

COURT FILE NUMBER 25-2642858  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

DOCUMENT **THIRD REPORT OF THE PROPOSAL TRUSTEE, BDO CANADA LIMITED AUGUST 20, 2020**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **PROPOSAL TRUSTEE**  
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**THIRD REPORT OF THE PROPOSAL TRUSTEE  
BDO CANADA LIMITED  
AUGUST 20, 2020**

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## **INTRODUCTION**

1. On May 1, 2020 (the “**Filing Date**”), Olympus Food (Canada) Inc. (“**Olympus**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to the *Bankruptcy & Insolvency Act* (the “**Act**”). BDO Canada Limited consented to act as trustee (the “**Proposal Trustee**”) pursuant to the proceedings.
2. On May 4, 2020, the Proposal Trustee filed the following documents with the Office of the Superintendent of Bankruptcy (the “**OSB**”):
  - a. the Cash Flow Statement prescribed by S.50.4(2)(a) of the Act covering the period beginning May 1, 2020 through to July 25, 2020 (the “**Initial Forecast**”);
  - b. the *Trustee’s Report on Cash Flow Statement* as prescribed by S.50.4(2)(b) of the Act; and
  - c. the *Report on Cash Flow Statement by the Person Making the Proposal* as prescribed by S.50.4(2)(c) of the Act.
3. On May 28, 2020, the Court of Queen’s Bench of Alberta (the “**Court**”) granted an Order extending the time in which Olympus must file its proposal to its creditors to July 15, 2020 upon application by the Company.
4. In connection with the May 28, 2020 application, the following materials were filed with the Court:
  - a. The First Report of the Proposal Trustee; and
  - b. The Affidavit of Noli Tingzon, sworn on May 22, 2020.
5. On June 24, 2020, the Company sought and received the following two Orders of the Court:
  - a. A Claims Solicitation Process Order (the “**Claims Solicitation Process Order**”) to solicit and identify claims against the Company; and
  - b. A further Extension Order (the “**June 24 Extension Order**”), extending the time in which Olympus is required to file a proposal to its creditors to August 29, 2020.

6. In connection with the June 24, 2020 application, the following materials were filed on June 17, 2020:
  - a. The Second Report of the Proposal Trustee; and
  - b. The Affidavit of Noli Tingzon, sworn June 16, 2020.
7. The purpose of this third report (the “**Third Report**”) is to provide an update to the Court with respect to the following:
  - a. An update on the status of the implementation of the Claims Solicitation Process Order and certain material claims which the Company and the Proposal Trustee are reviewing, which are material to Company’s ability to put forth a proposal to its creditors;
  - b. Actual cash flows during the period June 7 to August 15, 2020 versus those forecast by the Company;
  - c. The Company’s revised cash flow forecast for the period August 16 to October 17, 2020;
  - d. The Company’s continued restructuring activities; and
  - e. The Company’s request for a further extension of the time required to file a proposal and a corresponding extension of the stay of proceedings (the “**Stay**”) through to October 13, 2020 and the Proposal Trustee’s recommendation with respect thereto.

#### **TERMS OF REFERENCE**

8. In preparing this Third Report, the Proposal Trustee has been provided with, and has relied upon unaudited financial information, certain books and records of Olympus and discussions with management (“**Management**”) (collectively the “**Information**”).

9. Except as described in this Third Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“GAAS”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of such information.
10. Some of the Information referred to in this Third Report consists of forecasts and projections. An examination or review of any financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
11. All monetary amounts noted herein are expressed in Canadian dollars.
12. Capitalized words or terms not defined herein are as defined in the First Report, the Second Report or the Claims Solicitation Process Order.

#### **COMPANY BACKGROUND**

13. Olympus is a private company which is owned and controlled by Trenova Holdings S.A.R.L., a non-resident of Canada. Olympus was incorporated in British Columbia; however, its head office is located in Calgary, Alberta. The Company owned and operated a number of Kentucky Fried Chicken franchise restaurants in Quebec, the majority of which were sold to FMI Atlantic Inc (“FMI”) in 2019. Remaining unsold locations ceased operating prior to December 31, 2019, such that there were no ongoing operations as of the Filing Date.
14. Olympus no longer has any employees; however, it continues to be managed from Calgary, Alberta by staff of a related company, Hi-Flyer Food (Canada) Inc. (“Hi-Flyer”), under the direction of Olympus’ board of directors.

#### **STATUS OF THE CLAIMS SOLICITATION PROCESS**

15. The Claims Solicitation Process Order established a comprehensive process for the solicitation and identification of claims against the Company to assist in assessing the viability of the proposed transaction between Hi-Flyer and Olympus and ultimately the viability of a proposal.

16. As outlined in the Tingzon August Affidavit, 46 creditors filed proof of claims totalling approximately \$16,595,448 (inclusive of Hi-Flyer's unsecured claim of approximately \$11,491,408) in accordance with the Claims Solicitation Process.
17. The Proposal Trustee is working with the Company to review these claims and reconcile any differences between the amounts filed and the amounts reflected in Olympus' books and records.
18. In addition to the 46 proof of claims referred to above, the Proposal Trustee understands that 4 creditors with claims totalling approximately \$20,233 filed claims which were not received prior to the Claims Bar Date as established by the Claims Solicitation Process Order.
19. The Proposal Trustee highlights that the claims submitted by Les Galeries D'Anjou Leasholds Inc. ("**D'Anjou**") in the amount of \$1,252,582, Ontrea Inc. ("**Ontrea**") in the amount of \$1,389,460.22, and Le Carrefour Laval (2013) Inc. ("**Carrefour Laval**") in the amount of \$1,501,058.73 are in the process of being reviewed by the Company and the Proposal Trustee as such claims constitute a majority of the creditor pool, excluding the claim of Hi-Flyer..
20. The claims of D'Anjou, Ontrea and Carrefour Laval all related to commercial leases for franchised restaurant locations. Olympus issued a Notice by Debtor Company to Disclaim or Resiliate an Agreement ("**Disclaimer Notice**") to Carrefour Laval on July 29, 2020. On August 14, 2020, Carrefour Laval filed an application to set aside the Disclaimer Notice. A court ruling, or other determination or resolution of such application by Carrefour Laval will be material to the viability and terms of any proposal.

***Potential claim of Canada Revenue Agency***

21. The Proposal Trustee understands from the Company that Canada Revenue Agency is not listed as a creditor in the books and records of the Company. However, as is customary in these proceedings, CRA is typically provided with notification of claims processes to allow them the opportunity to conduct a trust examination to confirm the existence, or lack thereof, of any amounts deemed to be priority payables.

22. In this instance, CRA was not served with the Claims Solicitation Process Order or provided a copy of the Claims Package.
23. The Proposal Trustee has provided the following contextual comments arising from its discussions with the Company pertaining to its understanding of any potential claims of CRA.

#### Employee withholding amounts

24. Based on discussions with the Company, the Proposal Trustee understands that the Company does not show any amounts outstanding in respect of employee obligations, following the winding up of active operations in 2019.
25. However, the Proposal Trustee also understands from discussions with the Company that while active operations were wound up in 2019, two head office administrative staff were formally terminated in 2020. In addition, the final payroll for the service of approximately 62 operational employees was completed in January 2020. Therefore, the Company may be required to finalize 2020 T4s for the terminated employees and undergo a trust examination, if required by CRA.

#### Goods and Services Taxes (“GST”)

26. The Company advises that they are in a refund position with respect to GST. Therefore, pending the results of any audit, the Proposal Trustee would not anticipate any priority amounts owing to CRA with respect to GST.

#### Logistics of trust examinations given COVID-19 Pandemic

27. In the course of discussions with CRA, the Proposal Trustee understands that CRA may require the completion of a trust examination, which would require representatives of CRA attending to the location of the books and records of the Company.
28. Given the COVID-19 Pandemic, the Proposal Trustee understands that CRA policy is prohibiting staff from accessing business premises to conduct such examinations, with no fixed date for the prohibition to be lifted. The Proposal Trustee is in discussions with CRA as to how best to proceed in the circumstances.

## **FINANCIAL PERFORMANCE**

29. In connection with Olympus's second application for an extension of the time to file a proposal, the Company provided an updated cash flow forecast for the period June 7, 2020 through to August 29, 2020 (the "**Further Updated Forecast**"), which was attached as Appendix "A" to the Second Report.
30. A variance analysis of the Company's actual receipts and disbursements from June 7, 2020 to August 15, 2020 versus the corresponding period in the Further Updated Forecast is set out in the following table:

<b>Olympus Food (Canada) Inc.</b>			
<b>Forecast to Actual Analysis</b>			
<b>For the period of June 7, 2020 - August 15, 2020</b>			
	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b>
<b>Receipts</b>			
Accounts Receivable	\$ 72,754	\$ 42,035	\$ 30,719
Insurance	13,600	37,162	(23,562)
Other	8,593	-	8,593
<b>Disbursements</b>			
Bank fees	(479)	(300)	(179)
Insurance	(2,074)	(2,518)	444
Newspaper ad	(1,591)	-	(1,591)
Net cash flow	90,803	76,379	14,424
Opening cash	95,059	95,059	
Closing cash	<u>\$ 185,862</u>	<u>\$ 171,438</u>	<u>\$ 14,424</u>

31. Olympus experienced an increase of cash of approximately \$90,803 over the period versus an anticipated increase of approximately \$76,379, for a positive variance of approximately \$14,424, with the difference comprised substantially of the following components:
- Olympus continued to experience unanticipated receipts of ongoing revenues from stores that have been sold to FMI, reducing the amount receivable from FMI by a further approximate \$30,719 during the referenced forecast period; and
  - Although Olympus has not yet collected an estimated amount of \$37,162 pertaining to an insurance claim related to water damage from a 2017 incident, which is now forecast to be collected in the Third Report

Forecast, it did collect \$13,600 on an insurance claim related to property damage from 2018.

32. The Company maintained an approximate cash balance of \$185,862 as at August 8, 2020.

### **CASH FLOW FORECAST**

33. Management has prepared a further updated cash flow forecast for the period August 16, 2020 through to October 17, 2020 (the “**Third Report Forecast**”) which is attached as Appendix “A” to this Third Report.
34. A summary of the Third Report Forecast is set out in the table below

<b>Olympus Food (Canada) Inc.</b>	
<b>Cash flow forecast</b>	
<b>For the period August 16 - October 17, 2020</b>	
	<b>Forecast</b>
<b>Receipts</b>	
Accounts receivable	\$ -
Insurance	37,162
	<u>37,162</u>
<b>Disbursements</b>	
Bank Fees	(300)
Professional Fees	(75,712)
	<u>(76,012)</u>
Net Cash Flow	(38,850)
Opening cash	185,862
Closing cash	<u>\$ 147,012</u>

35. The Third Report Forecast reflects negative cash flow of \$38,850 over the forecast period, leaving an estimated forecast cash balance of \$147,012 at October 17, 2020.
36. The Third Report Forecast also contemplates receipt of an insurance claim payment that had previously been forecast to have been received in the Further Updated Forecast (as noted in paragraph [31(b)] above).
37. The Third Report Forecast does not include any forecast receipts derived from settlements of outstanding accounts receivable (if any) given the uncertainty with respect to the amounts and timing of any such settlements.

38. The Third Report Forecast also does not include forecast receipts generated through continued collections from stores that have been sold to FMI as the Company assumes that FMI will soon update the banking information associated with store payment authorizations, rather than paying the receivable owed by FMI to Olympus through its failure to do so.
39. Disbursements forecast over the period include substantially the payment of forecast professional fees of approximately \$75,000 to legal counsel to the Company, the Proposal Trustee and legal counsel to the Proposal Trustee for the continued review of the Claims and contemplated final steps towards putting a proposal forth for approval of the Company's creditors and the Court.
40. The Company has also included a forecast payment of approximately \$712 to a former employee of the Company in the professional fees category to provide contract services as it relates to assisting the Company with the Claims Process.
41. The Proposal Trustee is satisfied that the Third Report Forecast is reasonable in the circumstances.

### **PROFESSIONAL FEES**

42. Prior to the Third Report, the professional fees of the Proposal Trustee, its legal counsel and legal counsel to the Company (the "**Professional Fees**") have been covered through retainers, or fee agreements by and with Hi-Flyer.
43. As the Third Report forecast indicates sufficient cash to pay the Professional Fees, these Professional Fees are forecast to be paid directly by the Company.

### **RESTRUCTURING EFFORTS**

44. The Proposal Trustee is satisfied that Management has been acting with due diligence and in good faith towards ultimately presenting a proposal to the Company's creditors. Since the date of our Second Report, Management has:
  - a. worked with the Proposal Trustee on the review and reconciliation of Claims as submitted through the Claims Solicitation Process;
  - b. communicated with its creditors and landlords;

- c. continued to investigate a potential transaction with Hi-Flyer whereby Hi-Flyer would obtain the benefit of Olympus's tax losses; and
- d. continued to work with the Proposal Trustee on the formulation of a proposal.

**RECOMMENDATION**

- 45. The Proposal Trustee is of the view that a further extension of the Stay to October 13, 2020 is warranted to allow the Company the opportunity to continue to work towards the resolution of the Claims with a view to being in a position to formulate and file of a proposal.
- 46. The Proposal Trustee is satisfied that:
  - a. Management continues to act in good faith and with due diligence with a view towards presenting a proposal to its creditors;
  - b. After completing its analysis of the Claims, the Company will be in a better position to assess the viability and terms of a proposal; and
  - c. No creditor would be materially prejudiced if an extension is granted.

All of which is respectfully submitted this 20<sup>th</sup> day of August 2020.

**BDO Canada Limited**

in its capacity as the Proposal Trustee of Olympus Food (Canada) Inc.  
and not in its personal capacity

Per: 

Kevin Meyler  
Senior Vice President

# APPENDIX A

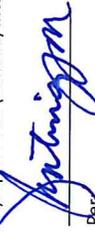
OLYMPUS FOOD (CANADA) INC.  
WEEKLY PROJECTED CASH FLOW

PROJECTED	Notes	Projected									Projected Total
		1 August 16 - 22	2 August 23 - 29	3 August 30 - Sept 5	4 Sept 6 - 12	5 Sept 13 - 19	6 Sept 20 - 26	7 Sept 27 - Oct 3	8 Oct 4 - 10	9 Oct 11 - 17	
Beginning cash		185,862.48	147,311.69	147,311.69	147,161.69	147,161.69	147,161.69	147,011.69	147,011.69	147,011.69	185,862.48
Receipts	1										
Accounts receivable	2										
Insurance claim	3	37,161.71									37,161.71
Disbursements	4										
Professional Fees		(75,712.50)									(75,712.50)
Bank service charges				(150.00)				(150.00)			(300.00)
Ending cash		147,311.69	147,311.69	147,161.69	147,161.69	147,161.69	147,011.69	147,011.69	147,011.69	147,011.69	147,011.69

Assumptions:

- All stores are closed. Olympus has not had any operating stores since December 30, 2019, and all employees have been terminated. Therefore, there is no revenue being generated, there are no operating expenses, and remaining lease payments related to closed locations are reflected in the creditor list. Certain management employees are employed by a related entity, Hi-Flyer Food Canada Inc. ("Hi-Flyer"), and the amounts of these individuals salaries are funded by Hi-Flyer.
- Olympus's records have accounts receivable of approximately \$130,000. This projection does not include the collection as we are uncertain on the timing and/or probability of collection.
- Olympus has been informed that its insurance company has approved a settlement for an insurance claim it had submitted in relation to a pre-filing loss, and therefore payment of the claim is anticipated to occur during the forecast period.
- With all locations closed, the only ongoing expenses are bank fees and professional fees related to the restructuring process. The estimates of the professional fees are on a base case.

Olympus Food (Canada) Inc.

  
Peter

20-Aug-20