC ("ACCCPH"); ACC F Plus Holdings, LLC ("ACCFPH"); Aequitas Corporate Lending, LLC ("ACL"); and Aequitas Peer-To-Peer Funding, LLC ("AP2PF").

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Equity Interests. All equity interests in the Aequitas Entities, including, but not limited to, all issued, unissued, authorized, or outstanding shares or membership interests together with any warrants, options, or contract rights to purchase or acquire such interests at any time.

Extended Entities. The nine (9) entities listed on Exhibit B of the Order Appointing the Receiver in which Aequitas had a material investment that are required by Court order to cooperate with the Receiver, but are not otherwise included in the Receivership.

Final Order. An order, judgment, ruling, or decree of a court having jurisdiction as to which the opportunity to seek review, reconsideration, or rehearing of the order, judgment, ruling, or decree by that court or a higher court has lapsed, been waived in writing, or from which no further review, reconsideration, or rehearing is available.

Forensic Report. The 137-page Receiver's Report Regarding the Investigation of the Receivership Entity's Business Conduct prepared by the Receiver (and filed at Dkt. #663), pursuant to Court Order, which details his investigation of the manner in which the financial affairs and activities of the Aequitas Enterprise were conducted during the Relevant Time Period (defined in the Forensic Report as January 1, 2014 through March 10, 2016), including 35 pages of exhibits and supported by 425 files obtained from the Books and Records of the Aequitas Enterprise and as supplemented by the Receiver's quarterly reports.

Fund Investors. Investors who that had an account balance as of July 1, 2014, or had account activity during the Ponzi Period that received promissory notes issued by holding companies: Aequitas Enhanced Income Fund, LLC ("EIF"), Aequitas Income Opportunity Fund, LLC ("IOF"), Aequitas Income Opportunity Fund, II, LLC ("IOFII"), and Aequitas Income Protection Fund, LLC ("IPF") and also includes Investors who received promissory notes issued by ACF (also referred to as "Private Note" Investors).

Individual Defendants. The non-entity defendants in the SEC Enforcement Action—

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specifically: Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

Intercompany Receivership Claims. Any Claim among and between Aequitas Entities.

Intervening Parties. All those persons and entities allowed to participate in the SEC Enforcement Action because they assert Claims, are enjoined by the injunction, or are representatives of those asserting Claims.

Investor. Any Claimant with a Claim arising in whole or in part as a result of such Claimant's acquisition of an equity interest in or debt of an Aequitas Entity that had an account balance as of or after January 1, 2012, including any Claimant with a Claim arising in whole or in part as a result of such Claimant's funds being placed through IBAT in interests in debt or equity instruments issued by an Aequitas Entity. Other than with respect to the claims process, this definition is without prejudice to any rights of the Receiver.

Investor Advisory Committee. The voluntary committee of approximately 60 Investors, formed at the direction of the Receiver, who represent all of the major groups of Investors.

Late Stage Defrauded Investors. Defrauded Investors who contributed cash towards the end of 2015 and thereafter.

Manufactured Notes. A self-described program, for which Aequitas management would assign collateral to certain Aequitas funds, namely EIF, IOF and IOFII, in the form of a note from a special purpose entity. The special purpose entity would assume the liability of repaying the note, often times without receiving any direct cash consideration.

Master Fund. The general partner of Window Rock Recovery Fund C, L.P.

Net Investment Loss. A Defrauded Investor's Total Investment less Pre-Receivership Returns.

Non-Officer Former Employee Claims. The claims of individuals employed by an Aequitas Entity during the twelve-month period prior to March 16, 2016, for services provided in

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accordance with the terms of employment, including for the amount of paid time off that accrued and was unused as of the separation date ("Accrued PTO"); amounts owing under the provisions of the Worker Adjustment and Retraining Notification Act ("Warn Act"); and amounts owing pursuant to contract, including but not limited to severance pay, retirement pay, expense reimbursement, and relocation or other bonus as of the separation date in an amount up to $12,850 for each employee. The definition of "Non-Officer Former Employee Claims" excludes the past and present officers and directors of the Aequitas-affiliated companies, including without limitation, Robert Jesenik, Brian Oliver, Craig Froude, Scott Gillis, Andrew MacRitchie, Olaf Janke, Brian Rice, William Ruh, Steve Hedberg, Brett Brown, Tom Goila, Patricia Brown, Bill Malloy, and Thomas Szabo.

Notice of Claims Bar Date and Procedures for Submitting a Proof of Claim. The Court-approved form of notice and procedures for submitting a Proof of Claim to be sent to Claimants and Administrative Claimants, posted by the Receiver's website (http://www.kccllc.net/aequitasreceivership), and posted to the website of the Claims Agent (http://www.AequitasClaims.com).

Notice of Claims Bar Date for Publication. The Court-approved form of notice for publication in newspapers to provide information about the Claims Bar Date and the procedures for submitting a Proof of Claim.

Notice of Receiver's Initial Determination. The notice, with instructions and attachments sent to certain (i) Investors, (ii) Former Aequitas Employees, (iii) Pre-Receivership Creditors, and (iv) Administrative Claimants who the Receiver has determined, in his sole and absolute discretion, are entitled to an Allowed Claim.

Pass-through Investor Claim. The Claim of a Pass-through Investor (predicated on their investment transaction in, with or through one or more of the Pass-through Entities).

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Pass-through Entities. The following 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").

Pass-through Investors. Investors whose transactions are predicated on their investment transaction in, with, or through one or more of the Pass-through Entities.

Plan Distribution. Anything of value distributed to a Claimant on account of an Allowed Claim pursuant to the Court-approved Distribution Plan.

Ponzi Period. The period of July 1, 2014, through March 16, 2016, which the Receiver believes to be the most relevant period for the Investigation and establishment of the Aequitas Enterprise Ponzi Scheme.

Portfolio Companies. The Portfolio Companies and their operational role included CarePayment Technologies, Inc. ("CPYT") (healthcare receivables), EDPlus (student loans), Marketing Services Platform, Inc. ("MSP") and its wholly owned subsidiary Ivey Performance Marketing, LLC ("Ivey"), Skagit Gardens, Inc. (retail nursery), Syncronex, LLC (technology solutions to the publishing industry) and non-controlling positions in SCA Holdings, LLC (back office integration to third-party investment management firms), MotoLease, LLC (motorbike and power sport receivables), QuarterSpot, Inc. (peer-to-peer small- to mid-size business loan originator), ETC Global Group (clearing, settlement, and custodial services to securities industries participants); MOGL Loyalty Services, Inc. (restaurant rewards programs), Cloudward, Inc. (web service company), Certified Security Solutions, Inc. (digital identity security solutions), Pipeline Health Holdings, LLC (telepharmacy) and Independence Bankshares, Inc. (a bank holding

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company).

Pre-Receivership Returns. The sum of:

- Cash Interest/Return Payments: The total amount of cash paid to a Defrauded Investor between July 1, 2014, and March 16, 2016, irrespective of the characterization by Aequitas of such payments. This excludes all non-cash transactions that involved transfers of a Defrauded Investor's investments between the Commingled Pool Entities.

- The total amount of cash paid to or for the benefit of a Defrauded Investor from commissions, advisory, and consulting fees or other payments as detailed in E-4.3.1 of the Forensic Report (see pages 76-77).

- The amount of any conversion of a Pass-Through Investor's investment out of a Commingled Pool Entity into an investment in a Pass-Through Entity.

Professional Claimant. An individual or entity (including, without limitation, partnerships, corporations, joint ventures, estates, trusts, and governmental entities or authorities) asserting or that believes they are entitled to assert a Professional Claim.

Professional Claim. A Claim based on professional services provided and fees and costs incurred after March 16, 2016, by the Receiver and his professionals for the benefit of the Receivership Estate.

Proof of Claim. A Claimant's or Administrative Claimant's assertion of a Claim timely and properly submitted in compliance with the Proof of Claim Form and in compliance with the provisions of the Notice of Claims Bar Date and Procedures for Submitting a Proof of Claim.

Proof of Claim Form. The Court-approved claim form to be completed by Claimants and Administrative Claimants.

QSF Order. The Order Granting Receiver's Motion for Order to Authorize, Approve, and Take Continuing Jurisdiction over a Qualified Settlement Fund, and for Related Relief [Dkt. 781].

Qualified Settlement Fund. The fund established pursuant to section 1.468B-1(c), Income Tax Regulations and created upon approval of the Court under Dkt. #781.

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Qualified Settlement Fund Trustee. Ronald F. Greenspan, the Court appointed trustee and administrator of the Qualified Settlement Fund.

Receiver. Ronald F. Greenspan, the Court-appointed federal equity receiver in the SEC Enforcement Action, or any Court-appointed successor to Ronald F. Greenspan.

Receivership Defendants. Collectively, Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC.

Receivership Estate. The Receivership Estate is comprised of the Aequitas Entities administered by the Receiver and the aggregate of all assets, claims, interests, rights, and powers created by the appointment of the Receiver for the Aequitas Entities.

Recovery Threshold. The minimum recovery percentage for any Defrauded Investor (eligible under the rising tide distribution plan) that is obtainable given the final amount of the assets available for distribution. A Defrauded Investor's recovery is calculated as their Pre-Receivership Returns plus any distributions from the Receivership, divided by their Total Investment. The percentage that equalizes the minimum recoveries across all eligible Defrauded Investors is the calculated Recovery Threshold.**SEC**. The Securities and Exchange Commission, plaintiff in the SEC Enforcement Action.

SEC Enforcement Action. The action commenced by the SEC in the United States District Court for the District of Oregon, Portland Division, Case No. 3:16-cv-00438-JR, titled *Securities and Exchange Commission v. Aequitas Management, LLC, et al*.

Third Party Claims. The legal and equitable rights held by the Receiver on behalf of the Receivership Estate to recover money from third parties.

TIN. Taxpayer identification number.

Total Investment. The sum of

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- Investment Balance as of 7/1/2014: [189] The book balance of a Defrauded Investor's accounts as of July 1, 2014, which includes any interest that was accrued and reinvested to the investment account on or prior to July 1, 2014, including for the second quarter of 2014.

- Cash Invested by a Defrauded Investor: The total amount of cash received from a Defrauded Investor between July 1, 2014, and March 16, 2016. This excludes non-cash transactions that involved transfers of a Defrauded Investor's investments between the Commingled Pool Entities.

- The amount of any conversion of a Pass-Through Investor's investment in a Pass-Through Entity into an investment in a Commingled Pool Entity.

Tort Claims Settlement. The agreement of the Receiver, subject to Court approval, to resolve the tort claims of four Investor litigation groups for an aggregate of $30 million, payable with estate funds to the groups' respective attorneys, for further distribution to their clients.

Tort Settlement Payment. The $30 million payment of Receivership Estate assets authorized by the Court to resolve the tort claims of four Investor litigation groups, which—for purposes of calculating distributions under the Distribution Plan—shall be treated as being allocated among members of those groups based on the methodology of the proposed Distribution Plan.

URGE Group. The plaintiffs in *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").

Warn Act. The Worker Adjustment and Retraining Notification Act.

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[189] Based on an insolvency date that was not later than July 3, 2014, the Receiver chose for accounting and other practical purposes to use account balances as of July 1, 2014.

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Appendix B—Abbreviations

ACCCPH	ACC C Plus Holdings, LLC
ACCFPH	ACC F Plus Holdings, LLC
ACCFST-5	ACC Funding Series Trust 2015-5
ACCFT-1	ACC Funding Trust 2014-1
ACCFT-2	ACC Funding Trust 2014-2
ACF	Aequitas Commercial Finance, LLC
ACL	Aequitas Corporate Lending, LLC
ACM	Aequitas Capital Management, Inc., f.k.a. JMW Capital Partners, Inc.
AES	Aequitas Enterprise Services, LLC
AH	Aequitas Holdings LLC
AHF	Aequitas Hybrid Fund, LLC
AIO	Aequitas International Opportunities, LP
AIO-Lux	Aequitas Income Opportunities Luxembourg, SA
AP2PF	Aequitas Peer-To-Peer Funding, LLC
APF	Aequitas Partner Fund, LLC
CCM	CCM Capital Opportunities Fund, LP
Cedar Springs GP	CSC CL GP, Ltd.
Cedar Springs LP	CSC CL Special Situations Fund, LP
CoCo	Corinthian Colleges, Inc.
COF	Aequitas Capital Opportunities Fund, LP, n.k.a. CCM Capital Opportunities Fund, LP or “CCM”
CPFIT	CP Funding I Trust
CPH	CarePayment Holdings, LLC
CPLLC	CarePayment, LLC
CPYT	CarePayment Technologies, Inc.
CSF	Campus Student Funding, LLC
EIF	Aequitas Enhanced Income Fund, LLC
Epiq	Epiq Corporate Restructuring, LLC
ETCFF	Aequitas ETC Founders Fund, LLC
IBAT	Integrity Trust Company, LLC and its affiliates
IOF	Aequitas Income Opportunity Fund, LLC

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IOFII	Aequitas Income Opportunity Fund, II, LLC
IPF	Aequitas Income Protection Fund, LLC
LUX Entities	collectively, Aequitas Income Opportunities Luxembourg, SA, Aequitas International Opportunities, L.P., and ACC Funding Series Trust 2015-5
MLF	MotoLease Financial, LLC
MLFH	ML Financial Holdings, LLC
MSP	Marketing Services Platform, Inc.
NOD	Notice of Receiver's Initial Determination
PCF	Aequitas Private Client Fund, LLC,
QSF	Qualified Settlement Fund
RIA	Registered Investment Advisor
SEC	U.S. Securities and Exchange Commission
TIN	taxpayer identification number
URGE	United Recovery Group for Equality
WRFF	Aequitas WRFF I, LLC

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Appendix C—Diagram of Aequitas Enterprise's Structure as of January 4, 2016

Aequitas Entity Structure

January 4, 2016

Ownership Relationship
Trust Beneficiary Relationship
Investment Advisory Relationship

Aequitas Operating Entity
Aequitas Managed Fund
Private Credit
Private Equity
Other
On Chart in Other Area

Aequitas Management, LLC (OR)
83.6% Ownership
100% Control
Aequitas Holdings, LLC (OR)
Executive Falcon, LLC (OR)

Aequitas Commercial Finance, LLC (OR)
Aequitas Capital Management, Inc. (OR)
Aequitas Enterprise Services, LLC (DE)
Aequitas Private Client Fund, LLC (DE)
Aequitas Income Opportunity Fund, LLC (OR)

ACC C Plus Holdings, LLC (DE)
Aequitas Peer-To-Peer Funding, LLC (DE)
CarePayment Holdings, LLC (DE)
Campus Student Funding, LLC (OR)
ACC F Plus Holdings, LLC (DE)
ML Financial Holdings, LLC (DE)
Executive Citation, LLC (OR)
Spouting Rock Financial Partners, LLC (DE)
Aequitas Capital Opportunities GP, LLC (DE)
Aequitas Commercial Finance, LLC
Aequitas Investment Management, LLC (OR)
Campus Student Funding, LLC

ACC Holdings 2, LLC (DE)
CarePayment, LLC (OR)
CP Funding I Holdings, LLC (DE)
ACC Holdings 1, LLC (DE)
MotoLease Financial, LLC (OR)
Aequitas Capital Opportunities Fund, LP (DE)
Aequitas Holdings, LLC
Aequitas Hybrid Fund, LLC (OR)
Aequitas Income Opportunity Fund II, LLC (DE)
Aequitas ETC Founders Fund, LLC (DE)
Aequitas WRFF I, LLC (DE)
Aequitas Enhanced Income Fund, LLC (DE)
Aequitas Income Protection Fund, LLC (DE)

ACC Funding Trust 2014-2 (DE)
Aequitas Private Client Fund, LLC
CP Funding I Trust (DE)
ACC Funding Trust 2014-1 (DE)
Window Rock/ Aequitas Residential Recovery Fund, L.P. (DE)
Aequitas EIF Debt Fund, LLC (DE)

Pipeline Health Holdings, LLC (DE)
Unigo Student Funding, LLC (DE)
The Hill Land, LLC (OR)
Aequitas Senior Housing, LLC (DE)
QuarterSpot, Inc. (DE)
CarePayment Technologies, Inc. (OR)
EDPlus Holdings, LLC (OR)
MotoLease, LLC (DE)
Alternative Capital Advisers, LLC (DE)
SCA Holdings, LLC (WA)
ETC Global Group, LLC (DE)
APF Holdings, LLC (OR)

MOGL Loyalty Services, Inc. (DE)
Strategic Capital Alternatives, LLC
Argentus Partners, LLC
Independence Bancshares, Inc. (SC)
Aequitas Partner Fund, LLC (OR)

ACC Holdings 5, LLC (DE)
Aequitas Corporate Lending, LLC (OR)
Aequitas Wealth Management, LLC (DE)
Portland Seed Fund II, LLC (DE)
Aequitas International Holdings, LLC (DE)
Aequitas Asset Management Oregon, LLC (DE)
Aequitas Senior Housing Operations, LLC (DE)

ACC Funding Series Trust 2015-5 (DE)
Aequitas Wealth Management Partner Fund, LLC (DE)
Hickory Growth Partners, LLC (DE)
Aspen Grove Equity Solutions, LLC (OR)
Aequitas International Opportunities LP (Cayman Islands)
AAM Fund Investment, LLC (DE)
Ledgestone Management, LLC (DE)
Ledgestone Holdings, LLC (DE)
Aequitas Holdings, LLC
Marketing Services Platform, Inc. (DE)
Skagit Gardens, Inc. (WA)
Cana's Feast Winery, L.L.C. (OR)
Syncronex, LLC (DE)

Private Advisory Group, LLC (WA)
Innovator Holdings, LLC (DE)
Innovator Management, LLC (DE)
Ledgestone Property (DE)
Ivey Performance Marketing, LLC (OR)
Gridbox Media, LLC (DE)
Cloudward, Inc. (DE)
Certified Security Solutions, Inc. (OR)

NOTE: Does note include inactive and non-operating entities

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Appendix D—Summary of Cash as of September 30, 2019

Asset	Entity Link*	Beginning Cash Balance	Additional Senior Financing	Collections	Sale/Settlement Proceeds	Other Proceeds	Total Proceeds	Asset Purchase/ Portfolio Financing	Payoff of Debt	Sale Expenses	Portfolio Expenses	Other Expenses	Pre-Rec. Legal Expenses	CFPB Expenses	Net Proceeds
Freedom Assets	ACCCPH	4,286,180		7,640,538	19,667,353	94,651	31,688,723		(20,654,251)	(51,298)	(188,520)	(3,338)			10,791,316
	ACCFPH	2,477,743		3,802,018	44,524,890	77,188	50,881,840		(41,464,806)	(20,140)	(155,012)	(3,338)			9,238,543
	Lux	1,528,952		10,925,017		86,756	12,540,725		(1,256,858)		(283,013)	(1,200)			10,999,655
CarePayment Assets	CPLLC	152,020	20,367,000	74,559,185	51,035,838	1,136,482	147,250,525	(70,210,997)	(39,842,380)		(21,487,808)	(7,253)			15,702,086
Campus Student Funding Assets	CSF	2,170,205		33,495,920	298,710	2,756,467	38,721,301		(1,961,505)		(2,827,801)	(73,695)	(560,052)	(808,803)	32,489,446
MotoLease Assets	MLF	1,918,067		15,623,641		131,750	17,673,457				(1,627,657)	(28,843)			16,016,957
COF Assets	COF	170,592			52,915,000	7,561	53,093,153	(290,000)		(669,625)		(109,085)			52,024,443
Other Entities		3,231,155		1,183,212	9,369,808	2,435,638	16,219,812	(1,165,000)	(1,924,119)		(52,295)	(394,527)	(227,459)		12,456,412
Receivership Total:		**15,934,913**	**20,367,000**	**147,229,531**	**177,811,600**	**6,726,492**	**368,069,536**	**(71,665,997)**	**(107,103,919)**	**(741,063)**	**(26,622,105)**	**(621,280)**	**(787,511)**	**(808,803)**	**159,718,858**

Tax Preparation Expenses	(657,619)
SEC Enforcement Action Expenses	(2,542,696)
Receivership Overhead	(17,261,783)
Claims Processing Expenses	(139,954)
Legal Fees	(6,206,597)
Financial Advisory Fees	(10,390,931)
Receiver's Expenses	(1,646,868)
Total Receivership Cash as of September 30, 2019	**120,872,411**
Pending Professional Fee Applications	(1,473,134)
Professional Fees Holdback	(5,553,962)

Asset	Entity Link*	Beginning Balance	Additional Senior Financing	Collections	Sale/Settlement Proceeds	Other Proceeds	Total Proceeds	Asset Purchase/ Portfolio Financing	Payoff of Debt	Sale Expenses	Portfolio Expenses	Other Expenses
CarePayment Assets	CPFIT	1,927,011		26,913,527	5,149,609	111,987	34,102,134		(20,980,954)	(469,759)	(2,209,499)	(435,861)

Non-Receivership Cash	10,006,060
Combined Available Cash as of September 30, 2019	**123,851,375**

*includes related parent/subsidiary entities as applicable

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