



COURT FILE NUMBER B-150741  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF APOLLO GROUP MANAGEMENT LTD.**

**FIRST REPORT OF THE PROPOSAL TRUSTEE**

**AUGUST 14, 2015**

## INTRODUCTION

1. This report (“**First Report**”) has been prepared by FTI Consulting Canada Inc. (“**FTI**”) in its capacity as the Trustee (the “**Proposal Trustee**”) under a Notice of Intention to File a Proposal (“**NOI**”) filed by Apollo Group Management Ltd. (“**Apollo**” or the “**Company**”) dated July 23, 2015 pursuant to Part III, Division I of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).
2. Apollo was founded in 1985 with the original intention of being used as a wine importer for Greek wines. However, in 1989 it purchased 184 acres of land on Barnston Island, an unincorporated island located on the Fraser River in the Greater Vancouver metropolitan area of British Columbia.
3. In 1994 Apollo leased the land to Opus Cranberries who operated the property as a cranberry farm.
4. In 2007 Apollo purchased the business from Opus Cranberries and took over a lease on 51 acres of property that was adjacent to Apollo’s existing property. In 2010, Apollo purchased the 51 acre parcel and in 2013 purchased an additional 36 acres of land from D.B. Barnston Holdings Ltd bringing its total land holdings for cranberry farming to 271 acres (the “**Cranberry Farm**”).
5. Since the purchase of Opus Cranberries in 2007 the Cranberry Farm operations have been managed by Peter Dhillon (the “**Farm Manager**”) of Richberry Group. Peter Dhillon has extensive cranberry farming experience, and is also the chair of Ocean Spray Cranberries Inc. board of directors.
6. Apollo’s crop is sold exclusively to Ocean Spray Cranberries Inc. pursuant to the terms of a Collective Marketing Agreement.
7. Ocean Spray Cranberries Inc. is a cooperative serving producers of cranberries in Canada, USA, and Chile.

8. Over the past 3 years Apollo's production has ranged from 38,000 barrels to 42,000 barrels. The Farm Manager estimates the 2015 crop yield to approximate 50,000 barrels.
9. On an annual basis, the value of the crop yield is based on a per barrel price set by Ocean Spray which is paid by bi-monthly instalments over a period ranging from 12 to 20 months.
10. The acquisition of the Cranberry Farm was financed by debt, primarily provided by Farm Credit Canada ("**Farm Credit**").
11. Over a period of several years, Apollo advanced approximately \$5.9 million to related parties with the majority of the advances made to Epta Properties Ltd. ("**Epta**"), a real estate development company.
12. As a result of the related party loan advances the Company was unable to make its loan payment to Farm Credit in November 2013 causing Apollo to be in breach of its loan covenants with Farm Credit who issued a Notice of Default in December 2013.
13. Farm Credit agreed to waive the breach for a period of one year to allow the Company to return to compliance with its loan covenants. However Apollo was not able to cure its default within the one year extension period.
14. Apollo failed to make its next scheduled loan payment to Farm Credit which was due in February 2014.
15. In May 2014, Apollo arranged a \$4,000,000 loan from First West Credit Union which was used to bring Farm Credit current on its loans. However, the residual funds were advanced to Epta resulting in the Company being unable to pay the scheduled quarterly payments to Farm Credit in August and November of 2014.
16. In January 2015 Farm Credit issued a letter to Apollo making demand for repayment of its loans.

17. Despite negotiations between Apollo and Farm Credit, the parties were unable to agree on the terms of a forbearance agreement and in May 2015, Apollo sought a stay of proceedings pursuant to the Farm Debt Mediation Act.
18. Concurrent with its attempt at mediation, Apollo was pursuing other options including refinancing Farm Credit's loans or selling its interest in the Cranberry Farm.
19. In July 2015, Apollo concluded negotiations with D.R. Barnston Holdings Ltd. (the "**Purchaser**") on the terms of a sale of the Cranberry Farm (the terms of which are detailed in a subsequent section of the First Report).
20. On July 17, 2015 Farm Debt Mediation Service sent a letter to Apollo notifying Apollo that it would terminate the stay of proceedings effective July 24, 2015.
21. As a result, Apollo decided to file a Notice of Intention to make a Proposal pursuant to the BIA in order to preserve its ability to close the sale transaction it had entered with the Purchaser in addition to receiving the revenue from the 2015 crop yield.
22. The reports of the Proposal Trustee and other information in respect of these proceedings are posted on the Proposal Trustee's website at <http://cfcanada.fticonsulting.com/ApolloGroupManagementLtd/>.

## **PURPOSE**

23. The purpose of this First Report is to provide this Honourable Court with an update on the following:
  - (a) The activities of the Company since the filing of its NOI;
  - (b) An overview of the Purchase and Sale Agreement entered into between Apollo and the Purchaser;
  - (c) A summary of Apollo's creditors;

- (d) An analysis of the Company's actual cash receipts and disbursements to August 9, 2015, compared to the forecast filed on July 31, 2015;
- (e) The Company's cash flow projection for the period from August 10, 2015 to January 23, 2016 (the "**Cash Flow Projection**"); and
- (f) The Company's request for an extension of the current stay of proceedings under the NOI from August 22, 2015 to October 5, 2015.

## **TERMS OF REFERENCE**

- 24. In preparing this report, the Proposal Trustee has relied upon unaudited financial information, other information available to the Proposal Trustee and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
- 25. Except as described in this First Report:
  - (a) The Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - (b) The Proposal Trustee has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
- 26. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

27. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

#### **UPDATE ON THE COMPANY'S ACTIVITIES**

28. Since the date of filing the NOI the Company has continued to operate the Cranberry Farm in the normal course.
29. The Company has communicated with several of its creditors soliciting their support through this process on the basis that closing the Sale Transaction (as defined below) is in the best interest of all creditors.
30. The Company has also been negotiating the terms of the release of the deposit funds from the Sale Transaction for use by Apollo during the proposal period.
31. Based on discussions with the Farm Manager, the production estimate for the 2015 crop yield should be a minimum of 50,000 barrels, exceeding the maximum crop yield achieved in the past 3 years.
32. The increase in crop yield compared to prior harvests is due to a longer than average growing season and the added production on a new parcel of land that had previously not produced a strong crop.
33. The 2015 crop yield is scheduled to commence in late September going until mid-October with receipt of the first instalment payment related to the 2015 crop yield expected in December 2015.

#### **PURCHASE AND SALE AGREEMENT**

34. On July 15, 2015, the Company entered into a Purchase and Sale Agreement (the “**Sale Transaction**”) with the Purchaser. The terms of the Sale Transaction are summarized as follows:

- (a) The Purchaser will acquire the Cranberry Farm in addition to all of the Company's buildings, equipment, permits and contracts required to operate the business;
  - (b) The purchase price is \$24,875,000;
  - (c) The Sale Transaction provides for a \$500,000 deposit;
  - (d) The Company retains its interest in the 2015 crop yield and is entitled to collect the related account receivable, subject to the rights of its secured creditors; and
  - (e) The closing date of the Sale Transaction is February 11, 2016.
35. The deposit funds are to be held in escrow by an escrow agent which the parties have agreed to be the purchaser's legal counsel (the "**Escrow Agent**"). The Escrow Agent is permitted to release the deposit funds prior to closing for the purpose of funding Apollo's operations or paying current obligations.
36. Accordingly, the Cash Flow Forecast prepared by the Company incorporates the use of the deposit funds.
37. The Proposal Trustee has not appended a copy of the Sale Transaction to the First Report, however the Proposal Trustee understands that the Company's legal counsel will have a copy available for review by this Honourable Court.

## SUMMARY OF CREDITORS

38. The Company's creditors are summarized in the following table:

Creditors	Amounts	Projected
	Outstanding at July 23, 2015	balance Feb 11, 2016
Farm Credit Canada	17,296,950	17,308,788
First West Credit Union	4,000,000	3,135,109
HSBC	1,029,169	648,944
DB Barnston Investment LP	1,300,000	1,300,000
Unsecured Creditors	1,286,235	1,286,235
	24,912,354	23,679,076

39. The amounts outstanding as at July 23, 2015 are based on estimates provided by management as indicated in the Company's books and records as at the date of filing the NOI.

40. The projected balance as at February 11, 2016 reflects balances that have been updated based on proofs of claim received as well as principal payments made from collateral security outside of Apollo and principal payments anticipated to be made by the Company between now and February 11, 2016.

41. The Proposal Trustee has not performed an analysis of the security positions of each of the secured lenders and does not anticipate instructing its legal counsel to prepare one on the basis that if the Sale Transaction closes, it would appear that all of the creditors would be paid in full.



## COMPARISON OF FORECAST TO ACTUAL

42. The following table indicates the actual cash receipts and disbursements for the period from July 23, 2015 to August 10, 2015 as compared to the forecast filed by the Company on July 31, 2015 with the Office of the Superintendent of Bankruptcy (the “July 31 Forecast” attached as Appendix A).

	Period covering July 23, 2015 to August 9, 2015		Variance
	Forecast	Actual	
	Week 1 - Week 3	Week 1 - Week 3	
Opening Cash (Canadian Dollar)	12,000	3,940	(8,060)
<b>Cash Receipts</b>			
Collections on AR	362,000	487,960	125,960
Other	5,000	10,400	5,400
<b>Total - Operating Receipts</b>	<b>367,000</b>	<b>498,360</b>	<b>131,360</b>
<b>Cash Disbursements</b>			
Finance Charges/Secured Debt Paymen	4,000	-	4,000
Operating Costs	80,500	6,085	74,415
Professional Fees	28,000	-	28,000
Management Fees	65,000	-	65,000
			-
<b>Total - Operating Disbursements</b>	<b>177,500</b>	<b>6,085</b>	<b>171,415</b>
<b>Net Change in Cash from Operations</b>	<b>189,500</b>	<b>492,275</b>	<b>302,775</b>
<b>Total Net Cash Flow</b>	<b>189,500</b>	<b>492,275</b>	<b>302,775</b>
<b>Ending cash (Canadian Dollar)</b>	<b>201,500</b>	<b>496,215</b>	<b>294,715</b>

43. Explanations for the significant variances in actual receipts and disbursements as compared to the July 31 Forecast are as follows:

- (a) The positive variance of approximately \$126,000 is due to a better than forecast USD/CAD exchange rate in addition to an upward adjustment in the pricing of the 2013 harvest by Ocean Spray; and

- (b) The positive variance of approximately \$171,000 in the disbursements are believed to be timing differences and expected to reverse in future weeks.

## **CASH FLOW PROJECTION**

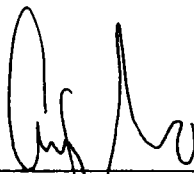
- 44. The Company prepared the Cash Flow Projection for the period from August 10, 2015 to January 23, 2016 (attached as Appendix B).
- 45. The Cash Flow Projection is prepared on the basis of the following major assumptions:
  - (a) The Company collects the Ocean Spray receivables related to the payment instalments for the 2013, 2014 and 2015 crop yields based on a USD/CAD exchange rate of 1.31;
  - (b) The Company accesses the deposit funds related to the Sale Transaction;
  - (c) The post filing interest expense of the Company's secured lenders, namely Farm Credit Canada, First West Credit Union, HSBC and D.B. Barnston Investment LP, is paid; and
  - (d) The operating costs are based on historical results which reflect the farm in full operation. In addition, where considered necessary, the operating costs have been adjusted to a prepaid or cash on delivery basis.
- 46. The Cash Flow Projection indicates that the Company should have sufficient resources to meet its obligations during the period covered by the Cash Flow Projection.

## COMPANY REQUEST FOR AN EXTENSION

47. The Company is seeking an extension of the stay of proceedings to October 5, 2015. Absent an extension the stay of proceedings would expire on August 22, 2015. The Company is seeking an extension for the following reasons:
- (a) To provide the Company with the time required to negotiate terms of forbearance with its secured lenders which would allow Apollo to close the Sale Transaction; and
  - (b) To formulate a proposal to its creditors in conjunction with the Sale Transaction.
48. The Proposal Trustee supports the Company's request for an extension of its stay of proceedings based on the following:
- (a) The Trustee has observed that the Company has acted in good faith and with due diligence;
  - (b) Subject to notification of any material variance in the amount of creditor claims, the Sale Transaction would appear to provide sufficient proceeds to satisfy the claims of all creditors in full; and
  - (c) The Company appears to have sufficient resources to allow it to keep its creditors current during the extension period and accordingly does not appear to be prejudicial to any of the creditors.

All of which is respectfully submitted this 14<sup>th</sup> day of August, 2015.

FTI Consulting Canada Inc.,  
in its capacity as Proposal Trustee under a NOI  
filed by Apollo Group Management Ltd.



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Name: Craig Munro  
Title: Managing Director,  
FTI Consulting Canada Inc.

# **APPENDIX A**

Apollo Group Management Ltd. 5 Week Cash-flow Forecast

	Week commencing				TOTAL	Notes
	Week 1 27-Jul	Week 2 3-Aug	Week 3 10-Aug	Week 4 17-Aug		
Opening Cash	12,000	14,000	-	201,500	12,000	1
<b>Cash Receipts</b>						
Interim Financing	-	-	-	-	-	
Collections on AR	-	-	362,000	-	362,000	2
Other	5,000	-	-	-	5,000	3
<b>Total - Operating Receipts</b>	<b>5,000</b>	<b>-</b>	<b>362,000</b>	<b>-</b>	<b>367,000</b>	
<b>Cash Disbursements</b>						
Finance Charges/Secured Debt Payments	-	4,000	-	-	4,000	4
Operating Costs	3,000	10,000	67,500	-	80,500	5
Professional Fees	-	-	28,000	-	28,000	6
Management Fees	-	-	65,000	-	65,000	7
<b>Total - Operating Disbursements</b>	<b>3,000</b>	<b>14,000</b>	<b>160,500</b>	<b>-</b>	<b>177,500</b>	
<b>Net Change in Cash from Operations</b>	<b>2,000</b>	<b>(14,000)</b>	<b>201,500</b>	<b>-</b>	<b>189,500</b>	
<b>Total Net Cash Flow</b>	<b>2,000</b>	<b>(14,000)</b>	<b>201,500</b>	<b>-</b>	<b>189,500</b>	
<b>Ending cash</b>	<b>14,000</b>	<b>-</b>	<b>201,500</b>	<b>201,500</b>	<b>201,500</b>	

**Notes:**

Apollo Group Management Ltd. ("Apollo") has prepared this Projected Cash Flow Statement solely for the purposes of determining the liquidity requirements of Apollo for the 5 week period from July 27, 2015 to August 23, 2015 .

The Projected Cash Flow Statement is based on the probable and hypothetical assumptions detailed in Notes 1 - 7.

Consequently, actual results will likely vary from performance projected and such variations may be material.

- 1- Opening bank balance July 27, 2015
- 2- Ocean Spray International Inc. pays Apollo for the annual harvest bi-monthly over 18 Months. The August payment includes Ocean Spray accounts receivable payment for both the 2013 and 2014 harvest.
- 3- This represents the receipt from the sale of some sand from the farm.
- 4- Apollo has an outstanding operating line with HSBC. This represents the monthly interest payment to HSBC on the amount outstanding on the line of credit.
- 5- Operating costs are based on Apollo's 2015 operating budget and assumed to be on a COD basis. The operating costs are based on historical cost which reflect the farm in full operation.
- 6 - Professional fees are based on estimates provided by the Proposal Trustee and the company's legal counsel
- 7- Management fees relate to management services provided to Apollo.

District of: British Columbia  
Division No. 03 - Vancouver  
Court No.  
Estate No.

-- FORM 29 --  
Trustee's Report on Cash-Flow Statement  
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

The attached statement of projected cash flow of Apollo Group Management Ltd., as of the 30<sup>th</sup> day of July, 2015, consisting of , has been prepared by the management of the insolvent person for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by:  the management and employees of the insolvent person or  the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by:  management or  the insolvent person for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

(a) the hypothetical assumptions are not consistent with the purpose of the projection;

(b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or

(c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the city of Vancouver in the Province of British Columbia, this 30th day of July 2015.

FTI Consulting Canada Inc. - Trustee

Per:

  
\_\_\_\_\_  
Craig Munro

Pacific Centre

Suite 1502, 701 West Georgia Street

Vancouver BC V7Y 1C6

Phone: (604) 601-5691

District of: British Columbia  
Division No. 03 - Vancouver  
Court No.  
Estate No.

- FORM 30 -

Report on Cash-Flow Statement by the Person Making the Proposal  
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

I, Apollo Group Management Ltd., have developed the assumptions and prepared the attached statement of projected cash flow of the insolvent person, as of the 30<sup>th</sup> day of

July, 2015, consisting of .

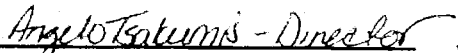
The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the insolvent person and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the city of Vancouver in the Province of British Columbia, this 30th day of July 2015.

  
\_\_\_\_\_  
Apollo Group Management Ltd.  
Debtor

  
\_\_\_\_\_  
Name and title of signing officer

\_\_\_\_\_  
Name and title of signing officer



# **APPENDIX B**

Cash Flow Projection for the period from August 10, 2015 to January 23, 2015

	Month						TOTAL	Notes
	August	September	October	November	December	January		
Opening Cash	496,215	361,665	174,990	193,315	740	229,165	496,215	1
<b>Cash Receipts</b>								
Deposited Funds	490,000	-	-	-	-	-	490,000	2
Collections on AR	-	-	200,000	-	516,000	-	716,000	3
<b>Total - Operating Receipts</b>	<b>490,000</b>	<b>-</b>	<b>200,000</b>	<b>-</b>	<b>516,000</b>	<b>-</b>	<b>1,206,000</b>	
<b>Cash Disbursements</b>								
Finance Charges/Secured Debt Payments	494,000	39,000	39,000	39,000	139,000	111,000	861,000	5
Operating Costs	55,550	72,675	72,675	83,575	83,575	46,425	414,475	6
Professional Fees	30,000	30,000	25,000	25,000	20,000	20,000	150,000	7
Management Fees	45,000	45,000	45,000	45,000	45,000	45,000	270,000	8
<b>Total - Operating Disbursements</b>	<b>624,550</b>	<b>186,675</b>	<b>181,675</b>	<b>192,575</b>	<b>287,575</b>	<b>222,425</b>	<b>1,695,475</b>	
<b>Net Change in Cash from Operations</b>	<b>(134,550)</b>	<b>(186,675)</b>	<b>18,325</b>	<b>(192,575)</b>	<b>228,425</b>	<b>(222,425)</b>	<b>(489,475)</b>	
<b>Total Net Cash Flow</b>	<b>(134,550)</b>	<b>(186,675)</b>	<b>18,325</b>	<b>(192,575)</b>	<b>228,425</b>	<b>(222,425)</b>	<b>(489,475)</b>	
Ending cash	361,665	174,990	193,315	740	229,165	6,740	6,740	

**Notes:**

Apollo Group Management Ltd. ("Apollo") has prepared this Projected Cash Flow Statement solely for the purposes of determining the liquidity requirements of Apollo for the period from August 10, 2015 to January 23, 2015 (the "Proposal Period").

The Projected Cash Flow Statement is based on the probable and hypothetical assumptions detailed in Notes 1 - 8.

Consequently, actual results will likely vary from performance projected and such variations may be material.

- 1 - Opening bank balance as at August 10, 2015.
- 2 - Apollo has entered into a Purchase and Sale Agreement (the "PSA") for the land and assets required to operate the cranberry farm. The PSA provides for a deposit of \$500,000 to be held by an escrow agent (the purchaser's legal counsel) to be released for use by the Vendor to fund its operations during the period until the closing of the PSA.
- 3 - Ocean Spray International Inc. pays Apollo for its annual harvest on a bi-monthly basis over an agreed upon period (12 months for the 2015 harvest). This represents the amount expected to be collected from Ocean Spray relating to accounts receivable for the 2013, 2014, and estimated 2015 harvest. Payments are made in USD and are subject to currency fluctuation. The forecast is based on a USD/CAD exchange rate of 1.31.
- 4 - This represents the receipt of cash from the sale of sand from the farm.
- 5 - Apollo proposes to fund the post-filing interest expense of its secured creditors; Farm Credit Canada, DB Barnston Investment LP, First West Credit Union, and HSBC during the Proposal Period. Apollo also proposes to make payments to HSBC on account of principal in the amounts of \$228,000 in August, \$100,000 in December 2015 and \$72,000 in January 2016.
- 6 - Operating costs are based on Apollo's 2015 operating budget and assumed to be on a COD basis where required. The operating costs are based on historical costs which reflect the farm in full operation.
- 7 - Professional fees are based on estimates provided by the Proposal Trustee and the company's legal counsel.
- 8 - Management fees relate to management services provided to Apollo.