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*Attorneys for the Court-Appointed Receiver,  
Diane A. Thompson*

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

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**vs.**

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

**Defendants.**

**RECEIVER'S MOTION TO APPROVE  
SUCCESSOR CUSTODIAN /  
ADMINISTRATOR AND  
MEMORANDUM IN SUPPORT**

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

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

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Diane Thompson, the Court-Appointed Receiver ("Receiver"), by and through undersigned counsel, hereby submits her Motion to Approve Successor Custodian/Administrator ("Successor").

**MOTION AND MEMORANDUM**

By this Motion, the Receiver requests that the Court approve a Successor to American Pension Services, Inc. The Receiver has gone to great lengths to identify an appropriate

Successor to take over administration and custody of the American Pension Services, Inc. (“APS”) client accounts. The steps taken by the Receiver are summarized in the Receiver’s Proposed Plan of Liquidation [Dkt. 186] and Proposed Modified Plan of Liquidation [Dkt. 356]. At hearing on December 17, 2014, the Court invited the Receiver to file a Motion requesting approval of the Successor described in her Plan and Modified Plan of Liquidation.

### ARGUMENT

The Receiver requests that the Court approve Equity Trust Company (“Equity Trust”) as the Successor to American Pension Services. This recommendation is based on evaluation of all offers the Receiver received from other potential successors to assume management of the APS accounts, the expertise and experience of Equity Trust, the benefits it will provide to the APS clients and the economic benefit to the Receivership Estate. Attached hereto as Exhibit A is additional information concerning Equity Trust Company.

The key terms of the Transition Services Agreement are as follows:<sup>1</sup>

- 1) Equity Trust will make an up-front cash payment to the Receiver in the amount of \$1,170,000 due at closing with no contingencies. Equity Trust offered one of the highest payments out of the final offers with no contingencies to the payment upon closing.
- 2) Equity Trust will waive account holder fees for one year post-closing. Equity Trust provided the most generous waiver of account holder fees post-closing out of the final offers. Upon transferring their account, clients will not be charged administration fees for their accounts for one (1) year. This will defray clients’ account costs and allow them

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<sup>1</sup> The Receiver will submit the final Transition Services Agreement to the Court *in camera* due to proprietary and confidentiality concerns.

to test the services of the Equity Trust with little to no cost or expense to the clients. The benefit of this term alone is a savings to all clients of approximately \$2.3 million.

3) Equity Trust will waive termination fees for nine (9) months post-closing. This represented the most generous termination fee waiver out of all of the final offers. Based on the comments received, the Receiver understands that such a termination fee waiver is important to the clients and will give them sufficient freedom to transfer their accounts if they are not satisfied with the service provided by Equity Trust. This term also eliminates the need to provide a second choice and will facilitate a more efficient transition of data and accounts.

4) Timing of transition and ability and experience to execute. Equity Trust provided a detailed transition plan and timeline, and will use best efforts to transfer accounts within 60 (sixty) calendar days after the closing. Moreover, it has conducted more than a half-dozen portfolio acquisitions, including a 2010 acquisition in which it became successor custodian to a division of a failed bank, which had over 8,000 clients and approximately \$1 billion in assets. The Receiver believes that Equity Trust's track record of successful acquisitions will aid it in performing a smooth and efficient transition of the clients' accounts.

5) Safety and soundness and regulated trust company status. Equity Trust is a leader in the self-directed industry. It has operated as a qualified IRA custodian since 1983, has over 130,000 clients in all 50 states and currently has over \$12 billion of assets under custody. Equity Trust meets all trust company capital requirements and is audited by its

regulator every 18 months. The Receiver believes that Equity Trust's size, experience, regulation and experience with transitions make it the lowest-risk option as Successor.

6) Ability to service all APS asset types, including 401(k) Plans. Equity Trust has experience with all assets types held by APS account holders. With respect to IRAs, it has accounts with assets in real estate, metals, private equity, private debt and other alternative asset types similar to the assets held in APS IRAs. Additionally, it currently administers 2,000 multi-participant and Solo 401(k) plans and has over 20 years' experience servicing qualified plans, including through Expert Plan, which is the qualified plan record keeper currently used by APS. Equity Trust's ability to service all APS asset types will facilitate a smooth transition of APS account holders' accounts.

7) Insurance/audit safeguards. Equity Trust's qualified plans are regulated by the Department of Labor. Internally, it has an independent internal auditor that reports directly to the audit committee of the board of directors and its financials are audited on an annual basis by certified public accountants, which report their findings to the audit committee. The audit committee oversees the activities of Equity Trust's internal and external auditors. All account holders' un-invested cash is placed in FDIC-insured institutions where it is federally insured up to \$250,000. Equity Trust also carries insurance for Banker Blanket Bond and Professional Liability Insurance.

Given the cash payment, the waiver of administration and termination fees, Equity Trust's experience in acquiring, transitioning and servicing accounts similar to the APS accounts, its size and leadership in the industry, and its safety and soundness, the Receiver, her attorneys and accountants believe that Equity Trust provides the lowest risk solution to achieve the

Receiver's goals of recovering the enterprise value of APS and finding a Successor to efficiently serve the APS clients and minimize their losses going forward. In addition, as discussed above, because Equity Trust will waive administrative and termination fees for one year and nine-months, respectively, the Receiver believes the choice of a single Successor will not constrain the choice of the APS clients to use the custodian/ administrator that they prefer.

Ultimately, the Receiver and her attorneys and accountants believe selecting Equity Trust as Successor will result in the best outcome for the clients, more revenue for the enterprise value of APS, and a clear and efficient transition of the accounts.

#### CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court approve Equity Trust Company as successor administrator/custodian and further approve that the Receiver may enter into a Transition Services Agreement with Equity Trust. The Transition Services Agreement will be submitted to the Court *in camera* for its review, due to proprietary and confidentiality concerns.

DATED this 16th day of January 2015.

/s/ Mark R. Gaylord  
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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 **RECEIVER'S MOTION TO APPROVE SUCCESSOR CUSTODIAN/ADMINISTRATOR AND MEMORANDUM IN SUPPORT** was served to the following this 16<sup>th</sup> day of January 2015, 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/ Lori D. Brown



# Exhibit A



# Equity Trust Company

Executive Summary and Capabilities Assessment

This Report is Confidential

# Integration Experience

Equity Trust Company has a history of over a half-dozen portfolio acquisitions, each resulting in a smooth and timely transition. Two of the more recent acquisitions include:



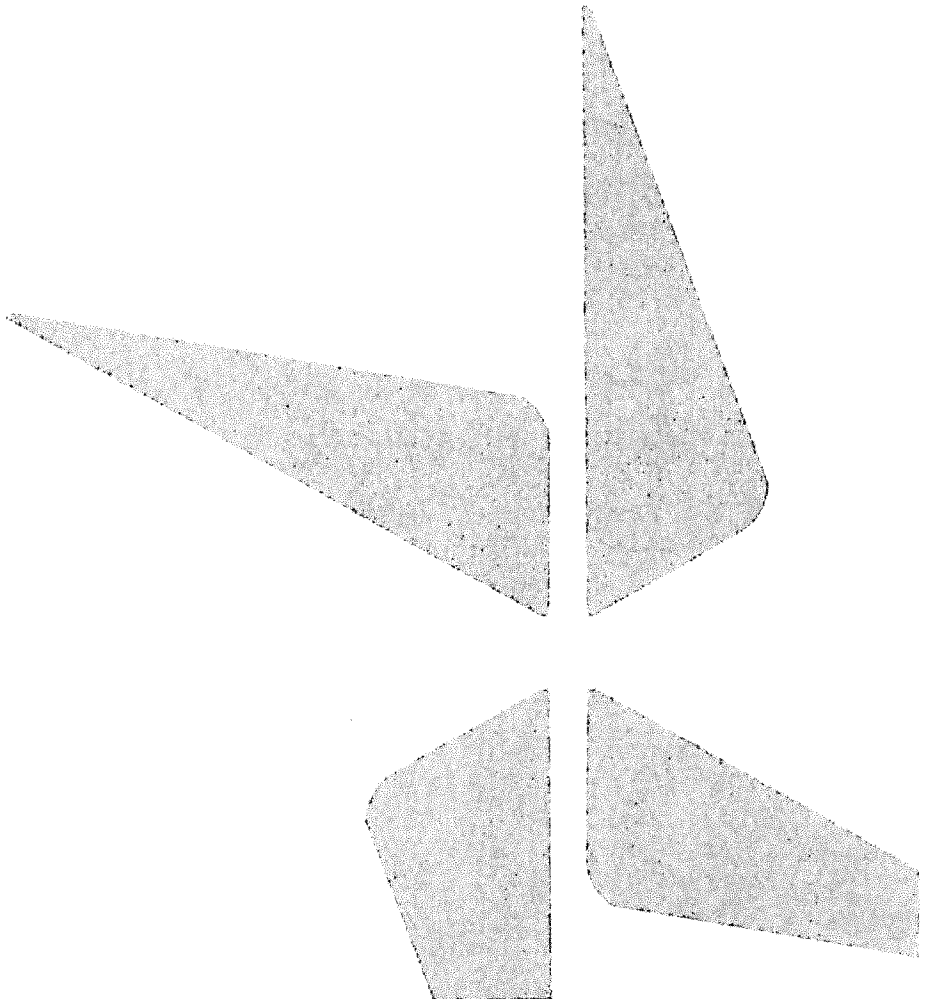
## **Sterling Trust Company**

In 2009, Equity Trust and an affiliated service company acquired the custodial services business of United Western Trust Company (formerly known as Sterling Trust Company), of Waco, Texas, a subsidiary of United Western Bancorp, Inc. of Denver, Colorado. The Company specialized in relationships, primarily to financial advisors and their clients, offering the ability to invest in non-traditional assets. At the time of the \$60-million acquisition, Sterling Trust Company served hundreds of financial firms and nearly 5,000 financial professionals.



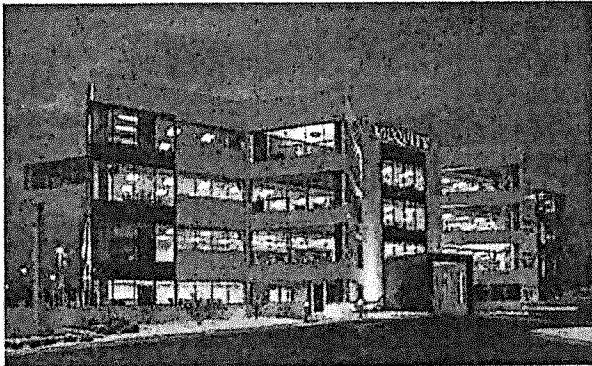
## **Trust Administration Services**

Conversion completed in March 2010. Equity Trust Company was chosen by the FDIC as successor custodian for Trust Administration Services, a division of First Regional Bank of Los Angeles, California. This deal was fast-tracked with the FDIC and the operation was seamlessly integrated in less than 80 days, thanks to Equity Trust's acquisition experience. Equity Trust acquired approximately 8,000 accounts with over \$1 billion of assets under management.



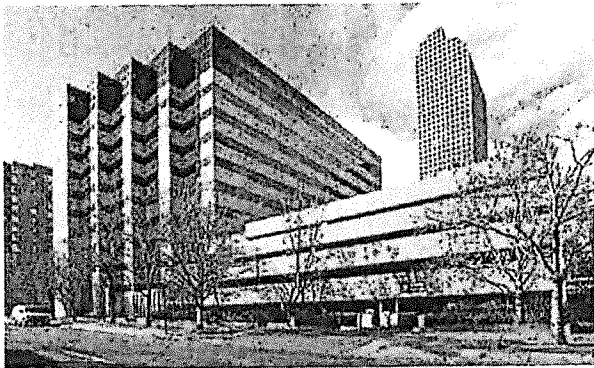
## National Footprint of Equity Trust Company

The Equity Trust family of companies covers a wide spectrum of product and service needs for over 130,000 clients across the country. We successfully manage three main operational centers, specifically chosen as the ideal locations for each line of business. Each location is staffed with experts trained in their respective fields so they can best manage the needs of our clients.



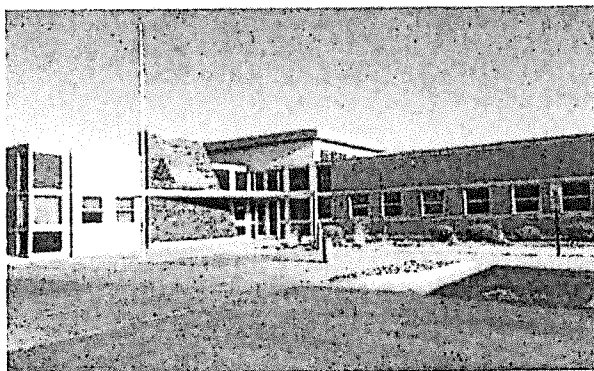
### Westlake, OH

This newly renovated, 73,000-square-foot, state-of-the-art facility is home to the corporate headquarters for the Equity Trust, Equity Institutional and ETC Brokerage Services lines of business. A staff of over 400 employees provides extensive sales, marketing, finance, operations and service support for the over 130,000 clients across the multiple brands.



### Denver, CO

Headquartered in Denver, Colorado, Equity Advisor Solutions provides registered investment advisors, turnkey asset management programs, hybrid firms, breakaway representatives and broker-dealers with custody and back-office solutions to enhance their services. This line of business provides complimentary technology and services to the Equity Institutional clients and prospects.



### Sioux Falls, SD

Recognizing potential benefits of operating a facility in the state in which it holds its trust company charter, Equity Trust opened a facility in Sioux Falls. This location houses a highly trained staff of client service representatives that handle thousands of calls each month. This office specializes in handling inquiries that include retail and institutional account matters as well as precious metals transactions.

## Equity Trust's Superior Processing Capabilities

Equity Trust is well equipped and experienced in efficiently handling high volumes of transactions. These statistics illustrate the amount of business that flows through the company on a regular basis. The driving force behind these numbers is a large, highly trained staff that works with precision to create a seamless experience for each client.

- Total assets under custody: **\$12 billion**
- Number of clients: **130,000+**
- Number of financial advisors served: **4,000+**
- Trained self-directed investment specialists: **400+**

## Equity Trust Company Employee Culture

Equity Trust offers its employees all the benefits and culture of working for a family-owned company combined with the opportunities that exist at larger corporations. The company maintains a positive, productive atmosphere while providing perks and amenities that attract top-flight talent.

## Equity Trust's Philanthropic Impact Today

Equity Trust is a quiet philanthropic partner for many organizations and the philanthropy spans across civic, non-profit, and educational institutions throughout the community. The company made a significant gift to Baldwin-Wallace University in 2013 when it donated its \$3.8-million Cleveland-area office building (located in the same city as Baldwin-Wallace) to the University.

This past year, Equity Trust paired with BVU (Business Volunteers Unlimited), the Center for Nonprofit Excellence, an organization that helps engage employees in community service. Two Equity executives currently participate in BVU's board matching program.

Equity also formed Getting Individuals to Volunteer for Equity (GIVE), a committee of 15-20 employees who coordinate and communicate all community outreach projects.

The philanthropic spirit is instilled at the individual employee level as well. The company promotes nine core values that were created to establish the company culture, including the client as the ultimate boss, working as a team, and welcoming colleagues home as a family. True to those values, Equity Trust employees recently initiated a fundraising campaign to help a fellow employee who lost everything due to an apartment building fire. The result of their effort was successful as they contributed enough household items and monetary donations to re-establish the employee who suffered the devastating loss.

In fall 2012, when the City of Elyria, Ohio (prior location of Equity's main headquarters) planned to cancel its annual holiday lighting, Equity Trust responded to the community with a donation of \$15,000.

That same spirit of giving to those in need is extended to the broader community as well. Equity Trust employees have been involved in numerous community service projects through the years including, but not limited to: Equity Trust Blood Drives, Susan G. Komen Race For a Cure, Annual Thanksgiving Turkey Drive, Adopt a Soldier, Elyria Relay for Life, Boys and Girls Club, Cleveland School Supply Drive, Junior Achievement, Toys for Tots, Canned Food Drive, Hurricane Sandy Victim Relief, Christmas Toy Drive, Families of South Africa Relief, and knitting scarves for women in the community struggling with heart disease.



## Acquisition Reference

In 2010 Equity Trust Company was given the opportunity by the FDIC to become the successor custodian for Trust Administration Services, a division of First Regional Bank of Los Angeles, California (TAS). This deal involved over 8,000 clients with approximately \$1 billion in assets.

This acquisition took place over the course of only 80 days. This was made possible by the Equity Trust acquisition and conversion staff assigned to this project. In addition to the dedicating staffing, Equity Trust's advanced technology platform offered a seamless transition for client accounts and assets. As a result, these factors helped Equity Trust retain the majority of the TAS client accounts following the transition.