



# FOCUS MANAGEMENT INC. (In Official Liquidation)

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## **Report to Creditors by the Joint Official Liquidators**

15 September 2016

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 collectively.

In accordance with Order 10 of The Companies Winding Up Rules, 2008 (As Amended) of the Cayman Islands (the CWR), this eighth 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 2015.

## 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.

Investigations are on-going and new information continues to be received. This may result in material changes to the information provided in this report.

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## Asset recoveries

### 2.1 Horizon Bank International Ltd. (Horizon)

- The JOLs lodged claims with the Horizon liquidator in 2008 for a total amount of USD904,907 and CAD354,596.
- To date, the JOLs have received an interim dividend of USD229,173.
- A proprietary claim dispute has prevented a further dividend. Resolution of the proprietary claim has been delayed for some time due to health issues with opposing counsel and in part due to the procedural process in St. Vincent.
- The latest update received from the Horizon liquidator is that the appeal by the putative creditor (the Appellant) of his rejected claim in the Estate was before the court in March 2016 and the court gave directions concerning the progress of the appeal.
- The directions which are subject to the issuance of a final order by the court include the fact that the Appellant has until 24 September 2016 to provide draft documents and comments. The parties then have until November to agree on those items and finally skeleton arguments are to be filed by December 2016. After this a trial date will be fixed.
- If the Appellant fails to provide the draft documents by September 2016, the claim will be dismissed with costs. These directions put the onus on the Appellant to progress the matter.
- The JOLs still anticipate a final dividend in the future. There is no change to the previous estimate of a distribution to Focus in the region of USD100,000.

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# Law enforcement

## 3.1 Law enforcement

- The JOLs initially assisted the Cayman Islands and Canadian authorities with their investigations in 2008, and have made repeated inquiries as to the prospects for criminal prosecution of individuals involved in Focus' operations. Any decision regarding criminal prosecution is a matter for the authorities.
- In April 2015 the JOLs met with the Financial Crime Unit of the Royal Cayman Islands Police Service and were advised that:
  - a) the Royal Canadian Mount Police (RCMP) is the lead agent on the case and any decisions on a Cayman prosecution would be subsidiary to any decision by the RCMP; and
  - b) for confidentiality reasons the RCIPS could not advise on RCMP's decision without their consent.
- In relation to the two Canadian individuals involved in the matter, the JOLs understand that the file remains with the Provincial Attorney General and is still under review.

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# Proceedings against financial institutions

## 4.1 BNP Paribas

- In 2012 the JOLs reached an agreement, sanctioned by the Cayman and Bahamian Courts, whereby BNP would, *inter-alia*, supply guarantee from its Swiss parent company (the Parent Company) to meet any subsequent damages award.
- 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. The JOLs can confirm that BNP were put on notice in 2010 to preserve all records relating to the case.
- The legal action is currently on hold whilst the JOLs, through Swiss legal counsel, have been handling proceedings with the Parent Company.
- Should BNP decide not to settle the JOLs will have to determine whether to continue with the court proceedings in the Bahamas, and how to fund such an action. It has been suggested that the JOLs could instead hand over the complaint to law enforcement and regulatory authorities for investigation into the bank's role and conduct. The JOLs have been advised by their attorneys that, even if the bank were found to be at fault and fined under regulatory provisions, it is highly unlikely that any economic value would be allocated to Focus.
- The JOLs met with the Parent Company in Switzerland in March 2016 with a view to reaching a decision and concluding the matter.
- Whilst the Parent Company has asserted that the bank considers it has no liability, they have not taken a final decision on the matter. The JOLs have pressed the Parent Company for a decision on whether they are prepared to make a voluntary contribution to settle the matter without admission of liability, and are awaiting the Parent Company's response.
- At the forthcoming creditors' meeting the JOLs will be seeking to ascertain creditors' views on how to proceed in the event that BNP declines to settle the matter.

## Receipts and Payments Account

<b>FOCUS MANAGEMENT INC. (IN OFFICIAL LIQUIDATION)</b>		
<b>Joint Liquidators' Abstract Of Receipts And Payments</b>		
<b>20 February 2008 to 31 August 2016</b>		
<b>RECEIPTS</b>	<b>USD</b>	<b>CAD</b>
<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	<u>170,735.91</u>	<u>734,663.69</u>
<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	80.46	0.09
Uncleared cheques refunded	9,217.42	-
Other refunds, credits & receipts	3,185.49	-
Total liquidation estate	<u>267,163.09</u>	<u>969,331.17</u>
<i>Inter-account transfers</i>	<i>623,097.92</i>	<i>(625,176.55)</i>
<b>TOTAL RECEIPTS</b>	<b>1,060,996.92</b>	<b>1,078,818.31</b>
<b>PAYMENTS</b>		
Records recovery charges	38,243.90	-
Liquidators Fees (GTSS)	512,371.30	227,206.64
Liquidators Expenses (GTSS)	58,414.40	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	2,163.00	127.87
Foreign exchange loss	36,892.99	14,254.09
Tax	-	29,537.32
<b>TOTAL PAYMENTS</b>	<b>1,012,488.45</b>	<b>980,426.80</b>
<b>Cash balances in hand</b>	<b>48,508.47</b>	<b>98,391.51</b>

- 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, who have not drawn fees since 2013 pending the determination of whether material recoveries can be achieved.
- Absent any material recoveries from the BNP litigation, there is no prospect of recovery for the estimated US\$69 million of creditors.