

Court File Nos.35-2466619 and 35-2466620  
Estate File Nos. 35-2466619 and 35-2466620

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**[COMMERCIAL LIST]**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE  
A PROPOSAL OF DONALDSON & JAMES LTD. AND THE  
AGENCY EMPLOYMENT SERVICES LTD.**

**THIRD REPORT OF THE PROPOSAL TRUSTEE**

**MAY 8, 2019**

## **TABLE OF CONTENTS**

<b>INTRODUCTION.....</b>	<b>1</b>
<b>PURPOSE OF THIS REPORT .....</b>	<b>2</b>
<b>DISCLAIMER.....</b>	<b>3</b>
<b>BACKGROUND AND FINANCIAL DIFFICULTIES.....</b>	<b>3</b>
<b>THE SALES PROCESS .....</b>	<b>5</b>
<b>ASSET PURCHASE AGREEMENT.....</b>	<b>8</b>
<b>CASHFLOWS .....</b>	<b>15</b>
<b>PROPOSAL TRUSTEE ACTIVITIES.....</b>	<b>17</b>
<b>RECOMMENDATIONS.....</b>	<b>20</b>

## **LIST OF APPENDICES**

- “A”      Administrative Consolidation Order of The Honourable Mr. Justice Penny dated January 31, 2019
- “B”      Sales Process Order of Mr. Justice Penny dated March 7, 2019
- “C”      Amended and Restated Order of Mr. Justice Penny dated January 31, 2019 as amended on March 7, 2019
- “D”      Advertisement placed in the Globe & Mail (National Edition) March 18, 2019
- “E”      Cash Flow Projections for the period of January 28, 2019 to April 26, 2019 with forecast to actual comparison to April 26, 2019

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A  
PROPOSAL OF DONALDSON & JAMES LTD. and  
THE AGENCY EMPLOYMENT SERVICES LTD.**

**THIRD REPORT OF THE PROPOSAL TRUSTEE**

**MAY 8, 2019**

**INTRODUCTION**

1. On January 23, 2019, Donaldson & James Ltd. (“**D&J**”) and The Agency Employment Services Ltd. (“**Agency**”) (collectively, the “**Companies**”) filed Notices of Intention to Make a Proposal (“**NOIs**”) under Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed proposal trustee (the “**Proposal Trustee**”) in both NOI proceedings.
2. The administrations of the Companies’ estates were administratively consolidated pursuant to the January 31, 2019 Order of Mr. Justice Penny (the “**Administrative Consolidation Order**”) attached as **Appendix “A”**.
3. The primary purpose of the NOI proceeding was to create a stabilized environment in which the Companies could, with the assistance of the Proposal Trustee, participate in a sales process to solicit bids for the Companies’ businesses and assets.
4. Justice Penny approved a sales process (the “**Sales Process**”) by order dated March 7, 2019 (the “**Sales Process Approval Order**”) attached hereto as **Appendix “B”**.

## PURPOSE OF THIS REPORT

5. The purpose of this third report of the Proposal Trustee (the “**Third Report**”) is to:
  - a. report to this Court on the Proposal Trustee’s activities and the results of the Sales Process set out in the Sales Process Approval Order;
  - b. support the Proposal Trustee’s request for the Court’s approval of its activities and conduct as set out herein;
  - c. recommend the approval of the transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated May 3, 2019 between FundThrough Inc. (“**FundThrough**” or the “**Purchaser**”) and the Companies (the “**APA**”), and the ratification of the Companies’ execution of the APA with the support of the Proposal Trustee;
  - d. request that the Proposal Trustee be authorized to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction; and
  - e. support the Companies’ request for an order vesting in the Purchaser all of the Companies’ right, title and interest in and to the Purchased Assets (as defined in the APA) free and clear of all encumbrances, except certain permitted encumbrances.
6. Capitalized terms used in this report but not defined have the meanings given to them in the APA.
7. The Proposal Trustee will also report on the Companies’ performance to April 26, 2019 compared to the cash flow projections for the period January 28, 2019 to May 20, 2019 (the “**Cash Flow**”). The Proposal Trustee will also report on its activities to date and seek the Court’s approval thereof.

## **DISCLAIMER**

8. Farber has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, and advisors, and Farber has not independently reviewed or verified such information. Farber assumes no responsibility or liability for any loss or damage incurred by or caused to any person or entity as a result of the circulation, publication, re-production or use of or reliance upon this Third Report. Any use which any person or entity, other than the Court, makes of this Third Report, or any reliance on or a decision made based upon this Third Report is at such person's or entity's own risk.

## **BACKGROUND AND FINANCIAL DIFFICULTIES**

9. The Companies provide human resources consulting services to their customers and are incorporated pursuant to the laws of the Province of Ontario with their registered head offices in Kitchener.
10. Agency carries on business as a conventional staffing company, providing recruitment, onboarding, short and long-term staffing, and employment services to its customers, primarily in the manufacturing sector. The majority of Agency's customers contract with Agency to recruit staff based on express criteria and such staff are placed on-site with the customers to work for a specific or indeterminate period of time. Such staff frequently are employees of Agency, and as such, Agency has approximately 500 on-site staff (the **"Field Staff"**).
11. D&J carries on business as a staffing support company, providing payroll and administration services to staffing companies. D&J provides such services to Agency as well as unrelated third-party staffing companies (**"Other Staffing Companies"**) primarily in Ontario.
12. The Companies are related companies and share management and back-office functions. Together, they represent two halves of a cohesive business enterprise. The Companies' management and back office functions are based in Kitchener, but, through employees

working for customers and sales initiatives, operate throughout Ontario. The Companies share a senior secured lender, FundThrough. The Companies' borrowings from FundThrough are cross-guaranteed. In addition, as further described below, the Companies are also indebted to BDC Capital Inc., a wholly-owned subsidiary of Business Development Bank ("**BDC**") pursuant to a subordinated loan agreement.

13. As of January 25, 2019, D&J had 12 employees working in office, administrative and management positions. Agency had 12 employees working in office, administrative and management positions, approximately 500 employees placed on-site with customers, and approximately 10 contractors placed on-site with customers but in a temporary capacity. The employees are non-unionized, and there is no employer-sponsored pension plan. The Companies advise that they are current on all payroll obligations and source deductions.
14. The Companies carry on business from leased premises in Kitchener, Listowel, and Cambridge. The landlords for the Kitchener and Cambridge premises are third-parties, while the landlord of the Listowel premises is a company related to the remaining director of the Companies, Mr. Gemmill. The Companies advise they are current on their rent obligations.
15. The financial difficulties leading to the commencement of these proceedings are set out in detail in paragraphs 34 through 44 of the Gemmill Affidavit included with the motion material filed in connection with the request for the Administrative Consolidation Order and the initial order in these proceedings granted on January 31, 2019 (the "**Initial Order**"). In summary, the debt structure of the Companies was not compatible with their growth strategy leading to profitability and cash flow constraints. Also, in the fall of 2018 management discovered that the former CFO had failed to remit approximately four months of Agency's HST remittances which led to a reassessment in December, 2018 of approximately \$1.5 million.
16. From the discovery of the CFO's failure, the Companies remitted HST going forward, but were unable to remit the \$1.5 million arrears which caused the Companies to go into default with their secured creditors. The cash flow challenges facing the Companies were

exacerbated when the CRA issued Requirements to Pay to the Companies' lenders dated January 14, 2019 seeking payment of \$1,542,746.25.

17. The Companies, in conjunction with their advisors, determined that formal restructuring proceedings were necessary because they were unable to meet their obligations as they generally fall due. These proceedings provided the Companies with temporary relief from their creditors to permit the marketing of its assets for sale following which the Companies aimed to make a proposal to their creditors.
18. On January 23, 2019, the Companies filed the NOIs and named Farber as Proposal Trustee.

## **THE SALES PROCESS**

### **Original Sales process and Stalking Horse Bid**

19. The Companies initially sought authorization and approval from the Court to enter into a stalking-horse asset purchase agreement with the Purchaser pursuant to which the Purchaser would act as the stalking-horse bidder in a sales process (the “**Original Sales Process**”).
20. At the January 31, 2019 hearing on the Original Sales Process, BDC took issue with the ranking of the DIP Charge and the Original Sales Process contemplated by the draft Initial Order. The parties agreed that BDC's security would not be primed by the DIP charge and to seek approval of an amended sales process at a later date. On that basis, the Initial Order was granted.
21. On March 7, 2019, the Companies returned to Court seeking approval of a revised sales process, without a stalking horse bid and without prejudice to BDC's right to challenge the approval of any transaction that might result from the Sales Process. FundThrough, in its capacity as the Companies' operating funder agreed that it would continue to advance funding pursuant to its existing loan and security arrangement in the ordinary course up to the closing of a transaction resulting from a successful sales process. The Initial Order



was amended to reflect the changes agreed to by BDC and an amended and restated order of Mr. Justice Penny was issued effective January 31, 2019 (the “**Amended and Restated Order**”) attached as **Exhibit “C”**.

### **Sales Process Summary**

22. The restructuring of the Companies contemplated under these NOI proceedings involved a sale of the Companies’ assets with Court approval. The Sales Process aimed to obtain the best possible price for the Companies’ assets. It was anticipated that the Sales Process, which ran from March 7, 2019 to April 5, 2019, as per the Sales Process Order, would provide sufficient time to expose the Companies’ assets to the market and maximize value.

23. The Sales Process is set out below:

<b>Sales Process Activity</b>	<b>Timeline</b>
Distribute a brief interest solicitation letter (the “ <b>Teaser</b> ”) detailing the opportunity to prospective purchasers identified by the Proposal Trustee	Within 5 days of Court Approval
Post information regarding the opportunity, including (i) the Teaser; (ii) the Terms and Conditions of the Sales process; and (iii) a proforma asset purchase agreement (the “ <b>Proforma APA</b> ”), on Proposal Trustee’s website: <a href="https://farbergroup.com/engagements/donaldson-james-ltd/">https://farbergroup.com/engagements/donaldson-james-ltd/</a>	Within 5 days of Court Approval
Order advertisements of the opportunity in the Globe and Mail newspaper (National Edition) and/or such publication(s) as the Proposal Trustee may deem appropriate	Within 7 days of Court Approval
Make available in an online “data room” information regarding the assets and the Companies’ businesses to all prospective purchasers upon execution of a non-disclosure agreement. The Proposal Trustee will facilitate due diligence, including meetings with management, etc.	Within 5 days of Court Approval

Final date for submission of offers (the “ <b>Bid Deadline</b> ”)	April 5, 2019
---	---------------

24. The Proposal Trustee issued the Teaser to 60 parties identified by the Proposal Trustee as potential purchasers of the Companies on March 14, 2019, within 5 business days of the Sales Process Approval Order and a further notice to another interested party identified after that date.
25. The Proposal Trustee also issued 8 Teasers to additional potentially interested parties identified by the Companies on March 12 and March 18, 2019.
26. The Proposal Trustee posted the Teaser, the Terms and Conditions of the Sales Process and the form Non-Disclosure Agreement on its website on March 13, 2019, within 5 business days of the Sales Process Order. The Proforma APA was made available to interested parties upon request and was posted in the data room.
27. The Proposal Trustee ordered an advertisement to be published in the Globe & Mail National Edition on March 13, 2019, within 7 days of the Sales Process Order. The advertisement ran on March 18, 2019. A copy of the advertisement is attached at **Appendix “D”**.
28. The Proposal Trustee set up an electronic data room and populated it with various information provide by the Companies during these NOI Proceedings.

### **Sales Process Results**

29. There was little interest expressed by third parties for the Companies’ assets. A limited number of parties contacted the Proposal Trustee based on the Teaser and the advertisement in the Globe and Mail, but most of these were in the nature of general enquiries. Two parties, one Canadian and one American, signed non-disclosure agreements and received copies of a confidential information memorandum (the “**CIM**”) prepared by the Proposal Trustee.

30. The Proposal Trustee followed up by phone and email with the American party that received the CIM, but no response was received nor any request to access the data room.
31. The Proposal Trustee followed up with the Canadian party, the Purchaser, and received a signed form of asset purchase agreement (the “**Bid**”) and a deposit before the Bid Deadline, as defined in the Sales Process Order, of 5:00 p.m. Friday, April 5, 2019.
32. Following receipt of the Bid, the Companies and the Purchaser, under the supervision of the Proposal Trustee, further negotiated the terms of the Bid, which ultimately resulted in the settlement of the APA.

## **ASSET PURCHASE AGREEMENT**

### **Asset Purchase Agreement Summary**

33. As noted above, at the end of the Sales Process only one offer, the APA, was received from the Purchaser, a copy of which is attached as Confidential Exhibit “X” to the affidavit of James Gemmill sworn May 3, 2019 in support of the within motion (the “**Gemmill Affidavit**”). A redacted copy the APA is attached as Exhibit “D” to the Gemmill Affidavit in which the purchase price, purchase price allocation amongst the assets, and the quantum of other figures identified in the APA have been redacted to ensure there is no prejudice to any future sales efforts and/or offers in the event the APA is not closed. The Proposal Trustee supports the Companies’ request that Confidential Exhibit “X” to the Gemmill Affidavit be sealed pending the closing of the APA. The unredacted APA has been provided to BDC.
34. The following is a summary of the key components of the APA:
- a. The Purchaser is buying all of the assets of the Companies, comprising of primarily accounts receivable, prepaid amounts, fixed assets and intellectual property for a total estimated purchase price set out in section 2.2 of the APA. The final purchase price on closing may vary depending on the Companies’

billings, operating expenses and accounts receivable collections between now and the date of closing.

- b. The Purchaser has paid a deposit identified in section 2.3(a) of the APA which the Proposal Trustee is holding in trust.
- c. The purchase price is payable, as set out in section 2.4 of the APA, as follows:
  - i. by the cancelation of the Purchaser Debt;
  - ii. by the application of the amount of the Deposit (including accrued interest);
  - iii. by payment to the Proposal Trustee, in trust, of (i) the Estimated Fees; and (ii) any and all amounts secured by the Administration Charge on Closing;
  - iv. by the assumption of amounts secured by the D&O Charge;
  - v. by the assumption of the Vendors' liability for Post-Filing HST;
  - vi. by assumption of any and all Employee Priority Payables on Closing; and
  - vii. to the extent such Priority Payables have not otherwise been paid or assumed pursuant to items "iii." "iv." and "vi." above, by (i) payment to the Proposal Trustee, in trust, of any and all remaining Priority Payables on Closing, or (ii) the assumption of any and all remaining Priority Payables on Closing.
- d. The APA provides the Purchaser with discretion to offer employment to the Companies' approximately 500 Field Employees and 24 head-office and marketing staff.

### **Review of Assets in a Bankruptcy**

35. The accounts receivable as at April 26, 2019 are approximately \$4,121,326 net of \$827,199 of projected disputed and/or uncollectable accounts and \$539,241 of

uncollectable intercompany accounts. The \$4,121,326 net of receivables includes both accounts receivable factored with FundThrough and unfactored accounts receivable. All of the receivables are pledged as security to FundThrough, either pursuant to a general security agreement or the FundThrough factoring agreement, to support the \$3,188,892 in funding provided to the Companies through these NOI proceedings as at April 26, 2019, as well as being subject to the D&O Charge and Administration Charge as defined in the Amended and Restated Order.

36. FundThrough generally factors receivables in respect of invoices under 90-days old. The unfactored receivables are generally accounts receivable that are over 90-days old or are disputed accounts.
37. In a bankruptcy scenario, the Companies would no longer be able to provide Field Staff to its customers. Those customers rely on the Field Staff to act as their work force. An absence of Field Staff would cause major disruption to the customers' operations. Accordingly, management and the Proposal Trustee expect that the realizable value of any accounts receivable would likely be significantly impaired in a bankruptcy.
38. As previously noted, the Companies provide staffing solutions to customers, and accordingly, there is no inventory.
39. As at December 31, 2018, the office equipment, including computers, has a net book value of approximately \$87,000. Much of the current computer equipment is leased. Management estimates that, in a liquidation scenario, the office and computer equipment would realize approximately \$8,000 to \$16,000. In addition, there are leasehold improvements with a net book value of approximately \$80,000 which would likely have no realizable value in a bankruptcy.
40. Prepaid amounts have a book value of approximately \$86,000 as at December 31, 2018, most of which relates to deposits on property and premises leases. It is not expected that there would be any recoverable value in a bankruptcy for these assets.

41. The intellectual property of the Companies is not expected to generate significant realizations in a bankruptcy as:

- a. the Companies only have one registered trademark and a number of unregistered trademarks;
- b. there was a computer program being designed for the Companies by a third party but those efforts were incomplete and abandoned in the Summer of 2018;
- c. the largest customers do not have contracts or have contracts that are easily cancellable by the customer. The customer relationships of the five largest customers representing over 80% of the sales are maintained by Mr. Gemmill and Ms. Teri Scott, the *de facto* general manager of Agency. Accordingly, the value of the customer lists is tied specifically to the strength of the person relationships that Mr. Gemmill and Ms. Scott have with the customers. As such, the Proposal Trustee estimates that the realizable value of the customer lists would be significantly negatively impacted in a bankruptcy.

42. Based on the above analysis, the Proposal Trustee is of the opinion that the APA is superior to a bankruptcy liquidation and is beneficial to the stakeholders, including the 500 Field Staff, of the Companies.

#### **Proposal Trustee Support for the APA**

43. Based on the foregoing, the Proposal Trustee supports the APA because it is of the opinion that:

- a. the terms of the APA are fair and reasonable given the circumstances;
- b. the Sales Process promoted an open and competitive sales process run by the Proposal Trustee to ensure fairness and that all interested parties had access to information to complete their due diligence;
- c. the Purchaser's ongoing commitment to date to continue funding the Companies pursuant to its security provides comfort to the Companies' customers, 500+

employees and creditors that funding is available to cover operating expenses until closing;

- d. if the APA is not approved, the value of the Companies may erode quickly as customers will be forced to make alternative staffing arrangements as they are presently highly dependent on the workforce supplied by Agency; and
- e. the APA and sale of the businesses as going concerns are expected to provide greater value than a forced liquidation and/or bankruptcy.

### **Anticipated Impact on Stakeholders**

- 44. The secured debt owing to the Purchaser will be substantially, but not wholly, satisfied as it is bidding its credit position. The Trustee has obtained a security opinion from its independent legal counsel, McMillan LLP, confirming that the Purchaser's security is valid and enforceable against the estate. The collection of the accounts receivable and amounts due under the APA are expected to pay the secured debt in full, over time. Thus, FundThrough will not be prejudiced if the APA is approved.
- 45. The second secured creditor, BDC, has a first charge on the intellectual property and a subordinated claim behind FundThrough over the balance of the assets. As noted above, the intellectual property is not expected to have significant value in a bankruptcy scenario, so approval of the APA will be beneficial to BDC. The Proposal Trustee is taking steps to obtain a security opinion in respect of the BDC security so that proceeds received under the APA allocated to the intellectual property may be distributed to BDC after closing.
- 46. The other PPSA registrants lease various equipment to the Companies. In addition, there are three landlords with premises leases. The APA does not specify which property or premises leases it may assume. To the extent leases are abandoned, the lessors will be in no worse position than in a bankruptcy and their position would be expected to improve if the APA is approved and the Purchaser assumes any of the leases. Both the PPSA registrants and the landlords are on the service list for this Third Report.

47. CRA's position will be improved if the APA is accepted. The APA provides that the Purchaser will assume the post-filing HST obligations that accrued since January 23, 2019. The Companies have paid the post-filing obligations for January 23, 2019 to March 31, 2019. Approximately \$417,000 is not payable until after closing (i.e. the April 1-30 and May 1- 17 assuming a May 17, 2019 closing). This amount would be unsecured in a bankruptcy and there will be no funds available for unsecured creditors in a bankruptcy although CRA may have a claim against the director. CRA is also owed approximately \$1.5m, as noted above, for pre-NOI HST obligations. These pre-filing obligations are not being assumed by the Purchaser so CRA's position for the pre-filing amounts would not be negatively impacted if the APA is accepted.
48. It is not expected that any funds will be available for unsecured creditors, including any amounts that may be owing to Other Staffing Companies, in a bankruptcy, so the unsecured creditors are not negatively impacted if the APA is approved.
49. There is no obligation in the APA for the Purchaser to retain all the employees, although it is expected that most, if not all, of the 500 Field Staff will be offered new employment by the Purchaser and that offers of employment may be made to some of the 24 head office employees.

### **BIA Analysis**

50. Subsections 65.13(4) of the BIA requires that certain factors be considered by the Court in granting an authorization of the sale of assets to a third party. Below is the Proposal Trustee's analysis of these factors in this case:
- a. Whether the process leading to the proposed sale or disposition was reasonable in the circumstances. The Proposal Trustee conducted the Court-approved Sales Process as noted above.
  - b. Whether the trustee approved the process leading to the proposed sale or disposition. The Proposal Trustee recommended Court approval of the Sales Process as set out in its Second Report.



- c. Whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy. The Proposal Trustee is of the view that the sale to the Purchaser is more beneficial to creditors than a disposition under a bankruptcy for the reasons set out earlier in this Third Report.
- d. The extent to which the creditors were consulted. The secured creditors with registrations under the *Personal Property Security Act* (Ontario) were served with the materials in connection with the initial Stalking Horse Sales Process and the Sales Process and are being served with this sale approval motion. One of the main secured creditors, the Purchaser, supported the Sales Process, and the other main secured creditor, BDC, reserved its right to challenge any transaction that may arise from the Sales Process. BDC has been provided with an unredacted copy of the APA. The Proposal Trustee has not received any notice of a challenge being filed as at the date of this Third Report.
- e. The effects of the proposed sale or disposition on the creditors and other interested parties. The closing of the APA will generally be more beneficial to the creditors and employees than a bankruptcy for the reasons set out in the “Anticipated Impact on Stakeholders” section set out above.
- f. Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value. The Proposal Trustee is of the opinion that the consideration is fair and reasonable as the estimated liquidation value of the assets, comprised primarily of accounts receivable would be significantly less than the purchase price in the APA.

51. Mr. Gemmill is the remaining director of the Companies. As noted in paragraphs 34 and 35 of the Gemmill Affidavit included in the Motion Material, Mr. Gemmill will likely be involved in at least part of the ongoing business being purchased. As such, the Proposal Trustee also sets out the analysis of Subsections 65.13(5) of the BIA that requires that certain factors be considered by the Court in granting an authorization of the sale of assets to a related party as if the Purchaser were a related party:

- a. Whether good faith efforts were made to sell or otherwise dispose of the assets to person who are not related to the Companies: The Proposal Trustee conducted the Court-approved Sales Process and made the opportunity available to the public as noted above.
  - b. Whether the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition: The Proposal Trustee conducted the Court-Approved Sales Process and no other offers were received, so the Purchaser's offer is superior to any other (non-existent) offers or the alternative of a bankruptcy.
52. For the reasons set out above, the Proposal Trustee is still of the position that the APA should be approved regardless of whether or not a related party is involved in the Transaction.
53. In addition, s. 65.13(8) of the BIA requires that companies that are employers and employers with prescribed pension plans be able to pay the amounts under s. 60(1.3)(a) and s. 60(1.5)(a), respectively. Paragraph 2.5(b) of the APA provides that as security for Employee Priority Payables, which comprise of applicable amounts referred to in s. 65.13(8), the Purchaser shall deposit on Closing with the Proposal Trustee, in trust, an amount which the Proposal Trustee is satisfied is sufficient to pay the Employee Priority Payables in the event the Purchaser fails to do so. Funds from the security deposit will be returned to the Purchaser upon receipt by the Proposal Trustee of satisfactory evidence that such obligations have been full and finally paid. Employee Priority Payables comprise of amounts referred to in s. 60(1.3)(a) of the BIA since the Companies do not have prescribed pension plans such that s. 60(1.5)(a) does not apply.

## **CASHFLOWS**

54. The Proposal Trustee has reviewed certain of the Companies' financial records as well as projected Cash Flow for the period January 28, 2019 to May 20, 2019 which was attached

to the Second Report. A cumulative comparison of the forecast to actual performance to the week ending April 26, 2019 is attached hereto as **Appendix “E”**.

55. In general, the operating results have been reasonably consistent with the forecasts and there have been no material adverse changes. The Proposal Trustee notes:

- a. There has been a reduction in accounts receivable collections of approximately 5.0% to date as a result of certain Other Staffing Companies and customers that have moved to new payroll/staffing service providers. As expected in the Notes and Assumptions that accompanied the cash flow reports filed in conjunction with the filing of the NOI, there has been a corresponding decrease in Field Staff payroll costs. There have been further costs savings as a number of the head office staff have left the Companies, so overall payroll costs have decreased by 9%.
- b. Payroll remittances have increased due to a timing difference of when source deductions are actually deducted from the bank account versus when the payments were projected to be released to CRA in the forecasts.
- c. The WSIB payments are lower than forecast due to timing differences of when the payments will be made. Management and FundThrough have advised that these WSIB payments will be funded and paid prior to the closing of the APA so there will be no net variance at that time.
- d. The Company did not pay the January 24, 2019 to March 31, 2019 HST on time, hence the positive variance of \$657,155 compared to forecast. The actual HST for that period of \$569,745 was paid in full on May 1, 2019 so there are no current arrear payments owing. The actual balance due was less than forecast as less HST was collected due to the lower sales noted above and more HST income tax credits were claimed due to the higher expenses as discussed in this section of the Third Report.
- e. The Other Costs of Sales and General & Administrative expenses increased as

certain supplier costs, recruiter commissions and employee busing expenses increased more than expected in the initial forecasts in order for the Companies to secure ongoing services post-filing.

- f. The Professional Fees have also increased due to the changes to the initial Sales Process Order and the longer than expected period of time between the end of the Sale Process and the signing of the APA.

56. Overall, there is a net positive variance of \$326,317 as at April 26, 2019 but that variance will become negative after the May catch-up payments for HST and WSIB noted above. FundThrough continues to provide funding under its various security to the Companies to provide the necessary funding necessary to support the operations during this NOI period.

## **PROPOSAL TRUSTEE ACTIVITIES**

57. In addition to the activities described in the Amend Sale Process section above, the Proposal Trustee has also attended to:

- a. assisting the Companies in all matters relating to preparation and submission of the initial filing of the NOI'S including preparation and filing of the initial cash flows and accompanying reports;
- b. notifying Other Staffing Companies and trade creditors and responding to their queries with respect to the NOI including counsel to Transline Resource Group (Canada) Inc.;
- c. attendance at the Kitchener premises upon the filing of the NOI to meet with the employees and describe the effects of the NOI proceedings;
- d. assisting the Companies in dealing with operational issues arising from the filing of the NOI and dealing with suppliers on pre-filing stayed amounts and post-filing obligations;
- e. calls and correspondence with CRA, the Companies, TD Bank and counsel with

respect to pre-filing Requirements To Pay (“**RTPs**”) issued by CRA, arrange the suspension of the RTPs’ during the NOI process, unfreezing of the Companies account to allow ongoing automatic and direct deposits, follow up sweep of funds by TD Bank and arrange for CRA agreement to refund the swept funds to the Companies;

- f. working with the Companies and FundThrough to prepare the Stalking Horse Bid, the DIP, the D&O and Administrative Charge, Consolidation Order and filing extension sought at the January 29, 2019 hearing;


- g. preparation of the Proposal Trustee's First Report to Court and submission and attendance at the January 29, 2019 hearing;
- h. discussions and negotiations with affected parties pursuant to the First Report to resolve outstanding issues from the January 29, 2019 hearing;
- i. preparation of the Proposal Trustee's Second Report and attendance at Court leading to the March 7, 2019 Amended Initial Order and the non-stalking horse Sales Process Order;
- j. ongoing dealings with the Companies and monitoring of weekly cash flows vis-à-vis the cash flows filed in these NOI proceedings; and assist the Companies in planning ongoing operations to an estimated date of closing of the APA, subject to Court approval;
- k. administration and execution of the Sales Process Order, including notifying and dealing with potentially interested parties as noted in the Sales Process Summary section above;
- l. discussions and negotiations with the Companies and the Purchaser to finalize the APA;
- m. preparation of this Third Report reporting on the Sale Process and the APA and supporting the Companies' application seeking approval of the APA;
- n. maintaining the Proposal Trustee's website with a summary of the status and the Court materials filed in these proceedings and maintaining the service list;
- o. corresponding with legal counsel regarding the various NOI proceeding matters described above;
- p. all other general administration of the Companies' estates and BIA compliance matters.

## RECOMMENDATIONS

58. The Proposal Trustee recommends that this Honourable Court grant the relief sought by the Company in its Notice of Motion, dated May 6, 2019.

All of which is respectfully submitted this 8th day of May, 2019.

**A. FARBER & PARTNERS INC.**, solely in its capacity as the Proposal Trustee of Donaldson & James Ltd. and The Agency Employment Services Ltd., and not in its personal or corporate capacity

Per:  \_\_\_\_\_

Name: John Hendriks

Title: Managing Director

# APPENDIX A





Court File No. 35-2466620  
Estate File No. 35-2466620

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY & INSOLVENCY)  
[COMMERCIAL LIST]**

THE HONOURABLE

A handwritten signature in blue ink, appearing to be "Penny", is written over the word "HONOURABLE".

)

THURSDAY, THE 31<sup>ST</sup> DAY

)

JUSTICE PENNY

)

OF JANUARY, 2019

**IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
THE AGENCY EMPLOYMENT SERVICES LTD.**

**ADMINISTRATIVE CONSOLIDATION ORDER**

**THIS MOTION**, made by The Agency Employment Services Ltd. ("**Agency**"), for an order approving an administrative consolidation of the proposal proceedings of Agency and Donaldson & James Ltd. ("**D&J**" and together with Agency, the "**Debtors**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of James Edward Gemmill sworn January 28, 2019 (the "**Gemmill Affidavit**") and the exhibits thereto and the First Report of A. Farber & Partners Inc. in its capacity as the proposal trustee of the Debtors (in such capacity, the "**Proposal Trustee**"), dated January 30, 2019 and the appendices thereto, and on hearing the submissions of counsel for the Debtors, the Proposal Trustee, FundThrough Inc. and such other counsel as were present, no

one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Sandra Radanovic sworn January 29, 2019, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the within proceedings be and hereby directed to be listed on, and to be heard by a Judge presiding over, the Commercial List.

3. **THIS COURT ORDERS** that the proposal proceedings of each of Agency (Estate No. 35-2466620) and D&J (Estate No. 35-2466619) (together, the “**Proposal Proceedings**”) are hereby administratively consolidated and the Proposal Proceedings hereby authorized and directed to continue under the following joint title of proceedings:

Court File Nos. 35-2466619 and 35-2466620  
Estate File Nos. 35-2466619 and 35-2466620

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE  
A PROPOSAL OF DONALDSON & JAMES LTD. AND THE  
AGENCY EMPLOYMENT SERVICES LTD.**

4. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed with the Commercial List only in the D&J court and estate file, under Court File No. 35-2466619 and Estate File No. 35-2466619.



# **APPENDIX B**



Court File Nos. 35-2466619 and 35-2466620  
Estate File Nos. 35-2466619 and 35-2466620

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY & INSOLVENCY)  
[COMMERCIAL LIST]**

THE HONOURABLE MR.	)	THURSDAY, THE 7 <sup>th</sup> DAY
	)	
JUSTICE PENNY	)	OF MARCH, 2019

**IN THE MATTER OF NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
DONALDSON & JAMES LTD. AND THE AGENCY EMPLOYMENT SERVICES LTD.**

**ORDER  
(Approval of Sales Process and Extension of NOI)**

**THIS MOTION**, made by Donaldson & James Ltd. and The Agency Employment Services Ltd. (collectively, the “**Companies**”) for an order approving the Sale Process (as defined below) was returnable and heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the first affidavit of James Edward Gemmill, sworn March 5, 2019 and the exhibits thereto (the “**Gemmill Affidavit**”) and the Second Report of A. Farber & Partners Inc., filed in its capacity as proposal trustee of the Companies (the “**Proposal Trustee**”), dated March 5, 2019 and the appendices thereto (the “**Second Report**”), and on hearing the submissions of counsel for the Companies and the Proposal Trustee, and such other counsel as were present,

no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Sandra Radanovich sworn March 6, 2019, filed,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **EXTENSION**

2. **THIS COURT ORDERS** that the time for the Companies to file proposals under section 50.4 of the BIA is extended by a period of thirty-nine (39) days to and including May 17, 2019.

### **SALES PROCESS**

3. **THIS COURT ORDERS** that the sales process appended hereto as Schedule "A" (the "Sales Process") be and is hereby approved.

4. **THIS COURT ORDERS** that the Companies and the Proposal Trustee be and are hereby authorized and empowered to take such steps as are necessary or desirable to carry out and perform their obligations under the Sales Process, provided that any definitive agreement to be executed by the Companies in respect of the sale of all or part of their properties, assets and undertakings shall require further approval of the Court.

5. **THIS COURT ORDERS** that in connection with the Sales Process and pursuant to clause 7(3)(c) of the *Personal Information Protection and Documents Act* (Canada), the Companies may disclose personal information of identifiable individuals to prospective bidders in the Sales Process

and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evolution of the said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Companies or in the alternative shall destroy all such information and certify such destruction to the Companies. The purchase of the Property in the Sales Process shall be entitled to use the personal information provided to it, and related to the purchased assets, in a manner which is in all material respects identical to the prior use of such information by the Companies and shall return all other personal information to the Companies or ensure that all other personal information is destroyed.

6. **THIS COURT ORDERS** that the Companies and the Proposal Trustee shall have no personal or corporate liability in respect of the Sales Process, except where incurred as a result of gross negligence or wilful misconduct.

7. **THIS COURT ORDERS** that each of the Companies and the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:  
MAR 07 2019



## **SCHEDULE "A"**

### **SALES PROCESS**

#### **DONALDSON & JAMES LTD. and THE AGENCY EMPLOYMENT SERVICES LTD.**

##### **Defined Terms**

1. These terms and conditions, and the process described herein shall collectively be hereinafter referred to as the **"Sales Process"**.
2. All capitalized terms contained herein but not otherwise defined herein shall have the meanings given to them in the order granted by the Ontario Superior Court of Justice (Commercial List) (the **"Court"**) on March 7, 2019 (the **"Sales Process Order"**) in respect of the proceedings commenced by Donaldson & James Ltd. and The Agency Employment Services Ltd. (collectively, the **"Companies"**) under the *Bankruptcy and Insolvency Act* (the **"BIA"**), under which proceedings A. Farber & Partners Inc.. was appointed as proposal trustee (in such capacity, the **"Proposal Trustee"**).

##### **Role of the Proposal Trustee**

3. The Sales Process will be administered by the Proposal Trustee on behalf of the Companies. The roles and responsibilities of the Proposal Trustee are described in further detail throughout this Sales Process, however, the Proposal Trustee's role in the Sales Process does not include managing, operating, or taking possession or control of any of the Companies' property, assets or undertaking.
4. The Companies and their principals, employees and professional advisors shall cooperate with the Proposal Trustee throughout the Sales Process and provide documents and information requested as part of the Sales Process to the Proposal Trustee in a prompt fashion.

##### **Commencement of the Sales Process**

5. The Sales Process shall commence immediately upon the date on of the Sale Process Order (the **"Commencement Date"**).
6. Within five (5) business days of the Commencement Date, the Proposal Trustee shall contact parties identified by the Companies who may be interested in purchasing the business and/or assets of the Companies together with any other parties who may be identified by the Companies and Proposal Trustee as potentially interested in purchasing the business and/or assets of the Companies (the **"Prospective Participants"**) and provide those parties with a copy of the "teaser" document. The teaser document shall contain general details about the opportunity to purchase the assets of the Companies (the **"Opportunity"**) as well as some general background information about the Companies.
7. Within seven (7) business days of the Commencement Date, or as soon thereafter as is practical, the Proposal Trustee shall also (a) publish a notice advertising the Opportunity in the Globe & Mail (National Edition) and/or such other trade publications or other publications as the Proposal Trustee may deem appropriate or advisable, and (b) post the Opportunity on its website.

### Due Diligence

8. Any Prospective Participants who advise the Proposal Trustee of their interest in participating in the Sales Process shall execute a non-disclosure agreement (the “NDA”) in a form satisfactory to the Proposal Trustee.
9. Commencing on the Commencement Date (and after each respective Prospective Participant has executed the NDA), the Proposal Trustee shall make available to the Prospective Participant the following:
  - a) a copy of the template asset purchase agreement (the “**Template APA**”); and
  - b) access to an electronic data room, to be maintained by the Proposal Trustee, which shall contain information pertaining to the Opportunity along with other corporate financial and other documents as provided by the Companies.

### Offer Deadline

10. All offers must be submitted in writing to and received by the Proposal Trustee at 150 York Street, Suite 1600, Toronto, Ontario, M5H 3S5, attention: John Hendriks or electronically to [jhendriks@farbergroup.com](mailto:jhendriks@farbergroup.com), in either case by no later than 5:00 p.m. (Toronto time) on April 5, 2018 (the “**Offer Deadline**”). Each offer must remain open for acceptance until 5:00 pm on April 12, 2018 (the “**Acceptance Date**”).

### Qualifying Offers

11. An offer will only be considered in this Sales Process, in which case it shall be considered a “**Qualifying Offer**”, if it is submitted before the Offer Deadline and if it meets the following minimum criteria:
  - a) it must be submitted in writing, substantially in the form of the template asset purchase agreement contained in the data room (the “**Template APA**”), with any changes to the offer blacklined against the Template APA;
  - b) it must include an express allocation of the purchase price among the assets;
  - c) it is irrevocable until the Acceptance Date;
  - d) it must be accompanied by a deposit in the form of a certified cheque or bank draft (or in the form of confirmed wire transfer in the case of offers submitted electronically) payable to the Proposal Trustee “in trust” which is equal to at least ten (10%) percent of the total purchase price payable under the offer;
  - e) it includes an acknowledgement that the purchaser has relied solely on its own independent review and investigation and that it has not relied on any representation by the Companies, the Proposal Trustee or their respective agents, employees or advisers;
  - f) it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror’s obligation to complete the transaction; and
  - g) it must include written evidence, satisfactory to the Proposal Trustee, that the offeror has the financial means to complete the proposed acquisition,



provided however that the Proposal Trustee may, exercising its reasonable discretion, waive compliance with one or more of the foregoing Qualifying Offer requirements and deem such non-compliant offer to be a Qualifying Offer.

12. Offers based on credit bid will be allowed.
13. Offers for all or part of the business, assets and undertakings of the Companies will be considered.

#### **Consideration of Qualifying Offers**

14. The Proposal Trustee shall review all offers submitted under the Sales Process and first determine whether any of the offerors are Related Persons (as that term is defined under either section 4(2) of section 65.13(6) of the BIA) and:
  - a) if none of the offers are made by parties that are Related Persons, then the determination of whether an offer is a Qualifying Offer shall be made jointly by the Companies and the Proposal Trustee; and,
  - b) if offers are made by one or more Related Persons, then the Proposal Trustee shall, in its sole discretion, determine what offers, if any, represent a Qualifying Offer.
15. Each Qualifying Offer shall be considered and, if necessary, there may be further discussions with some or all of the parties who have submitted a Qualifying Offer with a view to clarifying terms. The Companies shall participate in these discussions provided that a Related Person has not submitted a Qualifying Offer.
16. If the Proposal Trustee deems it advisable, the Proposal Trustee may enter into further negotiations with any party who submitted a Qualifying Offer and/or invite any such party to submit a final offer, which shall meet the criteria for a Qualifying Offer (each a **"Final Offer"**) by 5:00 p.m. (Toronto time) on the third business day after being invited by the Proposal Trustee to submit a Final Offer. In the event that the Proposal Trustee does not invoke this Paragraph 15 to seek Final Offers, all Qualifying Offers received shall be deemed to be Final Offers.

#### **Selection of the Winning Offer**

17. Following the receipt of Final Offers, the Proposal Trustee shall determine the highest and best offer received and shall convey its decision to the Companies at that time, together with its recommendation as to the same. Upon receipt of such recommendation, the Companies shall, within twenty-four (24) hours determine whether it will accept such highest and best offer (if so accepted, the **"Winning Offer"**) and, if so accepted, upon acceptance of the Winning Offer, there shall be a binding agreement of purchase and sale (the **"Final APA"**) between the winning offeror (the **"Winning Offeror"**) and the Companies, in accordance with the terms of the Winning Offer.
18. Notwithstanding anything to the contrary herein, it is open to the Proposal Trustee to recommend to the Companies against accepting any Qualifying Offer and it is open to the Companies, acting reasonably and in consultation with the Proposal Trustee, to elect not to accept any of the Qualifying Offers, whether before or after the negotiation of the same or the receipt of any Final Offers, provided that in the event that the Companies elect not accept any of the Qualifying Offers and in so doing, in the opinion of the Proposal Trustee, are acting unreasonably, the Proposal Trustee may apply to Court on notice to the Companies and all affected stakeholders for an order directing the Companies to complete the transaction contemplated by a Qualifying Offer

recommended by the Proposal Trustee or, in the alternative, authorizing the Proposal Trustee to complete such transaction on behalf of the Companies.

19. Notwithstanding anything to the contrary herein, it is open to the Proposal Trustee to recommend to the Companies the acceptance of more than one Qualifying Offer, provided the same are complementary in nature and capable of being completed without impairing each other. In such case, the terms of this Sales Process shall be interpreted (and amended as necessary) to allow for the acceptance and Court approval of multiple Winning Offers.

#### **Court Approval**

20. As applicable, as soon as practicable after the acceptance of the Winning Offer, the Companies will apply to the Court for approval of the transaction contemplated in the Final APA (the “**Approval Motion**”) and an approval and vesting order in respect of same.
21. As applicable, the Proposal Trustee shall serve and file a report with respect to the Sales Process and Final APA in advance of the Approval Motion.

#### **Other Terms**

22. All deposits received (except such deposit forming part of the Winning Offer) shall be held by the Proposal Trustee “in trust” until the acceptance of the Winning Offer. All deposits submitted by Prospective Participants who did not submit the Winning Offer shall be returned, without interest, following acceptance of the Winning Offer. The deposit forming part of the Winning Offer shall be dealt with in accordance with the Final APA.
23. In the event that a deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.
24. All Qualifying Offers (other than the Winning Offer) shall be deemed rejected on the date of the approval of the Final APA by the Court.
25. Subject to the Sales Process Order or other order of the Court, the Companies, in consultation with the Proposal Trustee, shall have the right to adopt such other rules for, or extend any deadlines in, the Sales Process that, at its sole discretion, will better promote the goals of the Sales Process.

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A  
PROPOSAL OF DONALDSON & JAMES LTD. AND THE AGENCY  
EMPLOYMENT SERVICES LTD.**

Court File Nos. 35-2466619 and 35-2466620  
Estate File Nos. 35-2466619 and 35-2466620

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY & INSOLVENCY)  
[COMMERCIAL LIST]**

**Proceedings commenced at Toronto**

**ORDER**

**(Approval of Sales Process; Extension of NOI)**

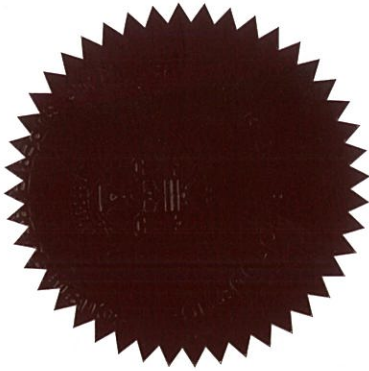
**LOOPSTRA NIXON LLP  
135 Queens Plate Drive – Suite 600  
Toronto, ON M9W 6V7**

**R. Graham Phoenix**  
Tel: (416) 478 4776  
Fax: (416) 476 8319  
Email: [gphoenix@loonix.com](mailto:gphoenix@loonix.com)

**Tom Lambert**  
Tel: (416) 478 5145  
Fax: (416) 476 8319  
Email: [tlambert@loonix.com](mailto:tlambert@loonix.com)

*Lawyers for Donaldson & James Ltd. and The Agency  
Employment Services Ltd.*

# APPENDIX C



Court File Nos. 35-2466619 and 35-2466620  
Estate File Nos. 35-2466619 and 35-2466620

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY & INSOLVENCY)  
[COMMERCIAL LIST]**

THE HONOURABLE	)	THURSDAY, THE 31 <sup>ST</sup> DAY
	)	
JUSTICE PENNY	)	OF JANUARY, 2019

**IN THE MATTER OF NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
DONALDSON & JAMES LTD. AND THE AGENCY EMPLOYMENT SERVICES LTD.**

**AMENDED AND RESTATED ORDER**

**THIS MOTION**, made by Donaldson & James Ltd. and The Agency Employment Services Ltd. (collectively, the “**Companies**”) pursuant to Sections 50.4(9), 50.6, 64.1, and 64.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an order, *inter alia*: (i) approving an extension of the time for the Companies to file a proposal by forty-five (45) days until April 8, 2019; (ii) granting the Administration Charge (as hereinafter defined); and (iii) granting the D&O Charge (as hereinafter defined), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of James Edward Gemmill sworn January 29, 2019 and the exhibits thereto and the First Report of A. Farber & Partners Inc. in its capacity as the proposal trustee of the Companies (in such capacity, the “**Proposal Trustee**”), dated January 30, 2019, and

the appendices thereto (the “**First Report**”), and on hearing the submissions of counsel for the Companies, the Proposal Trustee, FundThrough Inc. and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Sandra Radanovic sworn January 29, 2019, filed,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **EXTENSION**

2. **THIS COURT ORDERS** that the time for the Companies to file proposals under section 50.4 of the BIA is extended by a period of forty-five (45) days to and including April 8, 2019.

### **ADMINISTRATION CHARGE**

3. **THIS COURT ORDERS** that counsel to the Companies, the Proposal Trustee, counsel to the Proposal Trustee, the Proposal Trustee should it act as Trustee in Bankruptcy for either or both of the Companies (the “**Bankruptcy Trustee**”) and the Bankruptcy Trustee’s counsel shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Companies as part of the costs of these proceedings. The Companies are hereby authorized and directed to pay the accounts of counsel to the Companies, the Proposal Trustee and counsel to the Proposal Trustee (for work performed in connection with these proceedings) on a weekly basis.

4. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

5. **THIS COURT ORDERS** that counsel to the Companies, the Proposal Trustee and counsel to the Proposal Trustee shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order, in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 9 and 11 of this Order.

#### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION and D&O CHARGE**

6. **THIS COURT ORDERS** that the Companies shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Companies after the commencement of the within proceedings that arise on or after January 23, 2019 or are otherwise referable to the period on or after January 23, 2019, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

7. **THIS COURT ORDERS** that the directors and officers of the Companies shall be entitled to the benefit of and are hereby granted a charge (the “**D&O Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,500,000, as security for the indemnity provided

in paragraph 6 of this Order. The D&O Charge shall have the priority set out in paragraphs 9 and 11 of this Order.

8. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and (b) the Companies' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is denied or insufficient to pay amounts indemnified in accordance with paragraph 6 of this Order.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

9. **THIS COURT ORDERS** that the priorities of the Administration Charge and the D&O Charge (collectively, the "**Charges**") as amongst themselves shall be as follows: (a) first, the Administration Charge to a maximum amount of \$100,000; and, (b) second, the D&O Charge to a maximum amount of \$1,500,000.

10. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges are and shall be valid and enforceable against the Property for all purposes, including, without limitation, as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

11. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and that such Charges shall rank in priority to all other security interests, trusts, liens,



charges, mortgages, claims and encumbrances, secured, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any other person.

12. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Administration Charge or the D&O Charge, unless the Companies also obtains the prior written consent of the Proposal Trustee and the beneficiaries of the D&O Charge and the Administration Charge, or further Order of this Court.

13. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made in these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreements**”) which binds the Companies, and notwithstanding any provision to the contrary in any such Agreement:

- (a) neither the creation of the Charges shall create or be deemed to constitute a breach by the Companies of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Companies pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

## **SERVICE AND NOTICE**

14. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<https://farbergroup.com/engagements/donaldson-james-ltd/>’.

15. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Companies and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Companies' creditors or other interested parties at their respective addresses as last shown on the records of the Companies and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

16. **THIS COURT ORDERS** that the Companies, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Companies' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

17. **THIS COURT ORDERS** that each of the Companies and the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

18. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy or a monitor of the Companies, their business or the Property.

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Companies, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding or to assist the Companies, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that each of the Companies and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

21. **THIS COURT ORDERS** that any interested party (including the Companies and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

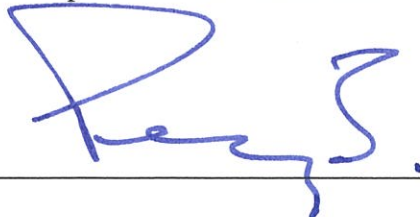
22. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAR 07 2019

(L1397927.1)

PER / PAR: *Rv*



---

**IN THE MATTER OF NOTICES OF INTENTION TO MAKE A  
PROPOSAL OF DONALDSON & JAMES LTD. AND THE AGENCY  
EMPLOYMENT SERVICES LTD.**

Court File Nos. 35-2466619 and 35 2466620  
Estate File Nos. 35-2466619 and 35-2466620

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY & INSOLVENCY)  
[COMMERCIAL LIST]**

**Proceedings commenced at Toronto**

**AMENDED AND RESTATED ORDER**

**LOOPSTRA NIXON LLP**  
135 Queens Plate Drive – Suite 600  
Toronto, ON M9W 6V7

**R. Graham Phoenix**  
Tel: (416) 478 4776  
Fax: (416) 476 8319  
Email: gphoenix@loonix.com

**Tom Lambert**  
Tel: (416) 478 5145  
Fax: (416) 476 8319  
Email: tlambert@loonix.com

*Lawyers for Donaldson & James Ltd. and The Agency  
Employment Services Ltd.*

# **APPENDIX D**

## Anna Chif: 'Never settle for anything less than excellence'

Dialogue COO reflects on being raised by entrepreneurs, starting a company and working with millennials

KARL MOORE  
DAN SCHECHNER

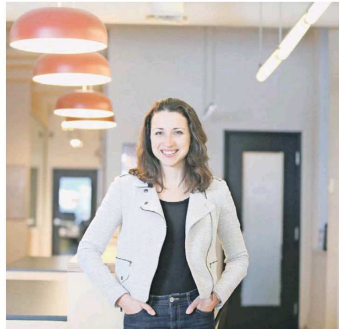
### THE LADDER

**A**na Chif, 30, is the co-founder and COO of Dialogue. Her company offers health-care services to companies' employees via online chat, audio and video calls.

**My parents are both entrepreneurs** - they started a community newspaper (Meeting Place - Montreal) and they've run it for about 25 years now. Everything about them is entrepreneurial - the way they think, the way they came to Canada from Uzbekistan. They had a vision of a better life and they went after it.

**I learned much more outside of school** than I learned in school. For example, travelling for a year between CEGEP and university was valuable and eye-opening. However, school is good for going deep on complex topics.

**Working at McKinsey** taught me how to be a professional. It



CHRISTINNE MUSCH/THE GLOBE AND MAIL

helped me go from being a student who had no idea how the business world works, to one who was able to engage with people at different levels, without making me look junior. It also taught me to be intellectually rigorous and never settle for anything less than excellence.

**My first attempt** at solving the rising issues in wellness and health was through food. I built a startup that helped people eat better, and that's where I ac-

quired a lot of my entrepreneurial instincts. That's where I hired my first employees, fired my first employees, set up vision, got investors, raised debt ... name it.

**Today, I wake up every day** knowing that hundreds of people, who wouldn't otherwise have access to care quickly, can get their issues resolved from the comfort of their homes.

**Our vision** is to increase humanity's level of well-being by lowering barriers to excellent care. What that means is being a large, impactful company that allows the masses to access better care, and setting the standard for what better care is.

**There is glamour** around entrepreneurship, but it is anything but glamorous, and I think it's not for everybody. Some people are great entrepreneurs because they thrive on uncertainty, an ever-changing environment and on complex decision-making. Others are great intrapreneurs - they don't thrive on starting a company from scratch, but they enjoy coming into a company and be entrepreneurial within it, by helping it scale and professionalize. And then some people perform (better) by working in well-established environments, tackling complex intellectual challenges without uncertainty.

**Creativity** is often associated with art, but I think there's a lot of creativity that goes into any industry. My work is highly creative to me personally, because every day we face challenges that we've never faced before and we need to find interesting, smart and clever ways to solve them.

**Health care** is moving from a very reactive state, where doctors treat patients after a health-care issue arises, to being much more pro-active - where, based on signs that as a human you may not even be aware of, you get a recommendation of what you should be doing. There is so much data we share through various devices, the more this data will be consolidated, the better predictions will be made.

**Millennials** join a company because of their purpose, and work hard if they receive recognition, have clear expectations and maintain good relationships with their managers. I think a lot of sensationalist media talks about how millennials are lazy. I disagree with that, and think millennials work very hard when they are in the right environment.

**I lead with context.** I think providing people as much transparency and context helps me lead effectively.

Special to The Globe and Mail

## Six steps you can take today to work toward a leadership role tomorrow

MERGE GUPTA-SUNDERJI

### OPINION

**I**f you aspire to be a manager or supervisor, your success will depend significantly on making a critical mental shift from task management to people leadership. Let's be clear - the two are not the same. In fact, the skills that lead to accomplishment as a "doer" of tasks are the very ones that will cause you to fail as a "leader" of people. Because as a leader, your success no longer rests on just you, your success now depends on how well you can get things done through others.

While still delivering results as an individual contributor, there are things you can do today to position yourself as a future leader, in the eyes of those who can help get you there.

### PUT YOUR HAND UP

Show initiative. A leader's job is

to get things done, but very rarely are you told how. Instead, the expectation is that you'll assess the situation strategically, then evaluate and act. So demonstrate early that you are capable and willing to step up and take charge. Look for opportunities for improvement in your job or work area.

Don't just identify problems, recommend solutions. Offer to spearhead a project or facilitate a group assignment. When you put your hand up and then deliver, you'll establish that you can plan, direct, communicate, build consensus and follow through, all key skills for anyone in a leadership position.

### BE OPEN TO SUGGESTIONS AND FEEDBACK

The most effective leaders listen to their critics because they are a valuable source of intelligence, both in terms of what works and what doesn't.

So don't just be open to feedback, seek it.

This will serve you well in two ways: First, it will give you access to information, some of which will increase your knowledge, which in turn makes for better decision-making. Second, it will help build better relationships with those you work with, which will further position you as a potential leader.

A leader needs to maintain a 360-degree view of the organization.

### BUILD RELATIONSHIPS

Speaking of building relationships, realize that astute leaders tune in to others' feelings and predispositions, and acknowledge different opinions from a variety of sources. Now (when you may not necessarily need it) is the time to seek out and establish a professional support system so that it is there when you really do

require it. No matter what your career aspirations, there is someone out there who's "been there and done that," which means that you can learn from their successes and mistakes.

### SHOW THAT YOU CARE

The best leaders are genuinely empathetic and compassionate. So take the time to get to know the people you work with. Not just professionally, but at a personal level. Learn about their families, their hobbies, their pets, their challenges. Because when you sincerely ask people about who they are, it shows that you care about them as human beings. If you're prone to absent-mindedness, there is nothing wrong in jotting down a few notes to jog your memory later.

### SEE THE BIG PICTURE

A leader needs to maintain a 360-degree view of the organization. So deliberately stand back and take a helicopter view. Step away

from the needs of an individual department and try to look at things from the perspective of the entire company. When you appreciate that other departments all contribute to the company's overall success, you're showing your boss (and his boss) that you are interested in more than just your own responsibilities.

### BECOME SOMEONE WORTHY OF BEING A ROLE MODEL

Good leaders are role models for others. If you see yourself in a position of formal leadership in the future, then start behaving in a way that makes others want to emulate you now. Be passionate about your work. Make thoughtful decisions that demonstrate that you are fair and considerate. Conduct yourself professionally and speak up when you see inappropriate behaviour, particularly if it is demeaning or harassing to others. Act ethically. Show compassion and kindness.

Special to The Globe and Mail

## COMMISSIONER

CORPORATE SERVICES • THE CITY OF MEDICINE HAT

With a population of more than 63,000, the City of Medicine Hat is located along the South Saskatchewan River Valley in Southeastern Alberta. Spread over a unique landscape of hills and coulees, Medicine Hat is known for its picturesque scenery. Boasting over 330 days of sunshine throughout the year, over 100 kilometers of hiking and biking trails, the City is a center for outdoor activity all times of the year. With a world-class performing arts theatre, museum and art gallery, Medicine Hat is also a flourishing cultural community.

Medicine Hat honours the city's heritage while fostering progress, innovation and entrepreneurship. The City is a dynamic bright spot, with an emerging and growing business culture issuing more than 3,019 business licenses in 2018. The city is one of only a handful of cities in the world that produces and distributes its own natural gas and electricity. Other key economic drivers include tourism, agriculture, manufacturing, construction, aggregates, retail and services and a variety of business opportunities including emerging work related to Canada's unmanned vehicle systems, aerospace, crypto currency mining, technology and security industries. Through this, the City's quality of life truly does shine providing a life unparalleled by cities similar in size.

Working in partnership with the Chief Administrative Officer and senior leadership team, the Commissioner, Corporate Services will provide leadership in executing the City's strategic and business plans and associated budgets. The strategic plan, as set by City Council, provides the framework for the organization over a four-year business cycle. He/She will be responsible and accountable for Finance, Information and Computer Services, Corporate Asset Management, Human Resources and Health, Safety, Environment and Emergency Management portfolios.

You are known for your exemplary leadership and relationship skills. Having built a career and track record of success in executive roles with a large, complex organization operating in a multi-stakeholder environment you have a passion for public service and for embracing the community in which you live.

Seize the opportunity to **LIVE** in a City that offers the most sunshine in Canada. **WORK** in a City which owns its own Utilities, Energy and Airport ensuring lower taxes for its citizens and **PLAY** in a city which offers amazing facilities and a safe community for families. Please forward your resume in complete confidence to careers@altopartners.ca. For further information, please contact Emily Henderson or Shauna Louise at (587) 353-9800.

*We review all applicants; however only those selected for an interview will be contacted.*

TO SUBSCRIBE 1-866-999-9237 | TGAM.CA/SUBSCRIBE

## BUSINESS CLASSIFIED

TO PLACE AN AD CALL: 1-866-999-9237 EMAIL: ADVERTISING@GLOBEANDMAIL.COM

### LEGALIS

#### NOTICE TO CREDITORS

of  
**IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED (collectively, "Imperial Tobacco")**

**NOTICE IS HEREBY GIVEN** that pursuant to the Initial Order, Hon. Warren K. Winkler Q.C. has been appointed, on an interim basis until April 30, 2019, as the Interim Tobacco Claimant Coordinator to assist and to coordinate the interests of all Persons (other than any defendant or respondent, any of their respective affiliates, and the federal, provincial and territorial governments of Canada) in the CCAA proceedings of Imperial Tobacco in connection with the Pending Litigation and any Tobacco Claim. Please refer to the Initial Order for all capitalized terms used but not otherwise defined herein.

**TAKE NOTICE** that the Initial Order and other public information concerning these CCAA proceedings can be found on the Monitor's website at <http://ctcanada.fticonsulting.com/imperialtobacco> or may be obtained by contacting the Monitor at:

FTI Consulting Canada Inc.  
Monitor of Imperial Tobacco et al.  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8  
Phone: 416-649-8044  
Toll-Free: 1-844-707-7558  
Email: [imperialtobacco@fticonsulting.com](mailto:imperialtobacco@fticonsulting.com)

### TENDERS

#### DONALDSON & JAMES LTD. AND THE AGENCY EMPLOYMENT SERVICES LTD. SALES PROCESS

A. Farber & Partners Inc., as Proposal Trustee in the Proposal proceedings of Donaldson & James Ltd. and The Agency Employment Services Ltd. (the "Companies"), has Court approval to seek parties interested in purchasing the Companies' business including assets, rights, undertakings and property.

The Companies operate together to provide a range of temporary/permanent staffing, related back-office and financing/payroll services. The Companies operate from leased premises in Kitchener, Listowel and Cambridge. Interested Parties will have until 5:00 p.m. EST Friday, April 5, 2019 to submit a binding offer or proposal. Interested parties are invited to visit Proposal Trustee's website to view the Sales Process documents at <https://farbergroup.com/engagements/donaldson-james-td/> or contact Megha Sharma Tel: 647-796-6034 Email: [msharma@farbergroup.com](mailto:msharma@farbergroup.com)

## FARBER

### BUSINESS TO BUSINESS

#### BUSINESS TO BUSINESS

**BUSINESS LOANS**  
Own a business?  
Need capital?  
Call us at 1-800-835-9618

#### A WORLD OF INTERESTS DELIVERED RIGHT TO YOUR INBOX.

Sign up for Globe Newsletters at [tgam.ca/newsletters](http://tgam.ca/newsletters)

# APPENDIX E



**DONALDSON & JAMES LTD. and THE AGENCY EMPLOYMENT SERVICES LTD.****APPENDIX E****CONSOLIDATED OPERATING CASH FLOWS**

Page 1 of 1

For the period: January 28, 2019 to April 26, 2019

	Cumulative: Jan 28 - Apr 26, 2019		
	Budget	Actual	Variance
<b>Operating inflows</b>	<b>8,115,580</b>	<b>7,649,585</b>	<b>(465,994)</b>
Payroll & Benefits	6,831,627	(6,216,162)	(615,464)
Payroll remittances	2,022,086	(2,296,378)	274,292
WSIB	159,846	(51,320)	(108,527)
HST remittances (Post-NOI)	657,155		(657,155)
Other cost of sales	476,861	(584,274)	107,413
G&A	120,474	(214,425)	93,951
<b>Operating outflows</b>	<b>10,268,048</b>	<b>(9,362,559)</b>	<b>(905,489)</b>
<b>Total professional fees</b>	<b>279,500</b>	<b>(354,545)</b>	<b>75,045</b>
<b>Other / not-forecast</b>		<b>(9,375)</b>	<b>(9,375)</b>
<b>Net cash flow</b>	<b>(2,431,969)</b>	<b>(2,067,519)</b>	<b>364,450</b>
<b>Opening funding balance</b>	<b>170,722</b>	<b>170,722</b>	
<b>Weekly funding received (net)</b>	<b>2,642,839</b>	<b>2,316,523</b>	<b>(326,317)</b>
<b>Closing funding balance</b>	<b>2,813,561</b>	<b>2,487,245</b>	<b>(326,317)</b>

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE  
A PROPOSAL OF DONALDSON & JAMES LTD. AND  
THE AGENCY EMPLOYMENT SERVICES LTD.**

Court File Nos.35-2466619 and 35-2466620  
Estate File Nos. 35-2466619 and 35-2466620

***ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
[COMMERCIAL LIST]**

Proceeding commenced at Toronto

**THIRD REPORT OF THE  
PROPOSAL TRUSTEE**

**MAY 8, 2019**

**MCMILLAN LLP**

Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON M5J 2T3

**Jeffrey Levine** LS#: 55582H  
jeffrey.levine@mcmillan.ca  
Tel: (416) 865-7791 / Fax: (416) 865-7048

**Tushara Weerasooriya** LS#: 51186K  
tushara.weerasooriya@mcmillan.ca  
Tel: (416) 865-7890 / Fax: (416) 865-7048

Lawyers for the Proposal Trustee