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ocas veces tenemos noticia de acciones colectivas llevadas a cabo por un conjunto de afectados por la información contable publicada. Sin embargo, en la realidad lo común es que haya múltiples perjudicados por una misma información, aunque sus decisiones sean distintas. Cuando se reúnen varias víctimas el monto reclamado alcanza cifras muy grandes.

En Estados Unidos de América la SEC (Securities and Exchange Commission) demandó judicialmente a las sociedades Aequitas Management, LLC y Aequitas Holdings, LLC. [Dentro de este proceso](http://www.kccllc.net/aequitasreceivership/document/1600438181121000000000001) “(…) *Ronald F. Greenspan, the duly appointed Receiver of the entity defendants and 43 related entities, hereby files the attached Report Regarding the Investigation of the Receivership Entity’s Business Conduct, dated November 1, 2018*. (…)”. Su informe tiene 174 páginas. Se lee en él: “(…) *C.* ***Executive Summary*** *The Commission alleges in the Complaint that “…redemptions and interest payments to prior investors were being paid primarily from new investor money in a Ponzi-like [emphasis added] fashion….”8 While the Investigation uncovered frequent instances where redemptions and interest payments were financed by fundraising efforts or the movement of funds among entities to satisfy such obligations, that, in and of itself, does not qualify as a Ponzi scheme. This Report examines the Ponzi scheme construct and applies multiple factors by which a finder of fact could determine if the Aequitas scheme qualifies as such. Even though Aequitas does not present as a classically defined Ponzi scheme where there was no material business being conducted, there is still sufficient evidence of actual fraud and badges of fraud9 apparent that establish the Ponzi-like nature and fraudulent activity. The Investigation uncovered instances of self-dealing and misstatement of financial statements and activities intended to perpetuate an investor fraud. Based on the findings of the Investigation, it is the Receiver’s intention to seek the designation of a Ponzi scheme as it relates to the Receivership Entity.* (…)”. Las empresas entran en iliquidez. Empiezan a usar el dinero disponible para atender obligaciones anteriores, lo cual es distinto de lo acordado. Este uso fraudulento del efectivo se esconde en los estados financieros, razón por la cual éstos no presentan la realidad o verdadera situación financiera. El esquema Ponzi es sustancialmente igual al que nosotros denominamos pirámides. Según [Oregon Live](https://www.oregonlive.com/business/2018/11/defunct-aequitas-misled-investors-cooked-books-ran-ponzi-like-scheme-receiver.html), “(…) *Even as the company’s cash shortage reached a critical stage after August 2015, the report says, Aequitas took care of its insiders. While panicky investors clamored in vain for Aequitas to return their money, Greenspan reports, the company paid $3.5 million to executives and members of its advisory board in its last eight months of existence*. (…)”. Es común que mientras se incumple a los acreedores, se hagan pagos a los controlantes y los administradores. Según [Law360](https://www.law360.com/articles/1176960/deloitte-sidley-austin-others-settle-ponzi-claims-for-234-6m), “*Deloitte, Sidley Austin, Others Settle Ponzi Claims For $234.6M*”. Ciertamente hay firmas que tienen con qué indemnizar y otras que adolecen de recursos.

*Hernando Bermúdez Gómez*