



No. S-235288
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

AND

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
NEXTPOINT FINANCIAL, INC. AND THOSE PARTIES LISTED ON APPENDIX "A"**

PETITIONERS

FOURTH REPORT OF THE MONITOR

October 27, 2023

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INTRODUCTION

1. On July 25, 2023, NextPoint Financial, Inc. (“**NPI**”) and 29 other petitioners (collectively, the “**Petitioners**”) were granted an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) in the Supreme Court of British Columbia Action No. S-235288, Vancouver Registry (the “**CCAA Proceedings**”).
2. The Initial Order provided for, among other things:
 - a. a stay of proceedings (the “**Stay of Proceedings**”) against the Petitioners until August 3, 2023;
 - b. the appointment of FTI Consulting Canada Inc. as Monitor of the Petitioners (the “**Monitor**”); and
 - c. the appointment of Peter Kravitz of Province Fiduciary Services, LLC (together with Province LLC, “**Province**”) as the Petitioners’ Chief Restructuring Officer (“**CRO**”).
3. On July 27, 2023, the Petitioners obtained orders in the U.S. Bankruptcy Court for the District of Delaware (the “**US Bankruptcy Court**”) under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) recognizing the CCAA Proceedings as a foreign main proceeding and granting certain additional provisional relief relating to the recognition of the Initial Order.
4. On August 3, 2023, this Honourable Court granted the following orders:
 - a. an amended and restated Initial Order (the “**ARIO**”) which, among other things:
 - i. extended the Stay of Proceedings up to and including October 20, 2023;

- ii. increased the amounts of certain priority charges granted in the Initial Order;
 - iii. clarified the priority of a charge (the “**FCB Charge**”) granted on certain property of Liberty Tax in an amount equal to the value of the indebtedness, interest, fees, liabilities and obligations to First Century Bank N.A. (“**FCB**”) incurred after the granting of the Initial Order; and
 - iv. approved an increase in the amount of the interim financing facility (the “**Interim Facility**”) to the maximum principal amount of \$25.0 million and increasing the amount of the charge on the Petitioners’ property to secure the obligations under the Interim Facility (the “**Interim Facility Charge**”); and
 - b. an order (the “**SISP Order**”) approving a restructuring support agreement dated July 25, 2023 among the Petitioners and certain secured creditors (the “**RSA**”) and a sales and investment solicitation process (the “**SISP**”). The SISP included a stalking horse purchase agreement (the “**SHPA**”) among certain of the Petitioners and certain of their lenders (the collectively, the “**Purchasers**”).
- 5. On August 16, 2023, the US Bankruptcy Court entered an order recognizing and approving, among other relief, the SISP Order and ARIO.
- 6. On September 19, 2023, granted an order (the “**September 19 Order**”):
 - a. removing LoanMe Trust Prime 2018-1 (the “**2018 Trust**”) and LoanMe Trust SBL 2019-1 (the “**2019 Trust**”) and together, the “**LoanMe Income Trusts**”) as Petitioners in these CCAA Proceedings;
 - b. providing for a limited Stay of Proceedings against the LoanMe Income Trusts (the “**LoanMe Stay**”); and

- c. adding LM BP Holdings, LLC as a Petitioner in these CCAA Proceedings.
7. On October 13, 2023, this Honourable Court granted an order amending and restating the ARIO (the “**Second ARIO**”), as follows:
 - a. extending the Stay of Proceedings up to and including November 20, 2023;
 - b. extending the LoanMe Stay; and
 - c. expanding the powers to be exercised by the CRO.
8. On September 22, 2023, the Petitioners filed with the US Bankruptcy Court a notice consistent with the September 19 Order and Second ARIO in respect of the LoanMe Income Trusts and the LoanMe Stay.
9. On October 5, 2023, NPI filed a motion in the US Bankruptcy Court seeking recognition of LM BP Holdings, LLC as a Petitioner in these CCAA Proceedings and certain additional relief relating to the recognition of the Initial Order.
10. On October 24, 2023, the Petitioners filed a notice of application returnable October 31, 2023, for an order (the “**RVO**”), among other things:
 - a. approving the transactions contemplated by a transaction agreement (the “**Transaction Agreement**”) among NPI and certain subsidiaries (the “**NextPoint Entities**”) and certain of its secured lenders (the “**Purchasers**”);
 - b. vesting in a Canadian residual company (“**Residual Co. 1**”) all of the right, title and interest in and to certain assets (the “**Excluded Assets**”) and liabilities (the “**Excluded Liabilities**”) of the acquired entities which were not formed or incorporated in the United States (the “**Non-US Acquired Entities**”); and

- c. vesting in a United States residual company (“**Residual Co. 2**”) all of the right, title and interest in and to the Excluded Assets and Excluded Liabilities of the acquired entities which were formed or incorporated in the United States (the “**US Acquired Entities**” and together with the Non-US Acquired Entities, the “**Acquired Entities**”).

PURPOSE

- 11. The purpose of this report is to provide this Honourable Court and the Petitioners’ stakeholders with information with respect to:
 - a. an independent review performed by the Monitor’s legal counsel of the security held by BP Commercial Funding Trust, Series SPL-X (the “**BP Lenders**”) and Drake Enterprises Ltd. (“**Drake**”);
 - b. the Transaction Agreement;
 - c. the Petitioners’ application for the RVO;
 - d. Disclaimer Notices issued by the Petitioners in respect of certain real property leases and operating agreements; and
 - e. the Monitor’s conclusions and recommendations.

TERMS OF REFERENCE

- 12. In preparing this report, the Monitor has relied upon certain information (the “**Information**”) including the Petitioners’ unaudited financial information, books and records and discussions with the CRO and management of the Petitioners (collectively, “**Management**”). The Monitor has also consulted with the financial and legal advisors of the Petitioners.

13. Except as described in this report, the Monitor 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.
14. The Monitor 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.
15. Future-oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars to be consistent with the Petitioners' primary reporting currency.

SECURITY OPINIONS

17. The Monitor's independent legal counsel, Fasken Martineau Dumoulin LLP, has coordinated security opinions (the "**Opinions**") in respect of the security held by each of the BP Lenders and Drake in Canada and the United States.
18. Subject to the standard qualifications and assumptions outlined in each of the Opinions, the Opinions reflect that:
 - a. the documents that NPI HoldCo LLC, LT Holdco, LLC, NPI and certain subsidiary guarantors including LoanMe LLC are party to, including the security agreement dated as of July 2, 2021 (as amended and restated or otherwise modified prior to the date of the opinion, the "**NPI Security Agreement**"), constitute valid, binding and enforceable obligations of such parties, and the provisions of the NPI Security Agreement are effective to create, in favour of the

BP Lenders, a security interest over the collateral described in the NPI Security Agreement; and

- b. the documents that CTAX Acquisition LLC and other subsidiary guarantors are a party to, including the security agreement dated June 29, 2022 (as amended and restated or otherwise modified prior to the date of the opinion, the “**CTax Security Agreement**”), constitute valid, binding and enforceable obligations of such parties, and the provisions of the Drake Security Agreement are effective to create, in favour of Drake, a security interest over the collateral described in the CTax Security Agreement.

SALES PROCESS AND TRANSACTION AGREEMENT

19. The Petitioners, with the assistance of the CRO and with the oversight of the Monitor, marketed the Petitioners’ interests in the Liberty Tax and Community Tax business lines in accordance with the SISP. The detailed timelines and procedures of the Sales Process are described in the First Report of the Monitor dated August 2, 2023, and are not repeated herein.

20. Highlights of the Sales Process are as follows:

- a. the CRO contacted 158 potentially interested parties, including 46 strategic and 112 private equity or other financial investors and provided them with a copy of a process summary non-confidential information letter;
- b. 13 potential purchasers executed non-disclosure agreements and were provided with access to an electronic data room; and
- c. two non-binding indications of interest (“**IOIs**”) for the Petitioners interests in Liberty Tax and Community Tax were received by the CRO and the Monitor.

21. As described in the Second Report of the Monitor dated September 18, 2023, the Petitioners, under the direction of the CRO and in consultation with the Monitor and the BP Lenders, determined that neither of the IOIs had a reasonable prospect of culminating in a Qualified Bid and that they were not considered “LOIs” as defined in the SISP. As a result, the Petitioners terminated the SISP and, on September 11, 2023, notified the bidders and Service List in the CCAA Proceedings of the termination.
22. In consultation with the CRO and Monitor, the BP Lenders and Drake advised the CRO and Monitor that they would amend their bid (the “**Amended Bid**”) to increase the purchase price through an increase to the credit bid of over \$96.0 million.
23. The Petitioners and Purchasers are continuing to negotiate the Amended Bid. However, the Monitor understands that the key commercial terms of the Transaction Agreement are expected to include the following (with any capitalized terms not defined herein intending to bear their meanings as defined in the Transaction Agreement):
- a. the purchase price is equal to the sum of:
 - i. a credit bid of \$196.59 million of the Interim Facility and first-lien debt, including a \$144.59 credit bid in respect of Liberty Tax (the “**LT Credit Bid Amount**”) and a \$52.0 million credit bid in respect of Community Tax (the “**CTAX Credit Bid Amount**”); plus
 - ii. an amount to be determined with the NextPoint Entities which will be sufficient to pay any encumbrances on the assets of the NextPoint Entities that rank prior to the interests of the Purchasers’ security interest in the assets of the NextPoint Entities, and are not otherwise an Assumed Liability, in an aggregate amount not exceeding \$500,000 (the “**Closing Cash Payment**”); plus
 - iii. the assumption of certain liabilities (the “**Assumed Liabilities**”), including:

1. the \$75.0 million LT Term Loan;
 2. the applicable taxes to be borne by the Acquired Entities; and
 3. all other debts, liabilities and obligations under the Continuing Contracts that are not Excluded Contracts for the period from and after the Closing. These Continuing Contracts include the agreement (the “**FCB Agreement**”) with First Century Bank N.A. (“**FCB**”), which is the subject of the Franchisee Lender Charge (as defined in the Amended and Restated Initial Order) with respect to applicable obligations;
- b. the purchase price shall be satisfied as follows:
- i. by causing the release of the applicable NextPoint Entities from (a) \$14.0 million of the amounts outstanding under the Interim Facility and (b) obligations owing pursuant to any and all revolving credit loans outstanding under the BP NP-Liberty Credit Agreement in an aggregate amount equal to the LT Credit Bid Amount;
 - ii. by causing the release of the applicable NextPoint Entities from (a) \$7.0 million of the amounts outstanding and obligations owing pursuant to the Interim Facility; and (b) the CTAX First Lien Debt, including the principal amount of such claims and interest and fees accrued as of the Closing Date, in an aggregate amount equal to the CTAX Credit Bid Amount; and
 - iii. by payment of the Closing Cash Payment to NPI;
- c. the remaining \$4.0 million owing under the Interim Facility will remain unpaid following implementation of the transaction and will be secured by the DIP Charge against the assets of the remaining Petitioners (comprised of NextPoint Financial Inc., NPI Holdco LLC and the various LoanMe entities) and Residual

Co. 1 and Residual Co. 2, which are intended to be added as Petitioners following the Effective Time (collectively, the “**Post-Closing Petitioners**”);

- d. the Purchasers (or their designee) will directly or indirectly acquire all of the Acquired Entities in their entirety other than the Excluded Liabilities and the Excluded Assets which include, among other things, the following:
 - i. cash for a wind-down of the CCAA Proceedings of \$600,000 and for professional fee retainers held in the segregated escrow bank account set forth in the DIP Term Sheet (the “**Retained Cash**”) (provided that any unused portion of the Retained Cash, after payment or reservation for all wind down expenses and professional fee retainers, as determined by the Monitor, shall be transferred by the Monitor or the CRO, as applicable, to the Acquired Entities after the Closing);
 - ii. certain contracts of the NextPoint Entities as set out in the Disclosure Letter; and
 - iii. equity interests or any other assets set forth in the Disclosure Letter, which may be modified as agreed upon by NextPoint and the Purchasers at least 3 days prior to closing;
- e. the obligations and liabilities of the Acquired Entities will consist only of the Assumed Liabilities;
- f. all Excluded Contracts and Excluded Liabilities of the Non-US Acquired Entities will be transferred to and vest in Residual Co. 1;
- g. all Excluded Contracts and Excluded Liabilities of the US Acquired Entities will be transferred to and vest in Residual Co. 2;

- h. unless the Parties otherwise agree in writing, the closing date will be no later than 5 business days after certain conditions precedent have been satisfied or waived, provided that no closing date is later than the Outside Date (as defined in the RSA); and
- i. the Petitioners within the LoanMe business line will not be acquired.

24. The Monitor's comments with respect to the Transaction Agreement are as follows:

- a. The business and assets of the Petitioners have been extensively marketed.
- b. The SISP was fair and transparent and provided all participants with equal access to information and opportunity to submit an offer and was conducted with the oversight of the Monitor.
- c. The secured lenders were consulted in respect of the SISP.
- d. The Purchase Price and other terms of the Transaction Agreement are fair and reasonable in consideration of the market value of the purchased assets as determined through the SISP, including providing greater value than indicated in the IOIs received.
- e. As noted above, under the terms of the Transaction Agreement there will be \$4.0 million owing under the Interim Facility following closing, which will be secured by the DIP Charge against the assets of the Post-Closing Petitioners. Under the terms of the SHPA, it was contemplated that up to the full amount of the Interim Facility would have been credit bid and there would have been significant debt left owing to the BP Lenders under their pre-filing facility guaranteed by among others, LoanMe LLC. Based on the Monitor's review of the Petitioners' books and records and discussions with the CRO and Management, the Monitor understands that the only realizable assets within the Post-Closing Petitioners are the interest LM Retention Holdings, LLC ("**LM Retention**") holds in the 2018

Trust (which has a book value of approximately \$2.2 million) and approximately \$94,000 in cash held at LoanMe LLC. The Monitor understands that LM Retention no longer has an interest in the 2019 Trust. Management and the CRO have advised the Monitor that there are no creditors with claims against LM Retention. Accordingly, if the Interim Facility had been credit bid in full, if LM Retention received any proceeds, those would have been distributed to LoanMe LLC and been subject to the BP Lender's security interest at that entity. Accordingly, based on the information provided by the Petitioners and the CRO, there is no material prejudice arising from the revised transaction structure and notional allocation of the \$4.0 million under the Interim Facility and corresponding Interim Facility Charge on the assets of the Post-Closing Petitioners. Counsel for Chilmark Administrative LLC ("**Chilmark**") has contacted the Monitor's counsel to advise that Chilmark has an interest in LoanMe entities. At the time this report was finalized, the Monitor had not received particulars of this interest or claim.

- f. The CRO advises the Monitor that the maximum amount of the Closing Cash Payment will be sufficient to pay any encumbrances on the assets of the NextPoint Entities that rank prior to the interests of the Purchasers' security interest in the assets of the NextPoint Entities, and are not otherwise an Assumed Liability.
- g. The only Assumed Liability with a priority claim to the pre-filing debt owing to the BP Lenders is under the FCB Agreement that is secured by the FCB Charge, which the Transaction Agreement contemplates will be assumed by the Purchaser on closing.
- h. The Monitor notes that certain court-ordered charges will continue following conclusion of the transaction and, going forward, be secured against the Excluded Assets, including the LoanMe entities, in Residual Co. 1 and Residual Co. 2. The Monitor is advised by the CRO, Petitioners and the Purchaser that there will be no

amounts owing on such charges as of the closing date, and that the beneficiaries of such charges consent to the charges continuing against the Excluded Assets.

- i. The target date of the Transaction Agreement will enable the Petitioners to complete a transaction within the liquidity runway afforded by the Interim Facility.
 - j. The timelines, conditions and other key terms of the Transaction Agreement are commercially reasonable in the circumstances, based on the Monitor's experience with similar transactions in the context of insolvency and restructuring proceedings.
 - k. The Transaction Agreement will provide for the continued operation of the Liberty Tax and Community Tax business lines, offering greater benefit than a forced liquidation.
25. Overall, the Transaction Agreement is the highest and best offer available for the business and assets of the Petitioners and is in the best interests of Petitioners' stakeholders.

REVERSE VESTING ORDER

26. The Transaction Agreement contemplates a RVO structure, as opposed to an asset purchase agreement as proposed in the original stalking horse purchase agreement dated July 25, 2023, for the following reasons:

- a. the "Compromised LT Entities" that were to be transferred to the Purchasers hold Electronic Filing Identification Numbers ("EFIN"s) which were issued by the Internal Revenue Service ("IRS") and allow for the entities to file tax returns on behalf of customers and represent customers in connection with IRS investigations. The EFINS are non-transferrable and the Petitioners advise the Monitor that it could take several months to obtain new EFINS;

- b. JTH, a Compromised LT Entity under the SHPA, has a registered Franchise Disclosure Document (“FDD”) in the U.S. which allows it to operate the franchise business of Liberty Tax. The Petitioners advise the Monitor that the FDD is critical to the business, cannot be transferred and it could take several months to register a new FDD in its place;
- c. the Compromised LT Entities are party to a large number of business-critical contracts which would require consent to an assignment in an asset purchase transaction which would be impractical in the circumstances; and
- d. JTH operates a complex payroll system developed by ADP that is non-transferable and would take significant time and cost to replace.

27. The Monitor’s comments with respect to the RVO structure of the Transaction Agreement are as follows:

- a. the RVO is necessary since certain key components of the Petitioners’ business are non-transferrable under a traditional asset sale transaction structure and, to the extent such components could be replaced, the steps required to do so would result in significant additional delays and costs, which would be reflected in the costs of these proceedings and/or the purchase price;
- b. the RVO structure avoids potentially significant delays and costs associated with having to seek the consent to assignment from contract counterparties or, if such consents could not be obtained, orders assigning such contracts pursuant to section 11.3 of the CCAA;
- c. no stakeholder is prejudiced by the RVO structure, as compared to an asset transaction. In particular, based on the transaction value and the amounts owing to secured creditors, there is no apparent prejudice to creditors whose claims will be Excluded Liabilities as their claims would not have been assumed and their unsecured claims would have received no recovery;

- d. there has been broad notice of the CCAA proceedings, and the proposed transaction (structured as an asset transaction which, as noted above, would not result in recovery for unsecured creditors);
- e. the stakeholder and transaction outcome under the RVO is at least as favourable as any alternative transaction since, in the circumstances, the Petitioners believe the RVO is the only viable transaction;
- f. the RVO structure is a requirement of the Transaction Agreement which is the highest and best offer as determined by the SISP. Accordingly, and based on discussions with the Petitioners and the Purchaser, the Monitor understands that an asset transaction, as previously contemplated, is not a viable option for the sale of this business.

28. The Petitioners have not served all contract counterparties with the materials in connection with seeking approval of the RVO. However, the counterparties have all been served with notice of the CCAA Proceedings and none of the contract counterparties have requested to be added to the Service List in the CCAA Proceedings. The CRO also advises that contract counterparties were notified of the proposed transaction and upcoming application by mail sent on or before October 25, 2023. Various contract counterparties have since contacted the legal counsel to the Petitioners and the CRO to discuss the notice and have not raised any concerns. The Monitor agrees with the Petitioners view that the cost (estimated by the CRO to be approximately \$245,000) and administrative burden of serving the materials on the contract counterparties are not justified in this case since there is no anticipated recovery for unsecured creditors.

29. The proposed RVO includes releases in favour of certain parties (collectively, the “**Released Parties**”) including:

- a. the current and former directors, officers, employees, legal counsel, and advisors of the Acquired Entities;

- b. the Monitor and its legal counsel;
 - c. Drake, the Purchasers and their respective affiliates; and
 - d. the CRO and each of their current and former directors, officers, employees, legal counsel and advisors.
30. The Released Parties will be released from any and all present and future claims of any nature or kind whatsoever based in whole or in part on any act or omission, transaction or dealing or other occurrent existing or taking place on prior to the Effective Time (and, with respect to the current or former directors and officers of the Acquired Entities, on and after July 25, 2023) in respect of (i) the Petitioners and their business, operations and administration and the CCAA Proceedings and/or Chapter 15 Proceedings, or (ii) the Transaction Agreement and other related documents.
31. The proposed release does not release any claim against directors and officers that cannot be released pursuant to section 5.1(2) of the CCAA.
32. The Monitor is of the view that each of the Released Parties have made significant contributions to the successful going-concern restructuring transaction in respect of the Petitioners, including facilitating the ongoing operations and advancing the sale process, and that the proposed releases are reasonable in the circumstances.

DISCLAIMER NOTICES

33. In order to conserve estate assets and prepare for the anticipated completion of the Transaction Agreement, the Petitioners, in consultation with the Monitor, determined that it was necessary to issue disclaimer notices to certain landlords and counterparties to operating agreements.
34. The disclaimers relate to 44 real property leases for premises which the Petitioners desire to vacate and six operating agreements that were for services no longer in use or for

which the costs are not commensurate with the ongoing benefits. In each case, the Purchasers have confirmed that they do not wish to assume the applicable contract under the Transaction Agreement.

35. Accordingly, the Monitor approved the Disclaimer Notices that were served on the respective counterparties on October 20, 2023 and they will become effective on November 19, 2023.

CONCLUSIONS AND RECOMMENDATIONS

36. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the RVO.

All of which is respectfully submitted this October 27, 2023.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Petitioners



Tom Powell
Senior Managing Director



Craig Munro
Managing Director

Appendix A

List of Petitioners

1. NextPoint Financial, Inc.
2. NPI Holdco LLC

Liberty Tax Entities

3. LT Holdco, LLC
4. LT Intermediate Holdco, LLC
5. SiempreTax+ LLC
6. JTH Tax LLC
7. Liberty Tax Holding Corporation
8. Liberty Tax Service, Inc.
9. JTH Financial, LLC
10. JTH Properties 1632, LLC
11. Liberty Credit Repair, LLC
12. Wefile LLC
13. JTH Tax Office Properties, LLC
14. LTS Software LLC
15. JTH Court Plaza, LLC
16. 360 Accounting Solutions, LLC
17. LTS Properties, LLC

Community Tax Entities

18. CTAX Acquisition LLC
19. Community Tax Puerto Rico LLC
20. Community Tax LLC

LoanMe Entities

21. NPLM Holdco LLC
22. MMS Servicing LLC
23. LoanMe, LLC
24. LoanMe Funding, LLC
25. LM Retention Holdings, LLC
26. LoanMe Stores LLC
27. InsightsLogic LLC
28. LM 2020 CM I SPE, LLC
29. LM BP Holdings, LLC