



FOCUS MANAGEMENT INC. (In Official Liquidation)

Report to Creditors by the Joint Official Liquidators

26 October 2017

Strictly private and confidential

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Basis of Report and Disclaimer

1.1 Basis of Report

On February 20, 2008, Jean Robillard of Raymond Chabot Inc. (Canada) and Hugh Dickson of Grant Thornton Specialist Services (Cayman) Limited (whilst entirely separate firms, for convenience referred to collectively as “Grant Thornton”) were appointed Joint Provisional Liquidators (JPLs) of Focus Management Inc. (Focus) by the Grand Court of the Cayman Islands (the Court) and on October 31, 2008 were appointed Joint Official Liquidators of Focus. On December 11, 2012, Nicolas Boily was appointed Joint Official Liquidator of Focus in place of Jean Robillard (deceased) by the Court. References to Joint Official Liquidators (JOLs) throughout this report mean Hugh Dickson and Nicolas Boily jointly.

In accordance with Order 10 of the Cayman Islands Companies Winding Up Rules, 2008 (As Amended) (the CWR), this ninth report has been prepared by the JOLs solely for the purpose of annual reporting to the Focus creditors on the conduct of the liquidation and the state of Focus’ affairs since the JOLs’ last report dated 15 September 2016.

1.2 Disclaimer

None of the JOLs, Grant Thornton, their partners, employees, professional advisers or agents accept any liability or assume any duty of care to any third party (whether it is an assignee or successor of another third party or otherwise) in respect of this report and any such party who receives a copy of this report whether from Grant Thornton or any other source shall have no right of recourse against Grant Thornton, their partners, employees, professional advisers or agents.

In preparing this report, the JOLs have relied upon information available to them at the time of preparation and have not performed an audit examination on this information. Except where specifically stated, the JOLs have been unable to establish the reliability of the sources of information presented to them by reference to independent evidence.

Asset recoveries

2.1 Horizon Bank International Ltd. (Horizon)

- As creditors are aware, the JOLs have to date received an interim dividend of USD229,173 in relation to claims filed with the Horizon liquidator in 2008 for USD904,907 and CAD354,596.
- In March 2016 court directions put the onus on the Appellant to progress the matter of the long delayed proprietary claim dispute in the courts since 2010, which has prevented a further dividend distribution in the Horizon liquidation.
- The latest update received from the Horizon liquidator is that a trial has now been set for December 12-13, 2017 in the High Court of Justice in St. Vincent and the Grenadines.
- Any further recovery from Horizon is not anticipated to exceed USD100,000 at best, and any recovery at all is subject both to the Appellant losing their claim and the costs of the ongoing liquidation and unrecoverable costs of the trial not exhausting the remaining estate. There is consequently no firm indication either of a final recovery from Horizon or the timing of such.

Law enforcement

3.1 Law enforcement

- Since the JOLs provision of assistance to the Cayman Islands and Canadian authorities' investigations in 2008, they have made repeated inquiries as to the prospects for criminal prosecution of individuals involved in Focus' operations.
- The JOLs have been repeatedly advised by the Financial Crime Unit of the Royal Cayman Islands Police Service (RCIPS) that the Royal Canadian Mount Police (RCMP) is the lead agent on the case and any decisions on a Cayman prosecution of the company director would be subsidiary to any decision by the RCMP.
- Following our latest communication with the RCIPS, they have reiterated that this remains an RCMP led investigation and they do not wish to make any comments that will have an adverse effect on potential criminal or civil legal proceedings in Canada.
- In relation to the two Canadian individuals involved in the matter, the JOLs have recently made a further request for an update to the RCMP and the chief prosecutor of the DCMP. The latter has recently advised that all information regarding criminal investigations are confidential, and they are not in a position to provide any further update on that file.
- Decisions regarding criminal prosecution remain a matter for the authorities, and there is nothing further the JOLs can do to advance matters.

Proceedings against financial institutions

4.1 BNP Paribas

- The JOLs can confirm that BNP were put on notice in 2010 to preserve all records relating to the case pending potential litigation.
- In 2012 the JOLs reached an agreement, sanctioned by the Cayman and Bahamian Courts, whereby BNP would, *inter-alia*, supply a guarantee from its Swiss parent company (the Parent Company) to meet any damages award, thus allowing the Parent Company to liquidate the Bahamian company that had traded as BNP in the Bahamas following the sale of its business to Scotiabank.
- In February 2014 the JOLs, upon legal advice, issued a writ against BNP to avoid any prospective action by the JOLs being time barred. The JOLs also served BNP a draft statement of claim in March 2014.
- As a result of the lack of funds in the Focus estate, the legal action was put on hold whilst the JOLs pursued negotiations with the Parent Company, through Swiss legal counsel and a meeting in Switzerland. However, the Parent Company asserted that the bank considered it had no liability.
- The JOLs subsequently pressed the Parent Company to reconsider its position and to consider whether they were prepared to make a voluntary contribution to settle the matter without admission of liability. One of the JOLs visited the Parent Company in Switzerland to emphasize the JOLs view that the bank had both legal and moral liability to assist the victims.
- However, notwithstanding the approach and the subsequent provision by the JOLs of further evidence in relation to the bank's conduct, the Parent Company in June 2017 reaffirmed its decision, stating that they do not consider that they are liable for the fraud perpetrated by Focus management.
- As previously advised, the JOLs' attempts to find parties prepared to finance a legal action against the bank were unsuccessful. The estate has approximately US\$125,000 in funds remaining, unpaid professional and legal costs of over \$500,000, and the bank has made it clear it will vigorously defend any continuation of the legal action.
- Focus is exposed to the bank accelerating the action by requiring us to either proceed with the action or withdraw it. Proceeding will rapidly escalate the legal costs and in our estimate beyond the available funds in the estate in short order, even if the unpaid legal fees to date were written off. If we then withdraw, the estate will be liable for the bank's legal costs to date.
- As a practical matter the estate has inadequate funds to progress that legal action to the next stage. Any continuation of the action without funding would leave the JOLs exposed not only to meeting Focus' own costs but the risk of having to meet potentially substantial costs of the defence should Focus either lose the action or be unable to continue at any point due to lack of funds (under local law, the principal is that the loser of a legal action has to pay the costs of the defence if unsuccessful). Given that Focus is an insolvent entity, it is highly likely that it would be required by the Court to lodge so called "security for costs" before it could proceed – that is, sufficient cash or a bank guarantee to cover the defendant's estimated costs of defence, so the defendant could be assured of recovering their costs if Focus failed.
- Given the nature of the allegation the JOLs anticipate that even if Focus were successful in the initial action, the judgment would almost certainly be appealed by the bank, involving further funding requirements. An action of this nature could easily require several million dollars of funding to prosecute through first instance and up to two levels of appeal, and the estate lacks the funding to realistically progress the action to even a first instance judgment.

Proceedings against financial institutions (continued)

4.1 BNP Paribas (continued)

- In addition, the JOLs act as officers of the Court. We consider the Court would be concerned if there were any suggestion that its officers had continued to conduct a legal action in the knowledge that there was inadequate funding to meet the costs of a successful defence.
- In the circumstances, the JOLs regret that they have no option but to discontinue the action against the bank, and are making arrangements to withdraw the writ.
- The JOLs understand that creditors will be very disappointed as the legal action represented the last realistic possibility for a recovery by creditors, but in the absence of adequate funding there is no practical alternative.

Receipts and Payments Account

FOCUS MANAGEMENT INC. (IN OFFICIAL LIQUIDATION)		
Joint Liquidators' Abstract Of Receipts And Payments		
20 February 2008 to 31 August 2017		
RECEIPTS	USD	CAD
<i>Third party funding:</i>		
Funds received from AMF	110,607.85	269,599.17
Funds received from Triglobal	-	357,827.41
Funds received from Ivest	59,982.50	104,137.11
Advances received	145.56	3,100.00
Total third party funding	170,735.91	734,663.69
<i>Liquidation estate:</i>		
Funds received from broker	7,769.83	-
Telephone deposit refunded	79.92	-
Recoveries - Horizon, PNB	229,172.81	969,331.08
Cash at Bank (rec'd from UEB)	17,657.16	-
Bank/ISA InterestGross	85.26	0.09
Uncleared cheques refunded	9,217.42	-
Other refunds, credits & receipts	3,185.49	-
Total liquidation estate	267,167.89	969,331.17
<i>Inter-account transfers</i>	<i>623,097.92</i>	<i>(625,176.55)</i>
TOTAL RECEIPTS	1,061,001.72	1,078,818.31
PAYMENTS		
Records recovery charges	38,243.90	-
Liquidators Fees (GTSS)	512,371.30	227,206.64
Liquidators Expenses (GTSS)	60,077.20	9,361.62
Liquidators Fees (RCGT)	67,594.08	464,608.93
Liquidators Expenses (RCGT)	-	7,832.67
Legal Fees (Caribbean)	281,808.78	3,635.61
Legal Fees (Canadian)	-	104,293.50
Legal Fees (Swiss Action)	15,000.00	-
Loan repayment (Ivest)	-	116,568.55
Loan repayment (advances)	-	3,000.00
Bank Charges	2,308.20	127.87
Foreign exchange loss	36,892.99	14,254.09
Tax	-	29,537.32
TOTAL PAYMENTS	1,014,296.45	980,426.80
Cash balances in hand	46,705.27	98,391.51

- Since the estate did not have sufficient funds for investigation, most of the funds were provided by third parties, namely the AMF, Triglobal and Ivest.
- The estate has also been subsidized by the JOLs and their legal counsel, who have not drawn outstanding fees and expenses totaling approximately US\$0.5 million since 2013 pending the determination of whether material recoveries could be achieved.
- The JOLs have now determined that there is no prospect of a recovery for the estimated US\$69 million of creditors.
- The JOLs consider that in light of the lack of funds needed to pursue any meaningful recovery, it is uneconomical to keep the liquidation open. Any recovery from Horizon would be insufficient to cover the unpaid legal and professional costs of the estate, and there are no other matters outstanding (any subsequent criminal prosecution, if any, being entirely outside the control of the JOLs). The JOLs therefore intend to propose to creditors at the creditors meeting that they apply to the Court for the liquidation file to be closed, and any remaining assets to be utilized to be applied against outstanding legal costs, the expenses of dissolving the estate and partial settlement of the JOLs fees since 2013 already approved by the Court.