



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 SCHEDULE "A"**

PETITIONERS

SECOND REPORT OF THE MONITOR

September 18, 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 4, 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 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 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. 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 correspondingly increasing the amount of the charge on the Petitioners’ property to secure the obligations under the Interim Facility; 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 “**Stalking Horse Bid**”) among certain of the Petitioners and certain of their lenders (the collectively, the “**Purchaser**”).
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 13, 2023, the Petitioners filed a notice of application returnable September 19, 2023, for an order:
- a. approving a transaction fee payable to the CRO (the “**Transaction Fee**”) based on a calculation approved by the Board of Directors of NPI (the “**Success Fee Calculation**”);
 - b. removing LoanMe Trust Prime 2018-1 and LoanMe Trust SBL 2019-1 (together, the “**LM Income Trusts**”) as Petitioners in these CCAA Proceedings; and

- c. adding LM BP Holdings, LLC as a Petitioner in these CCAA Proceedings.

PURPOSE

- 7. The purpose of this report is to provide this Honourable Court and the Petitioners' stakeholders with information with respect to:
 - a. an update on the SISP;
 - b. the Transaction Fee and Success Fee Calculation;
 - c. the proposed removal of the LM Income Trusts as Petitioners in the CCAA Proceedings;
 - d. the proposed addition of LM BP Holdings, LLC as a Petitioner in the CCAA Proceedings;
 - e. a Disclaimer Notice issued in respect of Community Tax LLC's head office lease in Chicago, Illinois;
 - f. the Petitioners' actual cash receipts and disbursements for the 6-week period ended September 1, 2023 (the "**Reporting Period**"), as compared to the cash flow statement included in the First Report of the Monitor dated August 2, 2023 (the "**Cash Flow Statement**"); and
 - g. the Monitor's conclusions and recommendations.

TERMS OF REFERENCE

- 8. 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**").

9. 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.
10. 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.
11. 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.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars to be consistent with the Petitioners' primary reporting currency.

UPDATE ON THE SISP

13. The Petitioners, with the assistance of the CRO and under the supervision of the Monitor, have been marketing the Petitioners' interests in the Liberty Tax and/or Community Tax business lines in accordance with the SISP. The detailed timelines and procedures of the SISP are described in the First Report of the Monitor dated August 2, 2023, and are not repeated herein.
14. The Petitioners, under the direction of the CRO and in consultation with the Monitor, and the BP Lenders (as defined in the First Affidavit of Peter Kravitz made July 25, 2023 (the "**First Affidavit**"), determined that neither of the indications of interest received 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 the Service List in the CCAA Proceedings of the termination.

15. The Petitioners anticipate a further application in respect of the transaction contemplated by the Stalking Horse Bid to be brought forward in the coming weeks. The Monitor plans to file a further report in respect of such an application. The Monitor understands that the sale approval timelines under the RSA have been extended by consent.

TRANSACTION FEE

16. As described in the Pre-filing Report of the Proposed Monitor dated July 25, 2023, on July 1, 2023, NPI entered into an agreement with Province (the “**CRO Agreement**”) to retain Mr. Peter Kravitz as CRO of NPI and its subsidiaries with the support of additional Province professionals. The CRO Agreement was attached as Appendix B to the Pre-Filing Report.

17. The CRO Agreement provides for various fees to be paid to Province in respect of the engagement which, for ease of reference, are summarized as follows:

- a. a monthly fee of \$80,000 plus expenses;
- b. a Transaction Fee (as defined in the CRO Agreement) at the discretion of the Board of Directors upon a successful transaction; and
- c. the hourly fees and expenses of the supporting professionals.

18. The Initial Order approved the appointment of the CRO pursuant to the terms of the CRO Agreement, with the Transaction Fee being subject to further approval by this Honourable Court.

19. The Petitioners and Province, in consultation with the Monitor, have agreed to calculate the Transaction Fee as follows:

- a. the greater of \$500,000 or 0.3% of the credit bid by the Purchaser (the “**Credit Bid**”); or

- b. 0.4% of the total consideration pursuant to a Successful Bid, as defined in the SISP (other than the Credit Bid);

subject to a maximum payment of \$1,000,000

(the “**Success Fee Calculation**”)

20. The Monitor’s comments with respect to the Success Fee Calculation are as follows:

- a. it was negotiated between Province and the Petitioners in consultation with the Monitor and has been approved by NPI’s Board of Directors;
- b. Province has overseen the SISP and marketed the Petitioners’ assets efficiently and in a coordinated manner without unwarranted duplication of roles;
- c. the secured creditors likely to be affected by the Transaction Fee were consulted in the determination of the Success Fee Calculation and are supportive of the Success Fee Calculation; and
- d. overall, the Monitor is of the view the Success Fee Calculation will result in a Transaction Fee that is within the range of transactions fees paid in other formal restructuring proceedings of a similar nature and scale and is reasonable in the circumstances.

LM BP HOLDINGS, LLC

21. LM BP Holdings, LLC is a subsidiary of NPI in the LoanMe business line that is not a Petitioner in the CCAA Proceedings.

22. The Petitioners have advised the Monitor that the terms of an agreement involving the BP Lenders (as defined in the Kravitz Affidavit) prevented LM BP Holdings, LLC from seeking relief under the CCAA without the consent of the BP Lenders.

23. The Petitioners advise that the BP Lenders have provided the necessary consent and, accordingly, the Petitioners seek to add LM BP Holdings, LLC as a Petitioner so that it can be wound down along with the rest of the LoanMe business line. The Petitioners also seek to amend the style of cause to reflect the change.
24. The Petitioners have advised the Monitor that they will deliver a further affidavit with additional information regarding this proposed change.
25. Based on the information provided by the Petitioners, the Monitor is supportive of the addition of LM BP Holdings, LLC to allow for an orderly wind-down of the LoanMe business line.

LM INCOME TRUSTS

26. The Petitioners have advised the Monitor that the LM Income Trusts are managed by “Owner Trustees” and hold portfolios of loans and pay out regular distributions to unitholders.
27. LM Retention Holdings, LLC (one of the Petitioners) holds all of the units of LoanMe Trust SBL 2019-1 and a portion of the LoanMe Trust SBL 2018-1 units along with six third-party unitholders.
28. The Monitor is advised by the Petitioners that the LM Income Trusts were included as Petitioners in the CCAA Proceedings inadvertently and without notice to their respective Owner Trustees. Accordingly, the Petitioners are seeking to remove them as Petitioners in the CCAA Proceedings.
29. The draft order attached to the Notice of Application seeks a Stay of Proceedings against the LM Income Trusts and their property to protect the interests of LM Retention Holdings, LLC and the LM Income Trusts from any adverse consequences arising as a result of: (i) the LM Income Trusts having been included as Petitioners in these CCAA

Proceedings; and (ii) the initiation of these CCAA Proceedings generally, including specifically:

- a. the insolvency of the Petitioners;
 - b. any of the Petitioners having sought protection under the CCAA;
 - c. any of the Petitioners being party to these CCAA Proceedings;
 - d. any of the Petitioners taking any step related to these CCAA Proceedings; or
 - e. any default or cross-default arising from the matters set out in subparagraphs a-d above.
30. The Monitor has no concerns with respect to the extension of the Stay of Proceedings to the LM Income Trusts to protect against actions by any Persons due to the inadvertent inclusion of the LM Income Trusts as Petitioners. In the Monitor's view, such relief ensures the maintenance of the status quo prior to the commencement of these proceedings.
31. With respect to the extension of the Stay of Proceedings to the LM Income Trusts as third parties based on the fact that the (other) Petitioners are subject to these CCAA Proceedings, the BP Lenders have advised the Monitor that their rationale for such relief includes, among other things, that:
- a. the insolvency of an affiliate can result in defaults under commercial agreements;
 - b. the Petitioners' interest in the trusts may represent sufficient control to meet the definition of "affiliate" under such agreements;
 - c. a default resulting from the insolvency of the Petitioners could cause an erosion of value for the estate; and

- d. there would not be prejudice to any stakeholders in the event that the concerns with respect to such potential defaults are unjustified.
32. The Monitor has also been advised by counsel for the Petitioners that they have communicated with a representative of Wilmington Trust Company, the trustee of LoanMe Trust SBL 2018-1, who has expressed their support for an order that trust be subject to the Stay of Proceedings generally.
33. The Monitor has further been advised that counsel for the Petitioners sought to contact representatives of Delaware Trust to advise them of these CCAA Proceedings and the relief being sought but had not received a response at the time of this Monitor's report.
34. While the Monitor appreciates the basis and rationale for the Petitioners' application to extend the Stay of Proceedings to prevent steps being taken by any Person as a result of the non-LM Income Trust Petitioners having obtained protection under the CCAA, the Monitor has not been provided with sufficient information or documentation to enable it to evaluate or comment on the necessity of such relief at this time.
35. In the event the Court considers granting an order extending the Stay of Proceedings to the LM Income Trusts to prevent steps being taken by any Person as a result of the non-LM Income Trust Petitioners having obtained protection under the CCAA, the Monitor suggests that such order be limited in duration to allow the Petitioners additional time to return to the Court with evidence to support a continuation of such relief.

DISCLAIMER NOTICE

36. In August 2023, Community Tax vacated its head office premises in Chicago, Illinois. Efforts to sublease the space over the prior two years had been unsuccessful.
37. In order to conserve estate assets and enhance the prospects of a viable sale of the Community Tax business line, the Petitioners in consultation with the Monitor,

determined that it was necessary to issue a Disclaimer Notice to the landlord, Marc Realty, in respect of the lease.

38. The Petitioners advised the Monitor that Marc Realty was a large full service real estate company that owns, manages, and leases over six million square feet of commercial real estate in the Chicago metropolitan area and that the proposed disclaimer was not likely to cause them significant financial hardship.

39. Accordingly, the Monitor approved the Disclaimer Notice which was served on the landlord on August 31, 2023, and will become effective on September 30, 2023.

CASH FLOW VARIANCE ANALYSIS

40. The Monitor has undertaken weekly reviews of the Petitioners' actual cash flows in comparison to those contained in the Cash Flow Statement. The Petitioners' actual cash receipts and disbursements as compared to the Cash Flow Statement for the period of July 25, 2023 to September 1, 2023, are summarized below:

NextPoint			
Cash Flow Variance Analysis			
Six Week Period Ended September 1, 2023			
<i>(USD\$ thousands)</i>			
	Actual	Forecast	Variance
Operating Receipts			
Community Tax Operating Receipts	\$ 2,797	\$ 2,918	\$ (122)
Liberty Operating Receipts	3,051	1,770	1,281
Total Operating Receipts	5,848	4,688	1,160
Operating Disbursements			
Community Tax Operating Disbursements	(1,398)	(1,475)	77
Liberty Operating Disbursements	(8,295)	(5,425)	(2,871)
NextPoint Operating Disbursements	(532)	(720)	188
LoanMe Operating Disbursements	36	(2)	39
Employee Compensation	(4,146)	(5,203)	1,057
Total Operating Disbursements	(14,336)	(12,826)	(1,510)
Net Change in Cash from Operations	(8,488)	(8,138)	(350)
Non-Operating Items			
Non-Operating Receipts	1,100	3,100	(2,000)
Restructuring Professional Fees	(1,201)	(4,348)	3,147
Net Change in Cash from Non-Operating Items	(101)	(1,248)	1,147
Financing			
Interim Financing	20,934	20,934	-
Interim Financing Fees and Interest	(366)	(536)	170
Net Change in Cash from Financing	20,567	20,398	170
Net Change in Cash	11,978	11,012	967
Opening Cash	4,791	4,791	-
Ending Cash	\$ 16,769	\$ 15,802	\$ 967

41. Overall, the Petitioners realized a favourable net cash flow variance of approximately \$1.0 million. The key components of the variance are as follows:

- a. operating receipts were higher than forecast as a result of initiatives to accelerate collection of accounts receivable;
- b. operating disbursements were higher than forecast, primarily as a result of timing differences relating to the costs of an annual conference for Liberty Tax franchisees hosted by NPI, partially offset by lower employee compensation than forecast due to attrition and bonuses that were not achieved in the current year;

- c. non-operating receipts were \$2.0 million lower than forecast due to a timing difference in respect of the collection of proceeds from the sale of a minority interest in Trilogy Software Inc. This delay caused an aggregate adverse variance in total cumulative receipts of greater than the 10% permitted under the Interim Facility. However, the breach has been waived by the interim lenders due to the nature of the variance;
- d. restructuring professional fees were approximately \$3.1 million lower than forecast as a result of timing differences that are expected to reverse in the coming weeks; and
- e. a summary of the professional fee disbursements made in the CCAA Proceedings to date is set out in the table below:

Professional Fee Summary						
Six Week Period Ended September 1, 2023						
<i>(USD thousands)</i>						
Firm	Role	Fees	Disbursements	Taxes	Total	
Province	Financial Advisor / CRO	\$ 295	\$ 0	\$ -	\$ 295	
DLA Piper LLP	Counsel to NextPoint	501	7	-	508	
FTI	Monitor	159	0	8	168	
Fasken	Monitor's Counsel	87	1	11	99	
Portage	Lender Financial Advisor	94	-	-	94	
Cole Schotz	Lender Counsel	36	0	-	36	
Other	Chapter 15 Proceedings	2	-	-	2	
Total		\$ 1,175	\$ 8	\$ 19	\$ 1,201	

42. Overall, the Petitioners have drawn \$20.9 million under the Interim Facility and are holding a cash balance of approximately \$16.8 million.

CONCLUSIONS AND RECOMMENDATIONS

43. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant an order:

- a. approving the Transaction Fee payable to the CRO calculated pursuant to the Success Fee Calculation;

- b. removing the LM Income Trusts as Petitioners in the CCAA Proceedings; and
- c. adding LM BP Holdings, LLC as a Petitioner in the CCAA Proceedings.

All of which is respectfully submitted this September 18, 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 Trust Prime 2018-1
27. LoanMe Trust SBL 2019-1
28. LoanMe Stores LLC
29. InsightsLogic LLC
30. LM 2020 CM I SPE, LLC