

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.**

FIFTH REPORT OF THE PROPOSAL TRUSTEE

FEBRUARY 17, 2016

INTRODUCTION

1. On July 23, 2015, Apollo Group Management Ltd. (“**Apollo**” or the “**Company**”) filed a Notice of Intention to File a Proposal (“**NOI**”) pursuant to Part III, Division I of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). FTI Consulting Canada Inc. (“**FTI**”) was appointed as the Trustee (the “**Proposal Trustee**”) under the NOI.
2. The Proposal Trustee has previously filed four reports with the Court as follows:
 - (a) The First Report dated August 14, 2015 (the “**First Report**”);
 - (b) The Second Report dated September 23, 2015 (the “**Second Report**”);
 - (c) The Third Report dated November 10, 2015 (the “**Third Report**”); and
 - (d) The Fourth Report dated January 29, 2016 (the “**Fourth Report**”).
3. The primary purpose of these reports was to provide an update to the Court on various matters in these proceedings, comment on the Company’s request for an extension of the stay of proceedings, to support Court approval for the sale of the Company’s assets, and to support Court approval of the proposal the Company filed on December 22, 2015 (the “**Proposal**”).
4. 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

5. The purpose of this report, the fifth report of the Proposal Trustee (the “**Fifth Report**”), is to provide the Court with supplementary information relating to the adjournment of the applications scheduled to be heard on February 9, 2016 with respect to:

- (a) Approval of the Proposal which was unanimously passed by the Company's creditors on January 12, 2016; and
- (b) Approval of an agreement of purchase and sale of substantially all of the Company's assets.

TERMS OF REFERENCE

- 6. 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**").
- 7. Except as described in this Fifth 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 Chartered Professional Accountants of Canada 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 Chartered Professional Accountants of Canada Handbook.
- 8. 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.
- 9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

10. Defined terms have the meaning ascribed to them in this report or in prior reports filed by the Proposal Trustee.

CAUSE FOR THE ADJOURNMENT

11. As detailed in the Fourth Report, the Company entered into a Purchase and Sale Agreement on July 15, 2015 (the “**Sale Agreement**”) for substantially all of the assets of the Company. The closing date of the Sale Agreement was February 11, 2016.
12. However, on February 4, 2015, the purchaser contacted Apollo requesting an extension of the closing date to March 4, 2016. The extension was requested by the purchaser to allow it time to finalize the documentation associated with its equity partner related to the Apollo acquisition.
13. After an initial discussion with the purchaser, it was apparent that the Company and the purchaser would require a few days to finalize the extension agreement to the Sale Agreement. Accordingly the Company, in consultation with the Proposal Trustee, decided to seek an adjournment of the hearing to approve the Sale Agreement. The hearing was adjourned from February 9, 2016 to February 18, 2016.
14. Between February 4, 2016 and February 10, 2016, the Company and the purchaser negotiated the terms of an extension agreement which was finalized by way of an Amendment to Purchase and Sale Agreement and Allocation Agreement (the “**Extension Agreement**”)(copy attached as Appendix A).
15. The principal terms of the Extension Agreement are as follows:
 - (a) The closing date of the Sale Agreement is March 4, 2016;
 - (b) The purchase price is increased by \$50,000, from \$24,875,000 to \$24,925,000;

- (c) The provision for a \$200,000 holdback from the purchase price by the purchaser is deleted from the Sale Agreement; and
 - (d) Although not indicated in the Extension Agreement, the purchaser placed into the trust account of its legal counsel an amount of \$1 million, some of which may upon agreement between the parties, be used by the Company to fund operating costs between the signing of the Extension Agreement and the new closing date.
16. Given that the Sale Agreement provides for the extension of the closing date, and the Company's ability to perform its obligations pursuant to the Proposal are dependent on the closing of the Sale Agreement, the Proposal Trustee was of the view that the request for an extension of the closing date was reasonable.
17. The Proposal Trustee also consulted the sole inspector (the "**Inspector**") of the estate that was appointed at the Company's creditors meeting held on January 22, 2016. The Inspector agreed to the extension of the closing date to March 4, 2016.

THE CLAIM OF OPUS CRANBERRIES CORPORATION

18. As noted in the Fourth Report, a contingent claim against Apollo was recently brought to the attention of the Proposal Trustee. The creditor was the former owner of one of the parcels comprising the Cranberry Farm (“**Lot 1**”), Opus Cranberries Corporation (“**Opus**”).
19. Opus had entered into an agreement with Apollo, the Continuing Carried Interest Agreement (the “**CCIA**”), the terms of which provided that in the event Apollo sold Lot 1 within 20 years from the date of its original purchase from Opus, then Opus would be entitled to 25% of the subsequent purchase price of Lot 1 that is in excess of \$3.2 million.
20. The Proposal Trustee noted in the Fourth Report that based on the mathematical per acre average of the purchase price pursuant to the Sale Agreement, Opus’ maximum claim arising from the CCIA would be approximately \$420,000.
21. Subsequent to the issuance of the Fourth Report, the Company and Opus engaged in negotiations as to the amount of Opus’ claim, finally settling on an agreed amount of \$360,000.
22. Given the Proposal Trustee’s estimated range of potential valuations, the Proposal Trustee is of the view that the agreed settlement amount is reasonable.

THE ESTIMATED CLOSING PAYOUTS

23. Subsequent to filing the Fourth Report, the Company has advised the Proposal Trustee of some additional closing costs and commissions that will be payable by the Company upon the closing of the Sale Agreement. In addition, the Company’s legal counsel obtained estimated payout statements from Apollo’s secured creditors which contained additional costs that the Proposal Trustee was not aware of at the time of the Fourth Report.

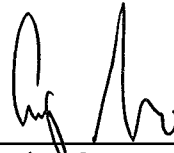
24. As a result, the Proposal Trustee has updated the schedule of projected payout amounts from the increased proceeds to be received from closing the Sale Agreement, including the agreed amount payable to Opus.

Projected balance March 4, 2016	
Cash Receipts	
Sale Proceeds	24,925,000
Less: Deposit already received	(500,000)
Less: Real estate commission	(157,500)
Less: FTI and Gowling fees	(60,000)
Less: Other closing costs	(130,000)
Total Receipts	24,077,500
Creditor payouts (estimated)	
Farm Credit Canada	17,402,000
First West Credit Union	3,193,000
HSBC	712,000
DB Barnston Investment LP	1,300,000
Opus CCIA claim	360,000
Unsecured Creditors	1,305,000
Total - Operating Disbursements	24,272,000
Surplus of Sale Proceeds	(194,500)

25. As indicated in the table, with these additional costs there will be a deficiency of approximately \$195,000 based on the estimated claims of the Company's secured creditors and the Company's obligations pursuant to the terms of its Proposal.
26. However, one of the unsecured claims in the approximate amount of \$932,000, is due to a party related to the principals of Apollo. This related party has agreed to defer that portion of its claim necessary to allow Apollo to pay its secured creditor claims and fulfill the terms of its Proposal.

27. The Company's remaining asset subsequent to the closing of the Sale Agreement will be a receivable from Ocean Spray relating to the Company's 2015 harvest. Upon receipt of this receivable, the Company's intention is to satisfy the deferred claim amount of the related party.
28. All of which is respectfully submitted this 17th day of February, 2016.

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



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

APPENDIX A

AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ALLOCATION AGREEMENT

THIS AGREEMENT is dated for reference February 10, 2016

BETWEEN:

APOLLO GROUP MANAGEMENT LTD., a company duly incorporated under the laws of British Columbia and having an office at #1910 – 1177 West Hastings Street, Vancouver, British Columbia V6E 2K3

(the "Vendor")

AND:

DR BARNSTON HOLDINGS LTD., a company duly incorporated under the laws of British Columbia and having an office at Suite 404 – 999 Canada Place, Vancouver, British Columbia V6C 3E2

(the "Purchaser")

WHEREAS:

- A. Pursuant to a purchase and sale agreement dated as of the 15th day of July, 2015 between the Vendor and the Purchaser (the "**Purchase Agreement**"), the Vendor agreed to sell and the Purchaser agreed to purchase, *inter alia*, all of the Vendor's right, title, and interest in and to the Purchased Assets (as defined in the Purchase Agreement) pursuant to the terms and conditions set out in the Purchase Agreement.
- B. Pursuant to Section 2.5 of the Purchase Agreement, the parties entered into an Agreement as to Allocation of the Purchase Price (the "**Allocation Agreement**") dated for reference the 21st day of January, 2016.
- C. The Vendor and Purchaser have agreed to amend the Purchase Agreement and make consequential changes to the Allocation Agreement as set out herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this agreement, the parties hereby covenant and agree as follow:

1. Unless otherwise defined in this Agreement, each capitalized term used in this Agreement will have the meaning ascribed to it in the Purchase Agreement.
2. The Purchase Agreement is hereby amended as follows:
 - (a) The definition of "Closing Date" at Section 1(8) is deleted in its entirety and replaced with the following:

"Closing Date" means March 4, 2016, or such other date as may be agreed to in writing by the Vendor and the Purchaser.

- (b) The definition of "Purchase Price" at Section 1(29) is deleted in its entirety and replaced with the following:

"Purchase Price" means \$24,925,000.

- (c) The following added to the end of Section 2.6 "Adjustments":

"The Purchaser will direct its solicitor to pay, from funds held in trust on behalf of the Purchaser in connection with this Agreement:

- (a) when due, to the Manager, the monthly management fees payable in respect of January, 2016 and February, 2016 pursuant to the Management Agreement; and
- (b) such other funds as may be necessary from time to time between February 10, 2016 and the Closing Date, to maintain operation of the Property, as may be agreed between the parties, acting reasonably.

All amounts paid pursuant to subsections (a) and (b) above, except the February, 2016 management fee, will be credited to the Purchaser on the statement of adjustments."

- (d) Section 7.2 "\$200,000 Holdback" of the Purchase Agreement is deleted in its entirety.

3. The parties hereby acknowledge and agree that the date for adjustment under Section 2.6 of the Purchase Agreement will remain as February 11, 2016.

4. Section 2(c) of the Allocation Agreement is hereby amended by deleting "\$19,944,995" and replacing such amount with "\$19,994,995".

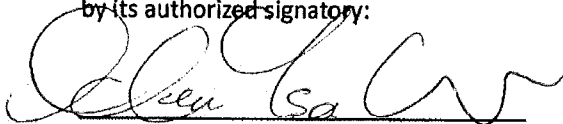
5. The parties hereby ratify and confirm each of the Purchase Agreement and the Allocation Agreement, as amended hereby, and will duly observe and perform all the covenants, terms and conditions contained in the Purchase Agreement and Allocation Agreement and herein.

This Agreement may be executed in counterpart and such counterparts together shall constitute a single instrument. Delivery of an executed counterpart of this Agreement by electronic means, including by facsimile transmission or by electronic delivery in portable document format (".pdf"), shall be equally effective as delivery of a manually executed counterpart hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first above written.

APOLLO GROUP MANAGEMENT LTD.


by its authorized signatory:



Authorized Signatory

Authorized Signatory

DR BARNSTON HOLDINGS LTD.
by its authorized signatory:



Authorized Signatory

Authorized Signatory