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Diane A. Thompson*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**AMERICAN PENSION SERVICES, INC.,
a Utah Corporation and CURTIS L.
DeYOUNG, an individual,**

Defendants.

**EIGHTH QUARTERLY STATUS
REPORT OF RECEIVER**

Case No.: 2:14-CV-00309-RJS-DBP

**Judge Robert J. Shelby
Magistrate Judge Dustin B. Pead**

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Diane Thompson, Court-appointed receiver (Receiver) for Defendants American Pension Services Inc. and Curtis L. DeYoung (Curtis) and related entities, by and through her counsel of record Ballard Spahr LLP hereby submits the Eighth Quarterly Status Report of Receiver as of March 31, 2016.

1. Introduction

On April 24, 2014, the Court appointed Diane Thompson as Receiver of American Pension Services, Inc. and any related entities owned, controlled, or under common control by or through American Pensions Services, Inc. and all assets of Curtis L. DeYoung (collectively referred to as Receivership Defendants). *See* Order Appointing Receiver, Freezing Assets, and Other Relief 1–3 (Dkt. 9) (hereinafter Receivership Order). These entities include American Pension 401K Services, Inc. (APS 401K); LJP, LLC; Interim Funding LLC; First Silverado Properties, LLC; LIC Environmental; and Quicksilver Management, LLC. *Id.* American Pensions Services, Inc. and related entities owned, controlled, or under common control of American Pension Services, Inc. are collectively referred to as APS.

The Court found the appointment of a Receiver was necessary to “marshal[] and preserv[e] all assets” of the Receivership Defendants (Receivership Assets) as well as “the assets of any other entities that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and[] (d) may otherwise be includable as assets of the estates of the Defendants.” Receivership Order at 1–2.

The Receiver, with approval from the Court, engaged Ballard Spahr LLP as legal counsel to the Receiver, Piercy Bowler Taylor & Kern (PBTk) as forensic accountants, Precision

Discovery, Inc. as forensic information technology specialists, Richards Brandt Miller Nelson as insurance coverage counsel, Orange Legal Technologies to perform forensic computer services, Gary Free as an independent appraiser, and Jonathan Cook as an independent appraiser. *See* First Quarterly Report of Receiver 1–2 (Dkt. 169); Order Granting Motion to Retain Gary Free as Appraiser (Dkt. 208); Order Granting Motion to Retain Jonathan Cook as Appraiser (Dkt. 639). The Receiver is required to “file and serve a full report and accounting of each Receivership Estate . . . reflecting (to the best of the Receiver’s knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and . . . the extent of liabilities . . . of the Receivership Estates” within thirty days of the end of each quarter. Receivership Order at 22.

The quarterly status report must contain: (1) a summary of the operations of the Receiver; (2) the amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate; (3) a schedule of all the Receiver’s receipts and disbursements with one column for the quarterly period covered and a second column for the duration of the Receivership;¹ (4) a description of all Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended; (5) a description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic or investigatory resources, the approximate valuation of these claims, the anticipated or proposed method of enforcing these claims, and the likelihood of success of the claims; (6) a list of known creditors with their

¹ The Receiver operates three accounts within APS. These accounts are discussed in more detail in Section IV, with copies of the Receiver’s Receipts and Disbursements attached as Exhibits A, B, and C.

addresses and the amounts of their claims; (7) the status of creditor claims proceedings; and (8) the Receiver's recommendation for continuing or discontinuing the Receivership with reasons for the recommendation. Receivership Order at 22–23.

This Eighth Quarterly Status Report is submitted to the Court in compliance with the Receivership Order for the period of January 1, 2016 to March 31, 2016 (“Reporting Period”).

2. Directions to Receiver

The Receivership Order provides detailed authorizations, directions, and instructions to the Receiver with regard to the Receivership Estate. A copy of the Receivership Order is available as Document Number 9 in this case.

3. Operations of Receiver

The Receivership continues to be a very unique and complicated Receivership. Unlike a typical Receivership—where the Receiver steps in, shuts down the business, terminates all employees, identifies and liquidates assets, makes disbursements to creditors, and files a report—the Receiver was faced with the task of not only marshaling all Receivership Assets, but also taking over and managing a business of providing third-party administrative services to over 5,500 clients with self-directed individual retirement accounts (“IRAs”) or 401(k) accounts.²

The purported value of the assets of APS client accounts as of April 25, 2014 was in excess of

² Due to the asset freeze placed on the accounts of APS, on April 25, 2014 there were approximately 5,400 clients with self-directed IRAs being administered by APS and over 300 clients with 401(k)s being administered by APS 401K. As the Receiver has implemented her Amended Modified Plan of Liquidation, these numbers have been significantly reduced. *See infra*. Part 3.A–B.

\$350 million.³ The APS business is complex because the emphasis of the business is on offering administration of non-traditional assets, such as unsecured real estate and promissory notes.⁴ It has become clear that APS was mismanaged prior to the Receivership and there were deficiencies in operating processes, training, technology, and process and accounting controls. Adding to the complexity of the Receivership—as well as the determination of the value of assets of both the Receivership Defendants and APS clients—is missing, poor, or inadequate documentation. This lack of documentation has made the Receiver’s task more difficult. The Receiver has also spent much of the Receivership continuing to search for information regarding assets of the Receivership Estate. This effort was complicated by the lack of cooperation from Curtis in providing a detailed sworn statement identifying and estimating the value of all known assets of the Receivership Estate and in his deposition on September 30, 2014.

Further adding to the cost and complexity of the Receivership are the hundreds of continuous telephone calls and emails between the Receiver or her staff and APS clients, many of whom have questions, are confused, angered, and frustrated by the Receivership. Some APS clients seek answers to questions about the Receivership, some demand distributions, others seek to conduct business transactions which require review pursuant to the Court’s Order Clarifying Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 79) (“Clarifying Order”), which authorized APS customer transactions under certain conditions. The Court approved the

³ APS IRA accounts purportedly had in excess of \$350 million in assets, while APS 401(k)s purportedly had in excess of \$35 million in assets.

⁴ While unsecured promissory notes were an offering available prior to the Receivership, the Receiver has authorized only secured promissory notes pursuant to the Court’s Order Clarifying Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 79).

Receiver's Amended Modified Plan of Liquidation ("Plan of Liquidation") and proposed Successor Administrator Equity Trust on February 27, 2015. Consequently, APS clients could transfer their account to Equity Trust.

The Receiver began the transfer of accounts to Equity Trust on April 1, 2015. During the Reporting Period, the Receiver and her professionals continued to respond to hundreds of telephone calls and emails from APS clients with questions regarding the transfer of their accounts to Equity Trust, the Plan of Liquidation, the value of their account(s), the amount required to satisfy their loss allocation, and the amount of any outstanding APS management fees. These calls also included questions on how to fund or satisfy the loss allocation, how and when the account(s) would be transferred to Equity Trust Company, how to re-register the alternative assets held within account(s) from APS to Equity Trust Company, requests for duplicate copies of current and past tax forms, the status of the Receivership and pending lawsuits, and the amount of the future distributions that may be received. The Receiver also received several calls and e-mails from clients asserting they were not required to make a loss allocation, disputing the value of their accounts, and seeking to revalue their accounts despite being past the deadline established in the Plan of Liquidation for revaluation requests.

A. Current Operations of APS

The Receiver continued to process client accounts for transfer to Equity Trust under the Transition Services Agreement between the Receiver and Equity Trust, approved by the Court in February 2015. It is important to note that the Transition Services Agreement between the Receiver and Equity Trust expired on December 31, 2015. As of December 31, 2015, the Receiver had transferred 4,038 clients to Equity Trust.

Although the Transition Services Agreement expired on December 31, 2015, it contained a provision to allow the Receiver to seek and receive an Order of this Court allowing the “forced” transfer of certain accounts to Equity Trust by March 30, 2016. The Receiver sought the Force Transfer Order after conducting a cost-benefit analysis regarding the accounts of the time and expense associated with the further collection efforts regarding these accounts, the continuing administrative and reporting requirements associated with these accounts, and the likelihood of recovering the loss allocation from these accounts. On February 19, 2016, this Court approved the Receiver’s request to force transfer certain non-compliant accounts to Equity Trust. *See Findings of Fact, Conclusions of Law, and Order on Motion for Order to Force the Transfer of American Pension Services, Inc. Accounts to Successor Equity Trust Company by March 30, 2016 and Memorandum in Support (Dkt. 720) (“Force Transfer Order”)*. Under the Force Transfer Order, APS clients who had accounts “with balances of \$50,000 or less and owing \$5,000 or less” could be transferred to Equity Trust Company. *See Force Transfer Order*, 4. Clients who were transferred under the Force Transfer Order would have their easily liquidated assets (such as brokerage accounts) within their accounts liquidated, and the cash from this liquidation or any other cash within their accounts swept by the Receiver. These clients would also forego any future distribution from the Receivership Estate. Furthermore, these clients were not required to complete a direction letter, Equity Trust account application, or otherwise send correspondence to the Receiver regarding their account(s).

On March 21, 2016, the Receiver elected to transfer approximately 715 accounts to Equity Trust under the Force Transfer Order. The Receiver sent each of these clients correspondence explaining the transfer of their account under the Force Transfer Order. As a

result of the Force Transfer Order, at the end of the Reporting Period, the Receiver had received communications from 4,906 of the of the approximately 5,500 APS clients.⁵ At the end of the Reporting Period, and due to the Force Transfer Order, the Receiver has transferred 4,917 of the approximately 5,500 APS clients. Furthermore, the Receiver noted that 383 accounts at APS were considered “open,” but contained no assets and owed only a yearly trust management fee of \$40.00. The Receiver waived the yearly trust fee and closed these accounts. Therefore, at the end of the Reporting Period, the Receiver had transferred or closed all but approximately 350 accounts.

As noted above, the Receiver ceased normal APS business operations on July 3, 2015. Despite the ceasing of normal business operations, the Receiver continued to work with clients that were working in good faith to make their loss allocation payments. Some of these clients required transactions within their accounts to create liquidity and fund their loss allocation in order to comply with the Plan of Liquidation. The Receiver continues to work with the clients that are still attempting to create the required liquidity within their account to fund their loss allocation. The Receiver continues to follow APS procedures to conduct these transactions, which require clients submit a direction letter and the transaction documents. Client transactions require a review of direction letters, transaction documents, and coordination with clients regarding any relevant supplemental documentation needed. The transactions conducted by the Receiver after client direction during this Reporting Period included, but were not limited to, the

⁵ The 4,906 client communications includes twenty-eight (28) clients that have affirmatively indicated to the Receiver that they will not submit any funds for a loss allocation payment.

transfer or funding from business entities such as LLCs, and the sale of real estate and precious metals, and the liquidation of brokerage accounts.

The Receiver has continued to allow clients to seek and receive additional time to liquidate assets and fund their loss allocation via an extension agreement. Clients seeking an extension agreement must agree to the loss allocation, a lien on their assets, and provide a specific plan for creating the loss allocation payment either outside of or within their accounts, including which asset or assets the client is seeking to liquidate and the time frame expected to liquidate such asset. Specifically, clients have sought extensions to foreclose on or complete the sale of real properties within their accounts to fund their loss allocations. The Receiver will continue to work with clients who have taken affirmative steps to comply with the Plan of Liquidation.

The Receiver has also issued a number of subpoenas to clients who have not responded to the Plan of Liquidation and not funded their loss allocation during this Reporting Period. The Receiver issued subpoenas to the 50 largest client accounts who hold IRA LLCs, requesting documents related to the LLCs, including tax returns, profit and loss statements, information on any real estate held by the LLC, and balance sheets for the LLCs. Because the client controlled the LLC activities and books and records, APS files have no information about the assets held by the LLCs. The Receiver has issued the subpoenas to allow the Receiver to adequately assess the financial condition of the LLC, including the existence of cash in the LLC to pay the loss allocation, as well as the underlying value of any assets held within the LLC. This will assist her in determining her next course of action, including the possibility of liening or liquidating assets within the LLC to satisfy the loss allocation. The issuance of subpoenas has also had the effect

of encouraging some clients to fund their loss allocations and transfer from APS. As of the end of the Reporting Period, the Receiver had received partial payment from two clients and received promises to pay by a date certain from another seven clients. These clients represent a total loss allocation amount of approximately \$300,000.00 and outstanding management fees of approximately \$8,000.00. The Receiver believes that the cost of this effort and contemplated subpoenas to the largest 50 promissory note holders is justified by the additional loss allocation recovery from these previously noncompliant clients.

The Receiver continues to update the Receivership website (www.apsreceiver.com) in an effort to keep all APS clients informed of key events affecting the Receivership. The website is updated with Court filings and frequently asked questions as necessary. The updates during this Reporting Period have included posting updates related to the settlement and claims bar order between the Receiver and First Utah Bank, the notice of appeal of the settlement to the Tenth Circuit Court of Appeals, and frequently asked questions related to the issuance of year-end account statements and tax documents. The Receiver also posted the following documents to the Receivership website: (1) the Eighth Quarterly Status Report of the Receiver; (2) Findings of Fact, Conclusions of Law, and Order on Joint Stipulated Motion and Memorandum to Approve Settlement with Michelle DeYoung; (3) Notice of Appeal by intervenors; and (4) the opening Brief of Appellant's and Appendix filed by the intervenors.

The Receiver continues to receive calls and e-mails from clients. Many of these calls and e-mails are from clients who have transferred to Equity Trust and are seeking a status report of their account. The Receiver has also answered calls and e-mails regarding the Curtis DeYoung

criminal matter. The Receiver continues to refer all inquiries regarding the Curtis DeYoung criminal matter to the U.S. Attorney's Office.

The Receiver issued letters to clients who had not yet transferred, but must take a required minimum distribution from their retirement account. These letters were similar to those issued by the Receiver in January 2015, and complied with the requirements set by the Internal Revenue Service in Publication 590.

Pursuant to the Transition Services Agreement, the Receiver and her staff issued year-end account statements to clients who had not transferred to Equity Trust by December 31, 2015. The Receiver also issued IRS Forms 1099-R to clients who received a required minimum distribution from their APS account(s) and that had not transferred to Equity Trust by December 31, 2015. Pursuant to the Transition Services Agreement, Equity Trust issued year-end account statements and IRS Forms 1099-R to all clients that had transferred to Equity Trust during 2015. The Receiver also received requests from some APS clients for amendments to IRS Forms 1099-R tax documents that were issued by APS prior to the Receivership. The Receiver and her staff have investigated and responded to all requests for amendments and continue to investigate and respond to requests as they are received.

The Receiver has received calls and e-mails from clients who have indicated that the value of their account that was transferred to Equity Trust was incorrect or have indicated other problems with their accounts after transfer to Equity Trust. The Receiver and her staff continue to hold regular conference calls with Equity Trust to resolve these client concerns.

The deadline for submitting a revaluation or in-kind exemption request under the Plan of Liquidation expired July 1, 2015. However, there have been a few additional requests for

account revaluations and in-kind exemption request during the Reporting Period. The vast majority of these requests have been supplemental requests for revaluations and in-kind determinations from clients whose requests were initially denied. These clients provided further information that enabled the Receiver to revisit her initial determination. The Court has directed the Receiver to work with clients whenever possible; thus the Receiver has processed these supplemental revaluations and in-kind exemption requests using the process outlined in the Plan of Liquidation.

The Receiver continued her efforts to collect outstanding administrative and management fees owed to APS. APS administrative and management fees are charged yearly on the APS Clients' anniversary date. The Receiver has collected these management fees as part of the transfer to Equity Trust. The Receiver elected not to charge continuing management fees after June 30, 2015 because the Receiver ceased "normal" business operations on July 3, 2015. The collection of fees until June 30, 2015 was warranted due to the continuing operations of APS during the Receivership pursuant to the Receivership Order and subsequent Clarifying Orders. Any remaining funds related to management fees following winding up of the APS business will be distributed back to clients under the Plan of Liquidation.

During the Reporting Period, the Receiver drafted an initial contract with a collections agency to precede with the collection of outstanding management fees. The Receiver anticipates finalizing the contract with the collections agency during the next Reporting Period. The outstanding amount of management fees owed by clients is currently \$561,172.30. This amount is comprised of \$246,813.33 owed by 508 account holders that have either closed their account or were transferred to Equity Trust Company under the Force Transfer Order, and \$314,358.97

owed by 182 clients who currently remain with APS. The Receiver anticipates sending the amount owed by closed or transferred account holders to the collections agency upon the finalization of a contract. The Receiver will continue to attempt to collect fees directly from the 182 clients that remain with APS until disposition of their accounts is resolved.

As reported in previous Quarterly Status Reports, the Receiver also reviewed account details for all clients that had not transferred as of June 30, 2015. The Receiver discovered several accounts were still listed as “open,” but the only account balance was a charge for management fees. These accounts were charged an annual \$40.00 trust fee, but never contained assets. The Receiver and her staff identified and closed these accounts. These accounts are not assessed a loss allocation and will not be transferred to Equity Trust. This situation represented a total of 383 client accounts.

The Receiver continues to receive communication from some clients that state they closed their accounts prior to the Receivership. The Receiver investigates these claims as they arise and is closing accounts where her investigation reveals that the client did indeed close their account prior to the Receivership. This is in contrast to clients who have requested revaluations on assets, insisting they are worth nothing, but they do not fit into any of the permitted revaluation categories and never previously attempted to revalue their asset.

In previous Quarterly Status Reports, the Receiver noted anecdotal evidence that clients who receive regular deposits from dividends, rental income, or payments from promissory notes were diverting those deposits from their APS accounts. The Receiver continues to notify APS clients of the potential ramifications of diverting those deposits, including the ramifications of a prohibited transaction under section 408(e)(2) of the Internal Revenue Code of 1986 (Prohibited

Transactions). The Receiver continues to notify clients to consult with independent legal counsel regarding Prohibited Transactions or any other tax advice sought by APS clients. As noted in previous Quarterly Status Reports, the Receiver has elected to include an acknowledgment that no such diversions have occurred within the transfer paperwork to Equity Trust preceding the transfer of APS client accounts. As a result of this acknowledgment, to the best of the Receiver's knowledge, many clients who may have been diverting funds, typically out of fear or confusion due to the Receivership, have returned those funds prior to the transfer of their accounts to Equity Trust.

The Receiver continues to work with clients who have accounts with investments involved in other receiverships. Notably, the Management Solutions, Inc. Receivership has proposed and conducted distributions, although there have been no distributions from Management Solutions, Inc. authorized during the Reporting Period. These distributions were the subject of an interpleader motion whereby the Management Solutions, Inc. Receiver interpleaded funds to this Court for distribution to APS clients or their APS accounts. (Dkt. 550, 552). The Management Solutions, Inc. Receivership has interpleaded additional funds with this Court, and the Receiver will be filing a motion during the next Reporting Period to release those funds to APS, which will then be forwarded to Equity Trust for deposit to the appropriate client accounts.

As detailed in previous Quarterly Status Reports, the Receiver completed the shutdown of the APS office location in Riverton, Utah on December 18, 2015. The Receiver opted to close the Riverton office as a measure to lower administrative costs of the Receivership. The Receiver coordinated with the SEC and the Department of Justice regarding document retention and

storage requirements. After discussions with the SEC and the Department of Justice, the Receiver contracted with Iron Mountain to pack and store APS documents to be retained for the duration of the Receivership. During this Reporting Period, the Receiver coordinated the delivery of an additional 126 boxes of documents, largely containing closed account files, to Iron Mountain. The Receiver and her staff continue to hold the files of non-transferred accounts for further processing, and any documents that may be required for ongoing litigation.

The computer systems utilized at APS were relocated and the Receiver continues to utilize those APS computer systems to access information, prepare required reporting, and complete transactions on behalf of clients seeking to make loss allocation payments.

B. Current Operations of Receiver

In addition to conducting the day-to-day operations of APS described above, the Receiver has conducted a variety of other actions pertaining to the Receivership. These actions include attempts to recover assets of the Receivership Estate. A detailed description of the Receiver's actions outside of the day-to-day operations of APS follows.

1. Continued Execution of the Amended Modified Plan of Liquidation

The Receiver continued to focus her attention on the continued execution of her Plan of Liquidation during this Reporting Period. During this Reporting Period, the Receiver and her staff transferred an additional 979 clients from APS to Equity Trust. Approximately 715 of these 979 were transferred under the Force Transfer Order. There are 383 accounts remaining with APS. These remaining 383 clients include clients that may have submitted transfer paperwork but still do not have sufficient funds to make their required loss allocation. These remaining clients also include those that are working with the Receiver in good-faith to fund their loss

allocation. Of the 383 clients who have communicated with the Receiver but have not yet transferred, approximately twenty-eight (28) have indicated they refuse to make any loss allocation payment.

Of the 383 accounts remaining with APS, 156 contain IRA LLCs, 140 contain promissory notes, and thirty-three (33) hold real property. As noted above, the Receiver has issued subpoenas to the fifty (50) account holders with the highest reported account values holding IRA LLCs. One effect of issuing the subpoenas has been to encourage clients to fund their loss allocation rather than provide documents requested under the subpoena.

The Receiver is evaluating how best to proceed with the remaining 383 accounts after the receipt of the subpoenaed documents. The Receiver's options include issuing additional subpoenas, auctioning assets within accounts, and/or pursuing an order to show cause for clients failing to adequately respond. First Utah Bank has tendered to the Receiver its resignation as the custodian of remaining accounts. However, First Utah has agreed that the resignation shall not be effective until there is a mutual agreement with the Receiver concerning the resignation and an order from the Court releasing APS as administrator and First Utah as custodian. Once those events have occurred, for remaining accounts not dealt with in the manner(s) described above, the Receiver will issue an IRS Form 1099-R for the reported value of the assets, and possibly also place a lien on those distributed assets. The Receiver will file appropriate pleadings with the Court upon determining the best course of action for the remaining 383 accounts.

Over the course of the Receivership, the Receiver received 234 formal requests from clients for either an in-kind exemption or revaluation under the Plan of Liquidation. The Receiver responded to all 234 of the formal requests for revaluation or an in-kind exemption. Of

the 234 formal requests, eight were received during this Reporting Period. The Receiver and her staff spent over 450 hours in total on a variety of tasks associated with revaluation and in-kind determination requests. The overwhelming majority of this time was spent reviewing client requests, supporting documentation submitted by clients with their requests, researching APS paper and electronic files associated with the client revaluation or in-kind exemption requests, and drafting determination letters. The review of the client's entire APS file and communication of all factual considerations has added to the response time for revaluation and in-kind exemption requests, but this has resulted in a reduced number of appeals being filed to date.⁶

Of the 234 formal requests, the Receiver received seventy-eight (78) in-kind requests and 156 revaluation requests. Of the seventy-eight (78) in-kind requests, the Receiver granted twenty-six (26). The twenty-six (26) in-kind exemption requests resulted in an exemption of \$14,650,515.35 of assets from a loss allocation payment, or \$1,465,051.54 in loss allocation payments.⁷ Of the 156 revaluation requests, the Receiver granted a total of eighty-seven (87) revaluations, reducing the total amount of assets assessed a loss allocation by \$7,610,460.40 or \$761,046.04 in loss allocation payments. The total reduction of assets is \$22,260,975.75. The revaluations and in-kind treatment of assets were contemplated in the Plan of Liquidation and will not have a material negative impact on the Plan of Liquidation. During this Reporting

⁶ To date, only one appeal has been filed disputing a declined revaluation request. The Receiver was able to resolve the dispute with the client shortly after the appeal was filed and the appeal was dismissed.

⁷ The vast majority of this amount comes from an in-kind exemption of two accounts. Those two accounts totaled \$13,132,775.80.

Period, the Receiver and her staff also filed amended IRS Forms 5498 to reflect the results of the change in account values as a result of the granted revaluations during the Reporting Period.

According to the Plan of Liquidation, the deadline for requesting a revaluation or in-kind exemption was June 30, 2015. The number of revaluation and in-kind exemption requests slowed dramatically during this Reporting Period. As a matter of fairness to the affected clients, the Receiver responded to the eight (8) requests for revaluation or in-kind exemption during this Reporting Period. Following the issuance of the subpoenas noted above, the Receiver received additional revaluation requests, which she is evaluating.

The Receiver continues to receive returned mail on correspondence or documents sent to clients. The Receiver has endeavored to determine updated addresses and resend the mailings to clients.

During the Reporting Period, the Receiver and her staff continued to process accounts for transfer to Equity Trust. This processing involved multiple steps with appropriate quality controls. A member of PBTk reviewed all account files to ensure all paperwork had been completed appropriately, that loss allocations had been appropriately booked into both the APS and accounting software, and that all precious documents and hard copies of files had been gathered and shipped to Equity Trust.

As part of the transfer of accounts, clients' loss allocations are documented by a Contingent Repayment Agreement ("CRA") issued to the account or client as applicable. The CRA is similar to a promissory note, and represents the amount clients have paid to fund their

loss allocation.⁸ The Receiver will use the amounts listed on the CRAs to make future distributions, if any, to the clients on pro-rata basis. Because the Receiver's recovery of assets is ongoing, the amount of Receivership Assets available for distribution is currently unknown. Thus, the best estimate of the value of the CRA at this time is the amount of each client's contribution to the loss allocation under the Plan of Liquidation. Many clients have requested that the Receiver revalue the CRA in order to reduce the amount of their account total. The Receiver does not believe it is appropriate to make an adjustment to the value of the CRA until the Receiver has exhausted her recovery efforts and has determined the amount, if any, that will be distributed to clients.

There have been inquiries about the transferability of the CRA by clients who transferred to Equity and now desire to select another custodian/administrator and by custodians/administrators reluctant to accepting the CRA as an account asset. The Receiver has conducted several conference calls with clients and new administrators/custodians to clear up this confusion and has posted clarifying information on her website. Clients are permitted to transfer the CRA to a successor custodian/administrator and no re-registration is required since the CRA is issued in the name of the account not the custodian. If a payment(s) is made pursuant to the CRA, for efficiency purposes, the Receiver provided in the Transition Services Agreement that payment would be made in a lump sum to Equity Trust (with an allocation schedule

⁸ In accordance with this Court's ruling on August 7, 2015, some clients will have the CRA issued to them personally, as they are ineligible to contribute to their retirement plan or have otherwise funded their loss allocation from asset outside of their retirement plan. *See infra*, Part 3.B.2; *see also* Findings of Fact, Conclusions of Law, and Order Granting Receiver's Motion for Order Requiring All Remaining American Pension Services, Inc. Account Holders to Transfer Accounts to Equity Trust Within Thirty Days, and Authorizing the Receiver to Exercise All Rights to Collect Loss Allocation Payments Under the Liquidation Plan. (Dkt. 592).

indicating the appropriate account recipients). Equity Trust is contractually obligated to process the payment to its accounts or track and forward the payments to accounts transferred to successor custodians.

Some CRAs were issued to client accounts upon transfer prior to the determination by the Internal Revenue Service on a Private Letter Ruling (“PLR”) requested by the Receiver, which is described in more detail below. As noted in the previous Quarterly Status Report, the IRS declined to issue a PLR. As a result of the transfer of accounts and CRAs to Equity Trust prior to the IRS’s decision, the Receiver corresponded with those clients on how they wished to treat their loss allocation payment. Also during previous Reporting Periods, the Receiver received an Order from the Court on her proposed treatment of loss allocation payments, which included a presumption that allocation payments be treated as “outside” of the client’s retirement plan if they did not specifically direct the Receiver. This presumption, approved by the Court after the transfer of a number of accounts to Equity Trust, necessitated a correction to approximately 1,000 CRAs. The Receiver worked with Equity Trust to correct accounting for nearly 1,000 CRAs from accounts at Equity and return the CRAs to the Receiver. The Receiver then reissued the CRA to the individual client rather than the client’s account. The Receiver sent a letter with the reissued CRA explaining the correction to the client.

The transfer of accounts from APS to Equity Trust requires that all assets previously titled in the name of APS for the benefit of the client be re-registered to reflect ownership as Equity Trust for the benefit of the client. The Receiver executed a limited power of attorney that allows Equity Trust to re-register client assets. The Receiver understands there have been some delays in the re-registration process. Specifically, some clients that have transferred to Equity

Trust have reported difficulties in accessing brokerage accounts that are held within their self-directed retirement accounts, such as TD Ameritrade. The Receiver provided brokerage firms with a list of all accounts that have transferred to Equity Trust with direction to re-register the accounts in the name of Equity Trust and a request to unfreeze the accounts. The Receiver continues to communicate with Equity Trust, and provide information necessary to unfreeze appropriate brokerage accounts and re-register assets held within transferred accounts.

The Receiver also conducted numerous meetings with her legal counsel and accounting staff regarding the accounts of clients that have refused to comply with the Plan of Liquidation. In order to accommodate clients working to fund their loss allocation, the Receiver and her staff developed criteria to allow clients to receive an extension for compliance with the Plan of Liquidation. As noted, clients must request an extension in writing, agree to the application of the loss allocation and a lien on their account assets, and provide a plan for liquidating assets within their accounts to fund their loss allocations. The Receiver and her staff also met to discuss the assets contained within the accounts and the best manner of liquidation for those assets in order to fund the required loss allocation. As noted above, the Receiver has issued subpoenas to account holders with the fifty (50) highest reported account values that contain IRA LLCs. The Receiver is evaluating the documents received in response to the subpoenas and will continue to evaluate her options for liquidating assets within non-compliant clients' accounts.

Under the Court's Order (Dkt. 592), the Court authorized the Receiver "to secure loss allocation payments under the Liquidation Plan," and granted her permission to "sweep[] the accounts for cash to satisfy the loss allocation" or "liquidat[e] assets." *Id.* After the expiration of the thirty day deadline in the Order, the Receiver swept all available cash from clients'

accounts who had not complied with the Order. The Receiver made an appropriate accounting entry indicating the cash was swept to satisfy the loss allocation or a portion thereof. Any client account that had sufficient cash swept to satisfy the entire ten percent (10%) loss allocation was issued a CRA and transferred to Equity Trust. During this Reporting Period, the Receiver liquidated brokerage accounts and mutual funds held by clients that had not yet satisfied their loss allocation. In the case where liquidating a brokerage account or mutual fund fully satisfied the client loss allocation, the Receiver transferred the client account to Equity Trust Company.

During the Reporting Period, the Receiver and her staff received a request to audit the APS employee 401(k) plan from the Department of Labor. The Department of Labor also requested information on accounts served by AP4S from January 1, 2014 to present. The request for information regarding plans served by AP4S also required the Receiver to provide all dates of service to those plans served by APS during the requested period, including service dates prior to January 1, 2014. The Receiver and her staff responded to the document request provided by the Department of Labor. The Receiver is awaiting further correspondence from the Department of Labor regarding the audit.

2. IRS Private Letter Ruling

The Receiver was and is cognizant that many APS clients do not have sufficient cash in their accounts to make a ten percent (10%) loss allocation payment. Such a situation could be addressed by having APS clients contribute cash outside of their IRA account, liquidate assets, or borrow against assets held in their accounts. *See* Amended Modified Plan of Liquidation at 34-35. The Receiver further recognized that the cash contribution, allocation, or liquidation of or borrowing against assets may have adverse tax consequences. *Id.* Thus, the Receiver filed a

request for Private Letter Ruling on October 3, 2014 (“PLR Request”). Additionally, as part of the Plan of Liquidation, the Receiver allowed clients with solely illiquid assets to elect to defer the transfer of their account to Equity Trust by returning a “notice” to APS indicating they elect to defer transfer until the IRS issued guidance on the PLR Request. Initially, approximately 450 clients filed an election to defer transfer until the IRS issued guidance on the PLR request. As of the end of the Reporting Period, 241 clients that initially elected to defer their transfer while awaiting guidance on the PLR request have not yet transferred to Equity Trust.

On July 2, 2015, the IRS declined to rule on the request for procedural reasons. The Receiver anticipated this possibility and noted in the Plan of Liquidation that in the event the IRS “decline[s] to issue a PLR, the Receiver will devise an alternative approach to propose to the Court.” *See* Amended Modified Plan of Liquidation (Dkt. 458-1) at p. 41. The Receiver sought and received a tax opinion letter from legal counsel, which only applies to the Receiver, and offered guidance on her tax reporting obligations for the loss allocation payments received from clients. Based on the tax opinion letter from legal counsel, the Receiver concluded that any payment made by the APS account holder that was not affirmatively designated as a contribution would be presumptively treated as a restorative payment and not be reported as a contribution to the retirement account. This approach was approved by this Court on August 7, 2015.

Following the approval of the Receiver’s approach to the tax treatment of loss allocation payments, the Receiver mailed a letter to over 1,000 clients who made a loss allocation payment to their account. In the letter, mailed October, 13, 2015, the Receiver explained the IRS’s response to her PLR request and the Receiver’s alternative approach approved by this Court. The letter also explained that the client was required to affirmatively advise the Receiver of their

desire to have their loss allocation, or a portion thereof reported as a contribution to their account; otherwise, the Receiver would report the loss allocation payment as a restorative payment, pursuant to her alternative approach. The Receiver received a total of 389 responses to her letter, in which clients indicated they desired to have their loss allocation payment, or a portion thereof, treated as a contribution to their APS account. In response to the letters received, the Receiver has worked with her staff and Equity Trust to ensure the appropriate accounting of each loss allocation payment for 2015 tax reporting, which were processed during this Reporting Period.

It became apparent during this Reporting Period that some clients previously electing to defer making their loss allocation until the IRS made a determination on the PLR may still believe they are absolved from making the loss allocation payment. On August 7, 2015, the Receiver sent a letter to clients explaining the IRS determination and that they were required to fund their loss allocation by September 18, 2015. Nevertheless, to clear up any confusion, the Receiver sent a second letter to those clients on April 10, 2016 explaining that they must now fund their loss allocation by April 30, 2016 to avoid liquidation or contempt of court proceedings.

3. Assets Uncovered or Sold During Reporting Period

The Receiver has uncovered a number of Receivership Assets. During this Reporting Period, the Receiver located and took possession of a 1922 Studebaker. The 1922 Studebaker is listed as the only piece of personal property awarded to Curtis in a divorce proceeding initiated by Michelle DeYoung (“Michelle”). (Divorce Decree, June 2, 2015, Case No. 144906613). On January 22, 2016, the Receiver made a formal demand that Curtis surrender the Studebaker to

the Receiver, with a deadline of making arrangements for the property to be turned over to the Receiver by February 1, 2016. Curtis did not respond to the Receiver's demand. On February 15, 2016, the Receiver filed a Motion for Order Requiring Curtis L. DeYoung to Surrender Assets to the Receiver and Memorandum in Support (Dkt. 702). In response, Curtis provided contact information for a purported storage facility, Masterlease, LLC ("Masterlease"), where the 1922 Studebaker was being kept. Initially, Masterlease claimed that the 1922 Studebaker had been stored by Masterlease for two years for Curtis and that Masterlease would not release the vehicle without payment in full of storage fees as Curtis had not made any required payments. In reality, Masterlease was not a storage facility, but is an office building in South Salt Lake. The Receiver discovered the Studebaker parked outside in an unsecured parking lot outside of the office building. When the Receiver requested record and payment information, Masterlease turned the 1922 Studebaker over to the Receiver without any payments by the Receiver. The Receiver arranged for appraisal of the 1922 Studebaker, and it was sold at auction in accordance with the Receivership Order on April 23, 2016.

Shortly after this Reporting Period, the Receiver also recently discovered assets hidden by Curtis and/or Michelle. On or about August 1, 2014, Ricky Dean Memmott ("Rick Memmott") hired Michelle as a consultant for Front Line Services, Inc. ("Front Line"). Rick Memmott is the President and Director of Front Line. On April 7, 2016, Rick Memmott was evaluating the drop ceiling of a building leased by Front Line for purposes of installing a security system. Rick Memmott discovered assets appearing to belong to Curtis and Michelle hidden in the drop ceiling. The items include U.S. mint coins, jewelry, and loose gems, in addition to other assets. Several of the items were stored with receipts or other documentation indicating the

items belong to Curtis and/or “Curt Michelle.” Further, a missing key to the building where the assets were discovered was found on Michelle’s key ring when Rick Memmott terminated her employment on April 8, 2016. The Receiver’s counsel, along with a Deputy U.S. Marshal, took inventory of the items concealed in the drop ceiling. The Receivership Assets are now secured in safe deposit boxes at a local bank.

Curtis did not disclose any of the assets found in the drop ceiling to the Receiver as required by the Court. Michelle also did not disclose any of the assets found in the drop ceiling to the Receiver as required by the Receivership Order, or in the financial statement recently signed by Michelle under penalty of perjury pursuant to the settlement agreement between the Receiver and Michelle.

On April 18, 2016, Curtis and his counsel met with SEC staff attorneys and the Receiver’s counsel regarding the discovery of Curtis’s assets concealed in the drop ceiling of Michelle’s former employer. At the conclusion of the meeting, Curtis agreed to settle with the Commission and signed the Consent of Curtis L. DeYoung to Entry of Judgment Order on April 18, 2016, which Consent has been filed with the Court by the Commission (Dkt. 745). The Court signed the Judgment as to Curtis L. DeYoung on April 21, 2016 (Dkt. 747). The Receiver filed a Notice of Non-Compliance with Receivership Order detailing the recent discovery of assets on April 22, 2016 (Dkt. 748.) As noted in the Notice, Curtis provided the Receiver with a Declaration, under penalty of perjury, stating that he agrees not to dispose of, move, or conceal any Receivership Asset, that he has not given any Asset to Michelle or any other third-party to conceal or dispose of, and that if he has moved or concealed any Asset, he will turn it over to the Receiver concurrent with signing of the declaration. No additional assets have been turned over

to the Receiver by Curtis. Curtis also agreed to cooperate with the Receiver in the recovery of assets for the benefit of the Receivership Estate. The Receiver is not currently seeking contempt orders against Curtis or Michelle.

The Receiver intends to sell all of the Receivership Assets discovered in the drop ceiling in accordance with the Receivership Order and settlement agreement for the benefit of the defrauded APS clients. The Receiver has cooperated with, provided all information requested by, and provided access to the items as requested by the Securities and Exchange Commission (“SEC”), Department of Justice (“DOJ”), and Federal Bureau of Investigation (“FBI”) about such Assets. The Receiver will continue to coordinate with the SEC, DOJ and FBI on the valuation and sale of the Receivership Assets.

Other personal items of Michelle and/or Curtis were stored in property leased by Front Line, such as furniture and paintings. The Receiver issued and served a subpoena on Rick Memmott on April 8, 2016, which covered all such personal property. This personal property is now in the possession of the Receiver, who is currently evaluating its status and value as part of the Receivership Estate. The Receiver previously sought to sell other personal property including a 1913 Ford Model T, Coca Cola vending machines, and a large crystal geode (Dkt. 515.). Michelle claimed all the property belonged to her pursuant to her divorce decree (Dkt. 544.) On November 30, 2015, the Receiver and Michelle entered into a settlement agreement under which Michelle agreed to relinquish and disclaim any interest in the personal property, and on February 22, 2016, the Court approved the settlement (Dkt. 701.). The personal property identified in the settlement agreement, as well as the 1922 Studebaker described above, were sold at auction on April 23, 2016.

The Receiver has determined that the DeYoung residence is of no value to the Receivership Estate because it has no equity. Under the parties' settlement agreement, the Receiver agreed to abandon claims related to the DeYoung residence and the furniture located therein based on her determination that the DeYoung residence will not benefit the Receivership Estate.

The Receiver is aware of a cabin located in Island Park, Idaho for which Curtis paid for extensive renovations and furniture following a flood. The Receiver has been unable to gain access to the cabin to assess the value of personal property located within. The Receiver agreed to release a Notice of Lis Pendens filed on the cabin pursuant to her settlement with Michelle.

The Receiver continues to evaluate her options regarding the remaining assets and real property owned by APS and Curtis. The Receiver has indicated how she has or intends to dispose of each known asset in her Summary of Receivership Assets, attached as Exhibit D.

4. Insurance, Tax Refunds, and Other Claims of Receiver

The Receiver filed claims against APS's "CrimeShield Advanced" policy issued by The Hartford with policy limits of \$1 million, as detailed in previous Quarterly Status Reports. In July 2015, the Receiver met with representatives from The Hartford to discuss a possible settlement of the Receiver's claims. At that time, the Receiver and The Hartford preliminarily agreed to terms of a settlement. The Receiver prepared a motion to approve the settlement with The Hartford on January 21, 2016 (Dkt. 697), which was approved by the Court (Dkt. 703). The settlement agreement provides \$405,000.00 to the Receivership Estate, and avoids the cost and expense of protracted litigation.

The Receiver also made a claim on APS's Chubb "PRO E&O" errors and omissions policy issued by the Federal Insurance Company with policy limits of \$1 million. On January 7, 2016, Federal Insurance Company filed its Complaint in Interpleader and for Declaratory Relief in case no. 2:16-cv-00023-RJS-DBP (Dkt. 2) seeking to interplead with the Court full policy limits of \$1 million. Although Federal Insurance Company did not seek leave to file an action against the Receiver as required by the Receivership Order, the Receiver has moved to have the Complaint consolidated as an ancillary action to this case. Curtis's attorney has made a claim to those funds to cover defense costs. The Receiver intends to assert the Receivership's interests in the entirety of those funds as well.

During previous reporting periods, the Receiver completed pre-litigation discussions and mediation with some third parties, including financial institutions, regarding their potential liability to APS and its clients. The largest settlement achieved by the Receiver is that with First Utah Bank, the custodian of the Master Trust Account. The settlement agreement provides that First Utah would provide value to the Receivership with cash and other consideration in excess of \$6 million. The Receiver believes the settlement agreement offers the highest potential recovery for the Receivership Estate and IRA Accounts Owners and the best method to carry out the Court's mandate to efficiently and economically administer the Receivership Estate. After extensive briefing, notice, an objection period, and a hearing, the Court approved the settlement agreement, the Court entered findings of fact, conclusions of law, and an order granting the Motion to Approve Settlement Agreement (Dkt. 683). The order and claims bar order were certified as a final judgment under Rule 54(b) of the Federal Rules of Civil Procedure to permit appeal of the Court's determination. On January 29, 2016, the Proposed Class filed a notice of

appeal (Dkt. 694). Counsel for the Receiver have entered an appearance and will strongly contest the appeal. The Receiver's response brief is due May 16, 2016.

The Receiver has filed two ancillary lawsuits to pursue recovery on behalf of APS clients (*Thompson v. Curtis DeYoung and Michelle DeYoung*, Case No. 2:14-cv-00870-RJS; *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-cv-00744-RJS), the status of which is discussed below.⁹

5. Distributions to Clients and Creditors

At the time of this filing, sufficient funds have been recovered to cover the loss caused by the misappropriation of approximately \$25 million from the APS Master Trust Account by Curtis. However, there are APS clients who have failed to comply with the loss allocation requirement of the Plan of Liquidation. The Receiver filed a motion to force the transfer of certain APS Account Owners owing smaller loss allocation payments to Equity Trust due to the cost of collecting these smaller amounts and the likelihood that the cost of sale of assets in these accounts would outweigh the potentially collected amounts. The Receiver will soon file a motion with the Court proposing a method by which compliance with the loss allocation for the 383 final accounts can be secured. Thus, there have been no distributions to any APS clients or creditors at this time.

Furthermore, the Receiver has continued to receive requests from clients to close their APS accounts and distribute all assets to the client. The Receiver has denied each of these requests as each is contrary to existing Court orders.

⁹ Due to the death of Michael Memmott, Jr. in *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-cv-00744-RJS, Deni Memmott, personal representative for the estate of Michael Memmott Jr. has been substituted as a defendant.

6. Costs of Receivership

The costs of the Receivership remain significant during the Reporting Period. The Receiver continues to complete the Plan of Liquidation, marshal the assets of the Receivership Defendants, and pursue all available avenues to recover the approximately \$25 million misappropriated by Curtis. While the Court has approved the Receiver's Applications for Interim Compensation of Receiver and Professionals for Services (with the exception of the Seventh Application which has not yet been considered), the Receiver has utilized amounts in excess of one month of operating expenses (approximately \$50,000) to cover a portion of Court-approved fees and expenses.

The costs of the Receivership have been reduced following the transfer of accounts from APS to Equity Trust and cessation of operations.

7. Pending Litigation

The Receiver has determined that as of April 25, 2014, APS was involved in a total of nine separate lawsuits in California, Idaho, and Utah as either a plaintiff or defendant. One action, noted in the First Quarterly Status Report, settled and resulted in over \$15,000 being deposited into the APS operating account. The Receiver has stayed the remaining actions. The Receiver has also elected to terminate counsel for APS in these actions and Ballard Spahr has entered appearances on behalf of APS.

During the Reporting Period, the Receiver and her counsel have made necessary filings and court appearances in appropriate courts to report on the status of the receivership in the ancillary actions.

The Receiver also issued and served the following subpoenas duces tecum, with the status indicated below:

- Fifty (50) subpoenas were issued related to the highest value LLCs held in the accounts of IRA Account Owners who have failed to make required loss allocation payments. The Receiver received several loss allocation payments in response to the subpoena, which are being processed.

The Receiver continues to prosecute claims in two ancillary actions (*Thompson v. Curtis DeYoung and Michelle DeYoung*, Case No. 2:14-cv-00870-RJS; *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-CV-00744-RJS) to recover monies resulting from fraudulent transfers. After the documentation related to the settlement agreement with Michelle is finalized, the Receiver will seek dismissal of the action against Michelle. Further, the Receiver will seek dismissal of her action against Curtis in light of his settlement with the SEC. The Receiver is currently negotiating a settlement agreement with the Deni Memmott, personal representative of the estate of Michael Memmott Jr., in *Thompson v. Michael Memmott Sr. et al.* With respect to Michael Memmott Sr. and Shauna Memmott, the case was referred to Magistrate Judge Warner and a mediation conference was held on January 20, 2015. The parties continued extensive settlement discussions following the mediation. However, no settlement agreement was reached, and the parties have agreed to proceed with discovery and motion practice.

The Receiver will continue to pursue recovery of funds fraudulently transferred to Michael Memmott Sr. and Shauna Memmott.

4. Cash on Hand, Expenses, Unencumbered Funds, Receipts, and Disbursements

APS business operations can be evaluated and broken into three categories. First, is revenue and expenses related to the day-to-day operations of APS. Second, there are assets and

expenses attributable to APS clients. Third, are assets and expenses related to APS 401K accounts. The following is a breakdown of the revenue and expenses of all three categories, with a summary of related account balances.

APS Operations (Day-to-Day)

As of March 31, 2016, the Operating Account¹⁰ of APS was as follows:

	January 1, 2016 through <u>March 31, 2016</u>	<u>Receivership Cumulative</u> ¹¹
Beginning Balance	\$91,310.50	\$129,251.80
APS Receipts ¹²	\$781,777.36	\$5,345,778.91
APS Expenses ¹³	\$429,076.01	\$5,031,018.86
APS Operating Account Balance	\$444,011.85	\$444,011.85

Attached as Exhibit A is a Summary of the Operating Cash Receipts and Disbursements of APS for the Reporting Period, as well as a cumulative report.

¹⁰ The Operating Account is a combination of the operating accounts for APS and APS 401K; however, these accounts are maintained separately by the Receiver.

¹¹ This reflects the balance of the account at the beginning of the Receivership.

¹² This amount represents business revenue generated from fees paid to APS in accordance with the APS clients' agreement to have First Utah Bank act as custodian and APS as third-party administrator.

¹³ This does not include all of the administrative expenses approved by the Court in the Fee Applications because all amounts were not dispersed by the end of the Reporting Period. Those expenses will be reflected on the next Quarterly Status Report.

APS Master Trust Accounts

As of March 31, 2016, the APS Master Trust Account and related expenses, receipts, and disbursements are as follows:

	January 1, 2016 through <u>March 31, 2016</u>	<u>Receivership Cumulative</u>
Beginning Balance	\$6,358,070.03	\$25,962,173.24
Receipts	\$2,401,228.45	\$63,102,181.68
Expenses	\$6,232,315.14	\$86,537,371.58
Balance	\$2,536,983.34	\$2,536,983.34

Attached as Exhibit B is a Summary of the Operating Cash Receipts and Disbursements of the APS Master Trust Account for the Reporting Period.

APS 401K

As of March 31, 2016, the APS 401K Trust Account and related expenses, receipts, and disbursements are as follows:

	January 1, 2016 through <u>March 31, 2016</u>	<u>Receivership Cumulative</u>
Beginning Balance	\$0.00	\$3,842,908.62
Receipts	\$0.00	\$7,150,259.60
Expenses	\$0.00	\$10,993,168.22
Balance	\$0.00	\$0.00

Attached as Exhibit C is a Summary of the Operating Cash Receipts and Disbursements of APS 401K Account for the Reporting Period.

5. Receivership Property

The Receiver has attached a list of Receivership Assets and its actual or estimated value as Exhibit D. The Receiver has attached a Schedule of Assets of APS Clients as Exhibit E. As with the previous Quarterly Status Reports, the Receiver has elected not to provide a detailed list of APS client assets on confidentiality grounds.

6. Liquidated and Unliquidated Claims

The Receiver has yet to determine whether claims held by the Receivership Estate are liquidated or unliquidated. The Receiver and her staff continue to evaluate all claims, the value of potential claims, and the anticipated methods of enforcing such claims, if any.

7. Creditors and Claim Proceedings

A list of known creditors, their addresses, and the amounts of their claims is attached as Exhibit F. The list of known creditors is exclusive of potential creditor claims of APS clients, which may be impacted by the final Plan of Liquidation. No creditor claim proceedings have taken place to date. On or about September 19, 2014, each of the creditors was sent Notice of the Proposed Plan of Liquidation and a response form to the Plan. As stated in the Amended Modified Proposed Plan of Liquidation, the Receiver has determined that creditors of APS should be classified differently than APS clients. *See* Amended Modified Plan of Liquidation at 51-52. Each creditor will need to submit a proof of claim setting forth (1) the date the claim arose, (2) the nature of the claim, (3) the amount of the claim, (4) whether the claim is secured or

unsecured, and (5) when the creditor contends the claim became due and owing. *Id.* The creditor must attach all supporting documentation to the proof of claim. *Id.* A proof of claim form is attached to the Amended Modified Plan of Liquidation as Appendix H. Once a proof of claim is filed, the Receiver will consider the claim. Should the Receiver object to the creditor's claim, the Receiver will notify the creditor in writing of the basis for her objection. The creditor will have the opportunity to respond to the objection by written reply. If the Receiver and creditor cannot agree on the amount of the claim, the Receiver or creditor will be allowed to submit the proof of claim, written objection, and written reply to the Honorable U.S. Magistrate Judge Dustin B. Pead for determination of the amount of the claim.

8. Receiver Recommends Continuation of the Receivership

As noted above, this is a complicated Receivership due to the nuances created by the APS clients, the assets held in the clients' accounts, and the interplay with the Internal Revenue Code. The Receiver recommends continuation of the Receivership. Continuation of the Receivership will assure the most favorable outcome for all APS clients through the pursuit of and equitable distribution of Receivership Assets. Additionally, the continuation of the Receivership will allow for the Receiver to complete collecting loss allocation payments from non-compliant clients, force the liquidation of client assets where available to satisfy the loss allocation, and/or issue an IRS Form 1099 where appropriate.

To the best of my knowledge, the information presented in this Eighth Quarterly Status Report is a full report and accounting of the Receivership estate as of the end of the Reporting Period.

DATED this 29th day of April 2016.

/s/ Melanie J. Vartabedian

Mark R. Gaylord, Esq.

Melanie J. Vartabedian, Esq.

Tesia N. Stanley, Esq.

Scott S. Humphreys, Esq. (*admitted pro hac vice*)

BALLARD SPAHR LLP

Attorneys for Court-Appointed Receiver, Diane A.
Thompson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **EIGHTH QUARTERLY STATUS REPORT OF RECEIVER** was served to the following this 29th day of April, 2016, in the manner set forth below:

Through the CM/ECF System for the U.S. District Court

Hand Delivery

U.S. Mail, postage prepaid

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/s/ Melanie J. Vartabedian

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- Exhibit A Summary of the Operating Cash Receipts and Disbursements of APS
- Exhibit B Summary of the Operating Cash Receipts and Disbursements of the APS Master Trust Account
- Exhibit C Summary of the Operating Cash Receipts and Disbursements of APS 401K Account
- Exhibit D Summary of Receivership Assets
- Exhibit E Schedule of Assets of APS Clients
- Exhibit F Summary of Known Creditors

EXHIBIT A

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period January 1, 2016 through March 31, 2016

	Jan 1, 2016 through Mar 31, 2016	Receivership Cumulative
Beginning Cash Balance	\$ 91,310.50	\$ 129,251.80
Cash Receipts		
Business Revenue	49,603.66	3,519,605.21
Sale of Property	327,173.70	327,173.70
Insurance Proceeds	405,000.00	405,000.00
Transition Services Fee	-	1,050,000.00
Legal Settlements	-	44,000.00
Total Cash Receipts	<u>781,777.36</u>	<u>5,345,778.91</u>
Cash Disbursements		
Appraisal Fees	290.00	7,365.00
Auto Expense - Employee	-	1,817.63
Bank Charges	-	64,925.15
Building Rent	-	67,793.46
Comcast Internet Services	-	2,661.11
Computer Software	219.91	4,438.43
Computer Support Services	3,517.91	21,101.47
Contract Labor	230.00	87,902.25
Copier Expense	121.59	3,383.76
Credit Card Processing	492.50	4,858.58
Document Disposal	397.33	2,598.64
Docuware Support	-	-
Employee 401(k) Program	-	36,438.08
Employee Comp.-401K Services	-	104,678.20
Employee Compensation & Taxes	369.30	360,040.43
Equipment Leases	-	25,315.20
General Telephone	3,972.64	32,194.42
Guard Services	-	42,437.50
Health Insurance	-	37,303.75
Insurance Expense	1,110.64	6,921.75
Interest Expense	-	3,179.33
Internet Research Fee	-	451.00
Legal Noticing	5,411.79	143,535.09
Licenses & Permits	-	637.90
Litigation Resolution	-	1,673.33
Meals & Entertainment	-	5,487.86
Mediation Services	-	7,687.50
Miscellaneous Operating Expense	0.63	5,315.17
Office supplies	250.06	13,978.38
Outside Contracting Services	-	23,043.10
Postage	542.00	21,873.12

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period January 1, 2016 through March 31, 2016

	Jan 1, 2016 through Mar 31, 2016	Receivership Cumulative
Printing Expenses	-	10,264.27
Professional Services	-	1,245.00
Repairs & Maintenance	-	11,961.33
Storage	7,036.45	10,230.37
Subscription Services	-	-
Taxes - Other	-	3,431.13
Taxes - Payroll	-	3,400.00
Travel Expense - Reimbursement	-	552.97
Utilities	-	86.01
Web Site Fees	113.25	24,325.84
Total Expenses	<u>24,076.00</u>	<u>1,206,533.51</u>
Extraordinary Expenses:		
Receivership Fees and Expenses	405,000.01	3,824,485.35
Total Extraordinary Expenses	<u>405,000.01</u>	<u>3,824,485.35</u>
Total Cash Disbursements	<u>429,076.01</u>	<u>5,031,018.86</u>
Ending Cash Balance	<u>\$ 444,011.85</u>	<u>\$ 444,011.85</u>

NOTES:

Note 1 - The above amounts are cash receipts and disbursements related to the business operations of American Pension Services, Inc. and American Pension 401k Services, Inc.

EXHIBIT B

AMERICAN PENSION SERVICES MASTER TRUST ACCOUNT**Cash Receipts and Disbursements****For the Period January 1, 2016 through March 31, 2016**

	January 1, 2016 through March 31, 2016	Receivership Cumulative
Beginning Cash Balance	\$ 6,358,070.03	\$ 25,962,173.24
Cash Receipts		
Contributions for Loss Allocation	385,116.12	5,471,920.52
Contribution	130,374.64	1,119,475.88
Gain	62,391.93	4,210,630.55
Interest Payments	98,328.47	7,244,830.93
Principal Payments	99,116.04	21,239,259.07
Rent	29,717.34	1,713,041.97
Rollovers	57,987.15	1,085,054.04
Assets Sold	211,793.20	17,780,465.27
Direct Transfer In	318,575.96	2,186,306.37
Dividends	616.00	43,985.48
Bank Interest	8,016.53	8,016.53
Other Rents	1,500.00	1,500.00
Other Income	2,241.51	2,241.51
Fees Collected	679.85	679.85
401k Loss Allocation Collections	994,773.71	994,773.71
Total Cash Receipts	2,401,228.45	63,102,181.68
Cash Disbursements		
Transfer to Equity	4,218,594.71	48,891,505.94
Assets Bought	-	28,449,424.02
Corrections	-	664.29
Early Distribution - exception applies	7,249.77	321,502.94
Early Distribution - no exception applies	-	371,726.53
Normal Distribution	-	2,723,516.88
Distribution Charitable Gift Annuity	-	14,853.04
Qualified Distribution Roth IRA	-	130,601.37
Roth IRA Distribution - Exception applies	-	59,035.47
Federal Tax / Premature Distribution	-	16,500.00
Federal Tax / Normal Distribution	-	48,724.96
Expenses	723.58	1,249,037.15
Fees Paid	5,622.57	1,936,753.00
Property Tax	-	309,312.96
Charitable Gift Annuity	-	74.36
Direct Transfer Out	-	14,014.16
Receivership Administrative Costs	2,000,000.01	2,000,000.01
Bank Service Charges	124.50	124.50
Total Disbursements	6,232,315.14	86,537,371.58
Ending Cash Balance	\$ 2,526,983.34	\$ 2,526,983.34

EXHIBIT C

APS 401(K) TRUST ACCOUNT**Cash Receipts and Disbursements****For the Period January 1, 2016 through March 31, 2016**

	January 1, 2016 through March 31, 2016	Receivership Cumulative
Beginning Cash Balance	\$ -	\$ 3,842,908.62
Cash Receipts		
Gain	-	230,316.68
Interest	-	660,081.68
Principal	-	1,458,031.24
Rent	-	192,501.19
Assets Sold	-	2,283,467.21
Money Market Transfer In	-	1,452,984.48
Contribution - Loss Allocation	-	104,387.71
Refund of Fees	-	2,160.57
Employer Contribution	-	423,205.62
Employee Contribution	-	343,123.22
Total Cash Receipts	<u>-</u>	<u>7,150,259.60</u>
Cash Disbursements		
Expenses	-	67,371.88
Fees	-	149,524.88
Transfer to Equity	-	4,854,664.11
Real Property Tax	-	24,378.57
Loss Allocation	-	880,949.51
Assets Purchased	-	4,995,543.76
Loan Payment	-	20,735.51
Total Disbursements	<u>-</u>	<u>10,993,168.22</u>
Ending Cash Balance	<u>\$ -</u>	<u>\$ -</u>

EXHIBIT D

AMERICAN PENSION SERVICES, INC. AND RELATED PARTIES
SUMMARY OF ASSETS

Entity	Asset Description	Estimated Value	Comments	Disposition Status
Personal Assets - Curtis DeVoung	Home - 1231 S. 1950 E., Draper, UT	630,000	Appraised Value	Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Encumbered by mortgage	(590,000)	Franklin America	
	Encumbered by 2nd Mortgage	(125,000)	Heritage West Credit Union	
	Rental Property - 1574 Iron Horse, Bluffdale, UT	375,000	Appraised Value	Disposed of pursuant to Order during Eighth Reporting Period [Dkt. 689] by deed-in-lieu of foreclosure to First Utah Bank.
	Encumbered by mortgage of \$364,644	(364,644)	First Utah Bank	
			Frozen at Brighton Bank; accounts comprised of \$70,051 cash and remainder in various other	
	Combined Retirement Accounts - Curtis DeVoung	325,945	Investment of unknown value	
	HSA account Curtis DeVoung	4,181	Frozen at Brighton Bank; accounts comprised of \$817,447.7 cash and remainder in various other	
	Combined Retirement Accounts - Michelle DeVoung	231,652	Investment of unknown value	Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	HSA account Michelle DeVoung	4,181	Value based on Rob Olson inspection	Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Personal Furniture, Figures	20,000	Kelley Blue Book	Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Vehicles	45,507	Value determined by market	This Receiver has determined efforts to recover the vehicles, which are held by a family trust called MACH Trust, would not be cost effective
	Idaho Cabin Furniture	unknown		Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Studebaker Vehicle	5,500	Value determined by market	Sold at auction on 4/23/16 for \$5,500, minus auction fees of ten percent
American Pension Services, Inc.	Cash - First Utah Bank	498,520	Operating account controlled by Receiver	Being used for day-to-day operations of APS and payment of professional fees, as funds are available
	Receivable - Watson	7,000	Loan 8/24/08, no payments received	Receiver has determined further collection efforts are not cost effective, pending further information from C. DeVoung
	Receivable - Courseware	46,600	Loans 2011 and 2012, no payments received	Receiver has determined further collection efforts are not cost effective, pending further information from C. DeVoung
	Receivable - Innovative Equity Partners	155,617	Loans for: to July 2013, Mike Mermott; entity	Receiver has determined further collection efforts are not cost effective, pending further information from C. DeVoung
	Receivable - Innovative Services	16,500	\$6500 loaned 6/29/11, \$10,000 on 6/4/13, Mike Mermott; entity	Receiver has determined further collection efforts are not cost effective, pending further information from C. DeVoung
	Receivable - Smart Capital, LLC	12,250	Loan on 8/13/11, Mike Mermott; entity	Receiver has determined further collection efforts are not cost effective, pending further information from C. DeVoung
	Receivable - Tyler Ayres	6,680	Loan on 10/25/10, no payments received	Receiver has determined further collection efforts are not cost effective, pending further information from C. DeVoung
	Receivable - Harold Hardie	5,056	\$15,000 loan on 12/31/06, repayment of \$9,945 on 6/10/11. No payments since	Receiver has been unable to locate Mr. Hardie and has determined further efforts are not cost effective, pending further information from C. DeVoung
	Verbal Property-Kendrick Note	58,468	loaned on 5/7/12, no payments received	Receiver has determined further collection efforts are not cost effective, pending further information from C. DeVoung
American Posh 401k Srvs, Inc.	Cash - First Utah Bank	5,492	Operating account controlled by Receiver	Being used for day-to-day operations
LJC Environmental	Commercial Property - 11027 S. State Street, Sandy, UT	330,000	Appraised value	Disposed of pursuant to Order during Eighth Reporting Period [Dkt. 688] via sale to First Utah Bank for \$330,000.
LJP, LLC	Cash-First Utah Bank	8,355		Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Receivable - Prime Utah	35,000	Loan 10/7/08, no payments received	Receiver has determined further collection efforts are not cost effective, pending further information from C. DeVoung
	Receivable - Cl White - Kansas City	2,250	No payments received since 2008	No value to Receivables Estate; pending further information from C. DeVoung.
	Receivable - Lionel Brown - Kansas City	18,000	No payments received since 9/25/11	Periodic payments being received in amount of \$137.50.
Quickliner	Real Property - Legends Townhomes in American Fork	280,000	Holiday Bank. Property is subject of litigation.	Receiver settled with Holiday Bank [Dkt. 522]
	Encumbered by loan from Holiday Bank & Trust	(186,861)		
APS Master Trust	Property - Harriford, PA	25,500	3 homes, assessed value only on land	No value to Receivables Estate, pending further information from C. DeVoung
DHR2 Holdings, LLC	Cash- Brighton Bank	67,516	Amount on deposit at Brighton Bank	Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
RE Ventures, LLC	Cash-Brighton Bank	81,745	Amount on deposit at Brighton Bank	Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
Other Claims or Assets	going Concern Value of APS and Receiver's Transition Services	1,050,000		Subject of Transition Services Agreement with Equity Trust
	1913 Ford Automobile	5,500	Value to be determined by market	Sold at auction on 4/23/16 for \$5,500, minus auction fees of ten percent
	Crystal Globe	800	Value to be determined by market	Sold at auction on 4/23/16 for \$800, minus auction fees of ten percent
	Vintage Coka Machines	2,800	Value to be determined by market	Sold at auction on 4/23/16 for \$2,800, minus auction fees of ten percent
	Misc. The Cabinets (fireproof and non-fireproof)	50	Value to be determined by market	Sold at auction on 4/23/16 for \$50, minus auction fees of ten percent
	Claims Against First Utah Bank	24,000,000		Subject of Tenth Circuit Appeal, appellate case no. 16-4013
	Claims Against Estate of Michael Mermott Jr., Michael Mermott	4,500,000		Subject of Thompson v. Mermotts, Case No. 2:14-cv-00744-BJS
	Claims Against MACH Trust	Unknown	Vehicles held by the Trust	This Receiver has determined efforts to recover vehicles, held by the MACH Trust, would not be cost effective.
	Potential Action Against MACH II Trust	Unknown	Recreation vehicles held by the Trust	The Receiver has determined efforts to recover vehicles, held by the MACH Trust, would not be cost effective.
	Claim against insurance carrier, the Hartford	405,000	Settlement Amount	Settlement Agreement with the Hartford [Dkt.703] approved during Eighth Reporting Period
	Membership interest in Asset Management Int'l, LLC	1,000,000	Policy limits to be interpleaded with Court by Chubb	Federal Deposit Insurance filed a Complaint in Interpleader and for Declaratory Relief in case no. 2:16-cv-0023, which the Receiver has sought to consolidate with SEC case. Receiver intends to pursue full policy limits
	Membership interest in First Silverado Properties, LLC	Unknown	Value to be determined	No known value to Receivables Estate, pending further information from C. DeVoung
	Interest in BDBD Investments, Inc.	Unknown	Value to be determined	No known value to Receivables Estate, pending further information from C. DeVoung. Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Partnership interest in DeVoung Associates, Ltd	Unknown	Value to be determined	No known value to Receivables Estate, pending further information from C. DeVoung. Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Membership interest in Inetrim Funding, LLC	Unknown	Value to be determined	No known value to Receivables Estate, pending further information from C. DeVoung. Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Membership interest in D1C2 Investments, LLC	Unknown	Value to be determined	No known value to Receivables Estate, pending further information from C. DeVoung. Subject of Settlement Agreement with M. DeVoung [Dkt. 701]
	Trustee of APS Master Business Trust	Unknown	Value to be determined	No known value to Receivables Estate, pending further information from C. DeVoung

AMERICAN PENSION SERVICES, INC. AND RELATED PARTIES
SUMMARY OF ASSETS

Entity	Asset Description	Estimated		Comments	Disposition Status
		Value	Value		
Partnership interest in NACH, LP		Unknown	Value to be determined.	No known value to Receivership Estate, pending further information from C. DeVoung. Subject of Settlement Agreement with M. DeVoung [Dkt. 701]	
Interest in Venture Broadcast Inc.		Unknown	Value to be determined.	No known value to Receivership Estate, pending further information from C. DeVoung. Subject of Settlement Agreement with M. DeVoung [Dkt. 701]	
Furniture at APS Office		4,340		The furniture was purchased and paid for by First Utah Bank during the Seventh Reporting Period.	
APS desktop computers and miscellaneous decorative items		1,400		The computers and other items were purchased during the Eighth Reporting Period and paid for on January 16, 2016.	
APS server and phones		2,200		The new office tenant were purchased during the Eighth Reporting Period	
Various Collectibles/Judgments		Unknown	Value to be determined.	The Receiver intends to pursue items included in list provided by M. DeVoung pursuant to the parties' settlement agreement to extent provided by law. See [Dkt. 749].	

EXHIBIT E

AMERICAN PENSION SERVICES, INC.
SCHEDULE OF CLIENT ASSETS
AS OF MARCH 31, 2016

ASSET TYPE	BOOK VALUE
Brokerage Account	\$ 192,460.55
Coins	170,710
Consolidated Notes	100,000
Contracts	952,918
Debenture	90,000
Domain Name	5,163
Escrow Account	1,507
Joint Ventures	48,000
Leases	73,035
Limited Partnerships	1,900,902
LLC Interest	21,791,598
Loan Agreements	100,000
Miscellaneous	77,519
Mortgage Note	220,000
Mutual Fund	5,000
Oil & Gas Ventures	3,969
Oil Leases	75,500
PPM	20,000
Promissory Notes	16,161,771
Purchase Agreement	2,500
Real Estate Option	370,000
Real Property	3,217,202
Recision Offer	801,611
REIT's	115,710
Stocks	3,099,465
Tax Deeds	56,321
Tax Lien	2,600
Trust Deed Notes	1,517,502
Viatical	96,810
Total Assets	\$ 51,269,773

NOTES:

Note 1 - The asset descriptions and asset values shown below were compiled from data contained in the APS trust accounting system as of March 31, 2016. The Receiver and her professionals do no guarantee the accuracy of the categories and their related values.

Note 2 - For those accounts remaining at APS, the full 10% Loss Allocation has yet to be extracted due to the lack of liquid assets in the accounts.

EXHIBIT F

AMERICAN PENSION SERVICES, INC.
SUMMARY OF KNOWN CREDITORS

CREDITOR	ADDRESS	OBLIGOR	AMOUNT	DESCRIPTION
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	Curtis DeVoung	\$ 43,412.75	Unsecured loan
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	Curtis DeVoung	364,644.32	Secured by Iron Horse Property
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	American Pension Services, Inc.	137,299.92	Unsecured line of credit
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	Curtis DeVoung	3,450.00	Overdraft on bank account
Snow, Christensen & Martineau	10 Exchange Place, 11th Floor, SLC, UT 84145-5000	American Pension Services, Inc., Curtis DeVoung	14,851.60	Legal fees
City of Harrisburg, PA	10 N. 2nd St., Suite 103, Harrisburg, PA 17101-1679	APS Master Trust	26,711.22	Demolition Costs on Property
City of Harrisburg, PA	10 N. 2nd St., Suite 103, Harrisburg, PA 17101-1679	APS Master Trust	10,504.77	Utility bills
Smith Accounting Services	999 E. 13200 S., Draper, UT 84020	American Pension Services, Inc.	8,695.62	Accounting fees
Greenbaum Law Group, LLP	840 Newport Ctr. Dr., Suite 720 Newport Beach, CA 92660	American Pension Services, Inc.	3,484.50	Legal fees
Kyler Kohler Ostermiller & Sorensen	1883 W. Royal Hunte Dr., Suite 200, Cedar City, UT 84720	American Pension Services, Inc.	320.00	Legal fees
Franklin America	501 Corporate Centre Dr., Franklin, TN 37067	Curtis DeVoung	590,000.00	Mortgage on residence
Heritage West Credit Union	13218 South 5600 West, Herriman, UT 84096	Curtis DeVoung	125,000.00	Mortgage on residence
Holladay Bank & Trust	2020 Murray Holladay Rd., SLC, UT 84117	Quicksilver, LLC	186,861.00	Secured by Legends Townhomes
Mountain America Credit Union	111 East Broadway, 11th Floor, SLC, UT 84111	American Pension Services, Inc.	12,253.00	Judgment
Estate of Jeannine Reneau	2825 E. Cottonwood Pkwy, Ste. 500, SLC, UT 84121	American Pension Services, Inc.	505,959.87	Judgment
Total			<u>\$ 2,033,448.57</u>	

NOTES:

Note 1 - The above list contains known creditors as of the inception of the Receivership on April 24, 2014. At this time, a claims bar date has not been established. As such, there may be additional creditors which assert claims against the Receivership Estate.

Note 2 - The above list does not include investors who have retirement accounts with American Pension Services Master Trust.