

**Form 10**

[Rule 3.25]

Clerk's Stamp

COURT FILE NUMBER	25-2642858
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF OLYMPUS FOOD (CANADA) INC.
DOCUMENT	<b>AFFIDAVIT OF NOLI TINGZON</b> <b>Sworn June 16, 2020</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Carole Hunter DLA Piper (Canada) LLP 1000 - 250 2nd Street SW Calgary, AB T3B 5L5  Phone: 403-698-8782 Fax: 403-697-6600 Email: carole.hunter@dlapiper.com  File No.: 101195-00001/CJH

**AFFIDAVIT OF NOLI TINGZON**

**Sworn June 16, 2020**

I, NOLI TINGZON, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am the President of Olympus Food (Canada) Inc. ("**Olympus**" or the "**Corporation**"). As such I have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information and belief, in which case I believe the same to be true.

Overview

2. On May 1, 2020, the Corporation filed a Notice of Intention to Make a Proposal (the "**NOI**") with the Official Receiver pursuant to section 50.4(1) of the *Bankruptcy and Insolvency*

Act (the “**BIA**”). BDO Canada Limited was appointed as the proposal trustee (the “**Proposal Trustee**”) under the NOI. The Corporation filed a cash flow statement with the Official Receiver on May 5, 2020.

3. On May 28, 2020, pursuant to the Order of the Honourable Justice A. M. Grosse, the time for Olympus to file a proposal was extended by a 45 day period to July 15, 2020, pursuant to section 50.4(9) of the BIA.

#### Formulation of a Proposal

4. As of the date of filing of the NOI, the Corporation’s books and records indicated that it owed its unsecured creditors approximately \$17,413,007.12, including an unsecured claim of \$11,529,48.20 owing to a related party, Hi-Flyer Food (Canada) Inc. (“**Hi-Flyer**”), which operates KFC and KFC/Taco Bell franchises in Alberta and Manitoba.

5. The Corporation has limited assets comprised mainly of cash, accounts receivable of approximately \$282,289 (of which the Corporation anticipates some amount to be uncollectible) and used/abandoned restaurant equipment. Aside from the assets that would be available in a bankruptcy of Olympus, the Corporation’s principal asset that would only have potential realizable value to its creditors in a proposal scenario is its corporate tax losses.

6. Olympus has approximately \$10 million of corporate tax losses as at December 31, 2019, but at this time their value is uncertain. Olympus has been in discussions with Hi-Flyer regarding a transaction which would allow Hi-Flyer to utilize the tax losses. The terms of the transaction have not yet been determined and more information about the transaction will be forthcoming later. The proceeds of the proposed transaction with Hi-Flyer would form the majority of the pool of funds available to the Corporation’s unsecured creditors in a proposal. The Corporation anticipates that, as part of the proposed tax loss transaction, Hi-Flyer will not file a claim in the proposal of the Corporation which would materially increase the funds available to the Corporation’s other unsecured creditors. It is the Corporation’s understanding, based on preliminary advice from their accountants, that the tax losses will have no value in the event of a bankruptcy and thus, the proposed transaction with Hi-Flyer and resulting proposal represent a better recovery for the creditors.

7. The viability of the proposed transaction between Hi-Flyer and Olympus will depend upon the quantum of claims ultimately filed against Olympus and the creditors voting in favour of the proposal filed by Olympus.

#### Claims Against Olympus

8. On September 17, 2012, the Corporation purchased 65 Kentucky Fried Chicken ("**KFC**"), KFC/Taco Bell and KFC/Pizza Hut franchises in the province of Quebec. All of these franchise locations operated out of leased premises. In 2015, the Corporation opened and signed 10 year leases for four new mall stores (including the relocation of one existing store) in the food courts of the Les Galeries de La Capitale, Galeries D'Anjou, Carrefour Laval and Les Promenades St-Bruno shopping centres.

9. In September 2018, the franchisor, Kentucky Fried Chicken Company Canada ("**KFCCC**") notified the Corporation that it was in breach of the franchise agreement and demanded the closure or sale of 15 KFC and KFC/Taco Bell locations and the Corporation's exit from the Quebec market before December 31, 2019.

10. In June of 2019, Olympus sold 33 of its locations to FMI Atlantic, Inc. ("**FMI**"). Then, in November of 2019, Olympus sold an additional 14 locations to FMI. As part of the sale transactions with FMI, Olympus, FMI and the respective landlords entered into assignment agreements for 46 of the 47 leased locations. The terms of the assignment agreements relating to Olympus' continuing liability under the leases can be separated into three categories:

- (a) There are seven leased locations where the landlord has expressly released Olympus from any future obligations under the leases;
- (b) There are six leased locations where it is explicit that Olympus remains liable to the landlord for the payment of rent and performance of obligations under the leases and, in some cases, any renewals of the leases; and
- (c) There are 33 leased locations where the landlord's consent to the assignment does not explicitly relieve Olympus from any of its obligations under the lease in favour of the landlord.

11. There is also one leased location where the assignment between FMI, Olympus and the landlord, Le Carrefour Laval (2013) Inc. ("**Carrefour**") has not been completed. On May 26, 2020, notwithstanding the stay of proceedings, Carrefour notified Olympus the lease is in default due to (i) the NOI filing by Olympus and (ii) the unexpected terminations of the leases in the Galeries D'Anjou and Les Promenades St-Bruno shopping centres.

12. The status of the leases for the 22 KFC, KFC/Taco Bell and KFC/Pizza Hut locations that were not part of the sale transactions with FMI, all of which are permanently closed and non-operating, can be summarized as follows:

- (a) Eight leases expired and were not renewed by the parties between 2014 and May 9, 2019
- (b) Nine leases were terminated pursuant to settlements or agreements reached with the landlords between March of 2015 and December of 2019;
- (c) Three leases were disclaimed by Olympus in accordance with section 65.2 of the BIA, with such disclaimers to become effective on June 20, 2020; and
- (d) Two landlords terminated the leases and commenced legal proceedings against Olympus, namely:
  - (i) Les Galeries D'Anjou Leaseholds Inc. who commenced proceedings against the Corporation on April 15, 2019 for approximately \$1.4 million, comprised of claims for unpaid rent, accelerated rent and damages allegedly owing under the terms of the lease; and
  - (ii) Ontrea Inc. who commenced proceedings against the Corporation on February 20, 2020 for approximately \$1.4 million, comprised of claims for unpaid rent, accelerated rent and damages allegedly owing under the terms of the lease.

13. On May 13, 2020, Olympus received notice from the landlords of two leased locations that were assigned to FMI indicating that the rent for the month of May, in the combined amount of \$27,331.00 was unpaid. The landlords demanded that these payment defaults be cured by May 25, 2020. The assignment agreements for both of these leases state that Olympus

remains liable for the payment of rent and the performance of obligations under the leases. Olympus has received no further communications from the landlords in respect of these leased locations.

#### Need for a Claims Solicitation Process

14. As set out above, as at the date of the NOI filing, Olympus is aware of approximately \$17,413,007.12 of unsecured claims, including the related party claim of Hi-Flyer which accounts for almost 65% of the total unsecured claims. Any change in the quantum of claims against Olympus could have a material impact on the viability of Olympus' contemplated proposal and the ability of the Proposal Trustee to recommend the approval of the proposal to the creditors of Olympus.

15. For the 39 leases assigned to FMI where the landlords did not explicitly release Olympus from its obligations under such leases (the "**Assigned Leases**"), if there is a default by FMI after the date of the NOI filing and/or the date that the proposal is implemented, Olympus would remain liable for the performance of such obligations. This could also create liability for Hi-Flyer in the event that the proposed transaction involves an amalgamation of Hi-Flyer and Olympus following the implementation of the proposal. The shortest leases assigned to FMI are month-to-month, whereas the longest lease expires in November of 2032.

16. Since there were no claims advanced by the landlords of the Assigned Leases as of the date of the NOI filing, Olympus' books and records do not reflect any amounts owing to these parties. Despite this, any potential claims by the landlords of the Assigned Leases could materially impact the quantum of outstanding claims, the potential recovery to other known unsecured creditors and the viability of any tax loss transaction and proposal. The success of the tax loss transaction and the proposal will be dependent on Hi-Flyer not being exposed to Olympus' liabilities, including any liabilities to the landlords.

17. As such, a process to determine these claims (including contingent claims) by landlords (the "**Claims Solicitation Process**"), at an early stage is critical to determining whether there is a reasonable prospect of developing a proposal based on a tax loss transaction and the terms of such proposal. The proposed Claims Solicitation Process requires:

- (a) The Proposal Trustee to notify all known creditors, including the former landlords of the Assigned Leases, of the Claims Solicitation Process via delivery of a proof

of claim, instruction letter and such other materials as the Proposal Trustee considers appropriate (together, the “**Claims Package**”), by no later than June 30, 2020 to their last known addresses recorded in Olympus’ books and records;

- (b) The Proposal Trustee to cause a notice to creditors to be published in the Calgary Herald and the Montreal Gazette by no later than July 8, 2020;
- (c) The Proposal Trustee to post a copy of the Claims Package and the Claims Solicitation Process Order on their website by no later than June 30, 2020; and
- (d) Any person who wishes to assert a claim against Olympus to file a proof of claim on or before July 31, 2020 (the “**Claims Bar Date**”). If a proof of claim is not submitted by the Claims Bar Date, then such Claim is barred against Olympus.

18. The Claims Solicitation Process establishes a comprehensive process for the solicitation and identification of claims against the Corporation and was developed in consultation with the Proposal Trustee. Given the status of the proceedings, Olympus is not currently proposing a process to adjudicate the claims and will seek same only if and when such process is required.

#### Extension of Time to File a Proposal

19. The time to file a proposal expires on July 15, 2020. In order to complete the Claims Solicitation Process and continue to work towards the formulation and filing of a proposal, Olympus requests an extension of the time for filing a proposal to August 29, 2020, in accordance with section 50.4(9) of the BIA.

20. Since the NOI was filed on May 1, 2020, Olympus has taken the following steps:

- (a) exploring a transaction with Hi-Flyer which would provide funding for the proposal in addition to the cash on hand and collection of accounts receivable by Olympus during these proceedings;
- (b) working with the Proposal Trustee on a review of the status of the former leased premises;
- (c) working with the Proposal Trustee on the formulation of the Claims Solicitation Process;

- (d) working with the Proposal Trustee on the formulation of the proposal;
- (e) communicating with its creditors and remaining landlords; and
- (f) disclaiming the leases for three restaurant locations and the former office premises in Quebec.

21. Olympus has acted in good faith and with due diligence since the NOI was filed and will likely be able to make a viable proposal if the extension applied for were granted. To the best of my knowledge, information and belief, none of the creditors of Olympus will be materially prejudiced if this Honourable Court grants the extension sought.

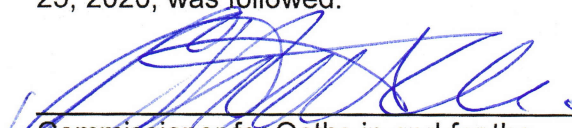
22. I make this Affidavit in support of an application for an Order extending the time for Olympus to file a proposal and establishing a Claims Solicitation Process.

SWORN (OR AFFIRMED) BEFORE ME at  
Calgary, Alberta, this 16<sup>th</sup> day of June, 2020.

The deponent was not physically present before me, but was linked with me utilizing video technology. The process outlined in the Court of Queen's Bench of Alberta Notice to the Profession and Public for Remote Commissioning of Affidavits for use in Civil and Family Proceedings During the COVID-19 Pandemic (NPP#2020-02), dated March 25, 2020, was followed.



NOLI TINGZON



Commissioner for Oaths in and for the  
Province of Alberta

*Carole J. Hunter*