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## FOCUS MANAGEMENT INC. (In Official Liquidation)

Report to the Creditors by the Joint Official Liquidators  
September 27<sup>th</sup>, 2011



September 27, 2011

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Dear Creditors,

We refer to Court Orders dated February 20, 2008 and October 31, 2008 appointing Jean Robillard and Hugh Dickson as Joint Provisional Liquidators and Joint Official Liquidators respectively of Focus Management Inc. (“Focus”). We have the pleasure to enclose a copy of our third report to the creditors of Focus. This report should be read in conjunction with the previous reports laid on August 28, 2009 and October 1, 2010 (previous reports), along with the following reports, submitted by the Provisional Administrator of Triglobal Capital Management Inc. and PNB Management Inc.:

- Triglobal Capital Management Inc. (“Triglobal”) submitted on January 20, 2008;
- P.N.B. Management Inc. (“PNB”), 2967-9420 Québec Inc., 4190424 Canada Inc. and 4384610 Canada Inc. submitted on February 22, 2008;
- Provisional Administrator’s Information Document submitted on May 21, 2008.

These reports are available on the web site of Raymond Chabot Grant Thornton at the following address: [www.raymondchabot.com](http://www.raymondchabot.com)

The current report has been prepared exclusively for the creditors of Focus. While other parties may be interested in receiving a copy of this report we stress that we cannot accept any responsibility whatsoever in respect of any reliance that these parties may place on our report in any decision that they may make in relation to Focus.

Yours faithfully,

*Hugh Dickson*  
Joint Official Liquidator

*Jean Robillard*  
Joint Official Liquidator

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## Section 1

### Basis of Report and Disclaimer

1. Basis of Report and Disclaimer

2. Introduction

3. Status of file

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# Basis of Report and Disclaimer

## 1.1 Basis of Report

On February 20, 2008, Mr. Jean Robillard of Raymond Chabot Grant Thornton & Cie (Canada) and Hugh Dickson of Grant Thornton Specialist Services (Cayman) Limited (whilst entirely separate firms, for convenience referred to collectively as “GT”) 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 (collectively the “JOLs”) of Focus by said Court. The terms JPLs and JOLs are used interchangeably throughout this report.

In accordance with Order 10 of The Companies Winding Up Rules 2008 of the Cayman Islands, this third report has been prepared by the JOLs solely for the purpose of reporting to the Focus creditors on the conduct of the liquidation and the state of Focus’ affairs.

This report has been prepared using the information available to the JOLs at the time of preparation. Investigations are ongoing and new information continues to be received. This may result in material changes to the information provided in this report.

## 1.2 Disclaimer

None of the JOLs, GT, 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 GT or any other source shall have no right of recourse against GT, their partners, employees, professional advisers or agents.

In preparing this report, the JOLs have relied upon information available to them 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.

## Section 2

### Introduction

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# Introduction

## 2.1 Introduction

On August 28, 2009, the JOLs issued a first report relating:

- the background to the JOLs appointment;
- the result of the ongoing investigation and specifics related to:
  - the visit to Focus' premises;
  - the examination of a former managing director, Mr. Austin Harris;
  - the removal of records;
  - the failure to maintain books and records;
  - Ivest and Tricap Funds diversion;
  - Horizon Bank International Ltd affairs;
  - Review of bank and brokerage accounts;
  - Axxon channelling Focus funds;
  - the investigation of property transactions;
- the claims received by creditors;
- the status of the estate ;
- the actions considered and required to pursue various lines of enquiries and to recover funds.

A second report was issued on October 1<sup>st</sup>, 2010, which discussed mainly the following:

- status of Focus claim filed against Horizon Bank International Ltd ;
- investigation into Focus' affairs by the Police (Law enforcement);
- channelling of funds from Focus to PNB through Axxon and directly from Focus to PNB;
- funding agreement between Ivest and Focus;
- Focus claim against PNB and PNB's proposal .

This report provides an update on the above-mentioned issues only. Moreover, the only issues discussed are those that have been resolved or partially resolved.

If there are any matters for which you require clarification or further information please contact Mr. Dickson or Mr. Robillard.

## Section 3

### Status of file

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## Status of file

### 3.1 Update on the claim filed against Horizon Bank International Ltd ("Horizon")

As mentioned in the previous reports, the JOLs have lodged claims with Horizon's liquidator for a total amount of USD904,906.63 and CAD353,595.99. The JOLs have received an interim dividend of USD229,172.81 from the Horizon liquidator.

As reported by the JOLs in the previous reports, another party has lodged a USD3m claim against Horizon. The Horizon liquidator believes the said claim will be rejected and if appealed, will be adjudicated through the court. It is anticipated that this should take approximately 12 months to resolve and the JOLs expect an additional dividend in the region of c. USD100,000 subject to the settlement of the disputed claim. The matter is in the hands of the court for a judicial determination.

Any future dividend to Focus from Horizon, both as to timing and amount, will depend on the outcome of the disputed claim.

### 3.2 Status of the PNB Management Inc. ("PNB") Proposal

As stated in the previous report, the JOLs assisted by their lawyers, have worked on the documentation supporting a claim against PNB. Legal research had been conducted on numerous topics such as: prescription of proceedings, applicable tracing in Civil Law and available recourses. Transactions over the last decade were analysed, evidence compiled and a formal claim lodged against PNB. PNB had previously filed a notice of intent to file a proposal. The notice was filed with an independent court officer (namely a Trustee), in the person of Mr. André Giroux.

Among other things, Mr Giroux has examined and authorized the Focus claim as a proven claim under the process driven by the Bankruptcy and Insolvency Act ("BIA"). Notwithstanding, PNB has not yet been able to settle its debts. Indeed, the Proposal filed under the BIA last November 2010 was disputed. However, it was agreed that the opposition would be withdrawn subject to the winding up of 4190424 Canada Inc. in favour of its legal beneficiary.

Following a recommendation made by the Bureau de Decision et de Révision en Valeurs Mobilières in June 2011, a liquidation order has been requested from the Minister of Finance against 4190424 Canada Inc.

Once the order is granted by the Minister and the opposition withdrawn, Mr. Giroux will be able to convene a meeting of PNB's creditors within 21 days and apply for a court hearing. Thereafter, the trustee will be able to liquidate the assets of PNB for the benefit of its creditors (mainly, Focus).

The JOLs are hopeful that Focus will receive this dividend before the end of the calendar year. The expected outcome for Focus is a dividend of c. CAD0.9M. The Focus Liquidation Committee will reconvene at that time to agree upon the application of the funds.

### 3.3 Law Enforcement

For law enforcement investigation purposes, the JOLs have liaised with the Financial Crimes Unit of the Royal Cayman Islands Police Service ("RCIPS") and with the Integrated Market Enforcement Team, a special unit led by the Royal Canadian Mounted Police. Formal request was lodged with the RCIPS in October 2010 and a second request in May 2011 in order to obtain an update on their investigation into Focus' affairs. A similar request was lodged with the Cayman Islands Monetary Authority (the "Authority") in May 2011.

## Status of file (cont'd)

In August 2011, the Authority advised the JOLs that at the end of their investigation into the matter, the Authority concluded that it had reasonable grounds for believing that Focus had been carrying on, or had been purporting to carry on, securities investment business in the Cayman Islands without a license issued pursuant to the Securities & Investment Business Law (2004 Revision) (“SIBL”). In addition, the Authority had suspicions that Focus had been involved in, or been used to facilitate, a fraud against investors. Given that: (i) carrying on or purporting to carry on securities investment business without holding a licence is an offence under SIBL that carries criminal penalties; (ii) the Authority had virtually no powers against non-licensees under SIBL; and (iii) the suspicions of fraud, the Authority took the decision that the most appropriate action was to refer the matter to the RCIPS for further investigation.

On August 22, 2011, the RCIPS verbally advised the JOLs that they were not actively investigating Mr. Harris, the sole director of Focus. However, they have been gathering evidence for the Canadian Authorities and conducted a second interview of Mr. Harris recently as requested by the Canadian Authorities. At the moment their review of Focus' affairs is not active however they will formally draft a written response to the JOLs shortly.

Recent changes to Cayman Law now empowers the JOLs to initiate criminal investigations against Mr. Harris. This option will be available if the creditors feel it might be beneficial. However, creditors must understand that any prosecution will not lead to a recovery of Focus' money.

### 3.4 Receipts and payments

As shown in Appendix A (Statement of Receipts and Payments), since the estate did not provide sufficient funds for investigation, most of the funds were provided by third parties, namely the AMF, Triglobal and Ivest.

Indeed, the AMF agreed to cover the liquidators' fees incurred in certain areas of investigation. A proposal filed with Triglobal and approved by the Court, provided some funding for the investigation of Focus' affairs. Additionally, Ivest lent monies to Focus on conditions as per a funding agreement.

Based on the current financial position of Focus' estate, absent any material recoveries from litigation, there is no prospect of recovery for the estimated US\$69 million of creditors' funds.

## Section 4

### Resolving Focus' Affairs

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## Resolving Focus' Affairs

### 4.1 Proceedings against financial institution

The JOLs are continuing their efforts to obtain better records to identify parties to whom illicit funds may have been paid. The JOLs have written to the liquidators of BNP Bahamas, Focus' bankers for the last 4 years of its existence, notifying them of Focus' involvement with the institution and the JOLs' interest in the preservation of books and records relevant to Focus' liquidation.

On 30 August 2011, H&J, under the direction of the JOLs, wrote to the liquidators of the financial institution requesting various documents, including, but not limited to, bank records to verify the identities of a number of unknown recipients of Focus' monies. If, and when, the information is recovered Focus may be in a position to consider actions for recovery of improperly paid monies .

Meanwhile, the JOLs have considered either filing a writ or making a claim against the financial institution concerned but is cognizant that the JOLs are not presently in a position to support such a claim with compelling evidence. If the liquidators of the bank rejected Focus' claim it may limit the JOLs ability to pursue a damages action in future. The JOLs are hopeful that further investigation may provide additional evidence which can be used to determine whether a commercially practical damages claim exists.

### 4.2 Conclusion

As long as the JOLs find additional funding and subject to the decision of the Liquidation Committee, they will continue to pursue known assets of Focus and follow up various actions already mentioned in previous reports, such as:

- examining directors and other related parties;
- analyzing potential causes of action against Focus' former directors or officers;
- analyzing potential proceedings against financial institutions;
- investigating the creation, operations and transactions of Focus' bank account, and the liability of any parties involved in transmitting or receiving the funds.

Any action would be assessed on its commercial merit and the JOLs would have to consider the evidence available at the time before any action is taken.

## Appendix A

### Statement of Receipts and Payments

