
FPI Term Sheet

Ocean Cuisine Trust

6 June 2005

Preamble

FPI is presenting this term sheet to the Government of Newfoundland and Labrador in good faith, in an attempt to come to mutually acceptable terms to allow FPI to proceed with its business plans, and to provide Government with reasonable and clear undertakings. FPI is willing to pledge significant security to give clear recourse to Government if FPI materially breaches these undertakings. Additionally FPI is prepared to provide a long term commitment to land all its groundfish Enterprise Allocation as described in this term sheet, in the Province for an unlimited time. It is intended that if and when an agreement is executed, subject to the proclamation of the amendments to the FPI Act, it will include all commitments and arrangements between the Government of Newfoundland and Labrador and FPI with respect to the Income Trust transaction.

This term sheet confirms FPI's commitment to the Government of Newfoundland and Labrador that the proceeds from the Income Trust transaction shall be primarily directed to the support and improvement of its primary harvesting, processing and marketing operations and business.

Parties

- (1) The Agreement to be entered into by the Government of Newfoundland and Labrador and FPI.

Purpose

- (2) The Agreement's purpose will be to:
 - (a) allow FPI to proceed with the creation of an Income Trust and the sale of a portion of that business to the public capital markets with respect to the operation of Ocean Cuisine International Incorporated ("OCI U.S.") in the United States and Canada;
 - (b) record the mutual undertakings being provided by FPI and the Government of Newfoundland and Labrador, and;
 - (c) ensure that the FPI groundfish quotas as described will be landed and processed in the Province of Newfoundland and Labrador as set out below

Required Legislative / Contractual Framework

- (3) The terms herein shall form the basis of and be incorporated into an Agreement between FPI Limited and the Government, which Agreement shall be conditional upon the passage and proclamation into law of the draft Act to Amend the Fishery Products International Limited Act attached hereto, such proclamation to be contemporaneous with the execution of the Agreement. Time periods set out herein shall not commence until such execution and proclamation.

Undertakings by FPI

- (4) FPI agrees that should the Income Trust proceed, it shall:
- (a) retain and not relinquish its ability to elect a majority of the Board of Directors of OCI U.S., or any successor company or entity carrying on the marketing business of OCI U.S., without the consent of the Minister of Fisheries and Aquaculture;
 - (b)
 - (i) from the proceeds of the Income Trust reduce FPI's existing senior debt on the Newfoundland-based assets by C\$30 million within 60 days of completion of the income trust transaction; and
 - (ii) not permit FPI's debt, other than debt associated with the income trust structure, as a percentage of its capital structure calculated on an average annual basis, to subsequently increase following such reduction.

Note: the exact definition of this ratio to be negotiated in the Agreement

- (c) retain the remainder of the proceeds of the initial offering of the Ocean Cuisine income trust for working capital and investment purposes by FPI.
- (d) not
 - (i) at closing of the Income Trust transaction distribute funds or provide other forms of financial assistance to FPI's shareholders or related parties of such shareholders; or
 - (ii) distribute funds or provide other forms of financial assistance to FPI's shareholders or parties related to such shareholders; other than:
 - (i) purchases of FPI shares pursuant to and in accordance with a normal course issuer bid conducted in accordance with the rules and regulations of the Toronto Stock Exchange, but in no event for more than 5% of its outstanding shares in a given year; and
 - (ii) declaration of dividends, subject to the limitations described in 4(f) below.

In executing its normal course issuer bid purchases FPI will not enter into, nor allow any agent, broker or dealer acting on its behalf to enter into, directly or indirectly, any private agreement, pre-arranged trade or other commitment, understanding or arrangement that would allow a purchase to be made by or on behalf of FPI Limited pursuant to its normal course issuer bid other than by means of open market transactions effected in the normal course.

(e) not to:

- (i) provide directly or indirectly a loan or other form of financial assistance to a significant shareholder of FPI (being a shareholder holding at least 10% of the then outstanding shares of FPI) (a "Significant Shareholder", which includes any affiliate, subsidiary or associates of a Significant Shareholder) or a related party of a Significant Shareholder; or
- (ii) (a) directly or indirectly invest or participate in: a company owned or controlled by, or partnership, limited partnership, or joint venture with, a Significant Shareholder or a related party of the Significant Shareholder; or

(b) enter into transactions for: the receipt or provision of goods or services, or the sale, purchase, transfer, lease or exchange of assets, rights or other property, with a Significant Shareholder or a related party of the Significant Shareholder (other than transactions in the ordinary course of FPI's business and on terms and conditions materially similar to those which would be available to and from arm's length commercial third parties.),

without the prior approval of the Minister of Fisheries and Aquaculture.

(f)

- (i) for the two years after closing not declare or pay any annual dividend or distribution in excess of \$0.50 per share (this amount to be applied pro rata in the event of any share split); and
- (ii) thereafter, declare and pay only those dividends or distributions, on an individual or aggregate basis over a fiscal year, that are consistent with FPI's historic dividend policy (excluding dividends paid under (i) above), and that are supported by FPI's annual financial performance, but specifically acknowledging FPI's ability to declare and pay occasional extraordinary dividends that are directly attributable to or arise from extraordinary profits from business activities of FPI. FPI will provide the Minister of Fisheries and Aquaculture with advance notice of any extraordinary dividend that is declared by the FPI Board of Directors.

Where:

- (1) "Extraordinary dividend" shall mean any nonrecurring distribution to shareholders paid outside the ordinary course of FPI's dividend policy and schedule. For greater certainty, dividends paid in the ordinary course of FPI's dividend policy can include normal profits received by FPI from cash distributions from the Ocean Cuisine Income Trust.
- (2) "distribution" shall mean the declaration or payment of any dividend, return of capital or other distribution (in cash, securities, or other property), the repurchase by FPI of any shares (except as otherwise permitted herein under 4(d)) or the incurrence of indebtedness for the benefit of particular shareholders in respect of any of its shares.

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- (3) "Extraordinary profits" shall mean profits realized by FPI from nonrecurring business transactions including any gain realized by FPI from the purchase and subsequent sale of any property (other than inventory) acquired by FPI after the date of the Agreement, but extraordinary profits shall not include any proceeds received by FPI from the monetization of all or part of FPI's interest in the Ocean Cuisine income trust.
- (f.1) For greater certainty, the application of the commitments in (d), (e) and (f) above are not restricted to proceeds from or funds related to the Income Trust.
- (g) obtain from Sanford Limited and Clearwater Fine Foods Inc., a commitment by them to the Government of Newfoundland and Labrador that neither they, nor any of their affiliates, subsidiaries, associates, or related parties, will acquire or agree to acquire, directly or indirectly, beneficial ownership of more than a 15% interest in the Units of the Income Trust, and no interest in any other entity involved as part of the structure of the Income Trust, including the OC GP and OC LP and that neither shareholder will act jointly or in concert with any other person to control the income fund. FPI will use its best efforts to obtain the same undertaking from Icelandic Freezer Plants Incorporated.
- (h) (i) provide Government with the opportunity to review the final income trust structure and related documentation, and (ii) not permit or promote any material change to the final structure of the Income Trust as disclosed to the Province as of the date of the Agreement, that would impair the intended effect and application of the undertakings given to the Province as set out in the Agreement.

Communities

- (5) FPI agrees that regardless of the completion of the proposed income trust transaction, it shall commit to the following community benefits with respect to its operations in the Province of Newfoundland and Labrador, upon the changes to the FPI Act being implemented:
- (a) FPI in cooperation with the Province of Newfoundland and Labrador and the FFAW will provide the ability for FPI's Fortune-based workers who qualified for E I benefits in 2005 to maintain E I benefits to July 1, 2006. To facilitate this, the FFAW will allow for the temporary employment of Fortune-based workers in the Marystown plant so long as this temporary arrangement does not reduce the minimum number of hours scheduled for the Marystown workers as agreed to by the FFAW for 2005. The Province of Newfoundland and Labrador to provide suitable training programs or work projects for any of the above identified workers at the rate of \$ 6.25 per hour who do not maintain E I benefits as above. FPI agrees to supplement this rate of pay with an additional payment of \$ 3.75 per hour.
- (b) If requested by the Town of Harbour Breton or an entity designated by the Town, FPI shall transfer the plant, land, and all remaining equipment located at Harbour Breton, including the new equipment installed over the last three years at a cost of C\$ 4 million, to the Town of Harbour Breton or an entity designated by the Town for one dollar, subject to agreement with the Town of Harbour Breton and the FFAW with respect to removal of specified equipment with a net book value of not more than \$400,000 and a release with respect to any claims against FPI or its assets.

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- (c) FPI shall provide C\$1.5 million dollars to the Government for the benefit of the workers of Harbour Breton affected by the FPI plant closure, subject to agreement by the FFAW and the Town of Harbour Breton to release FPI from any claims relating to notice obligations to employees.
 - (d) FPI commits to the ongoing operation for five (5) years of the facilities set out in Schedule B as described therein, subject to the availability of raw material supply and the economic viability of each operation, where a loss of “economic viability” for a facility will be deemed to occur if FPI incurs significant losses with no reasonable prospect of curtailing such losses for that facility. Any dispute between the parties as to whether either of these conditions has occurred may be referred by either party to a three person arbitration panel under the Arbitration Act of Newfoundland and Labrador.

Industrial Benefits

- (6) FPI agrees that upon the completion of the proposed income trust transaction, it shall commit to the following industrial benefits with respect to its operations in the Province of Newfoundland and Labrador:
 - (a) FPI shall invest C\$8 million to create new secondary seafood production capability within two years, subject to a government sponsored program providing 50% of the capital in the form of an interest free loan. It is FPI’s intention to do this on the Burin Peninsula, with the final location to be subject to negotiations with the FFAW. In any event, this investment will not have a detrimental impact upon processing capacity in Burin, and shall occur within the Province of Newfoundland and Labrador.
 - (b) FPI shall provide an additional C\$1.5 million dollars to the Government for the benefit of the workers of Harbour Breton affected by the FPI plant closure, subject to the same terms as 5(c) above.
 - (c) FPI shall invest C\$4.0 million in information technology infrastructure at company headquarters over period of not more than 3 years, to provide support service to FPI and OCI U.S.. FPI and OCI U.S. will enter into a five year shared services agreement, which agreement will include a provision that substantially all the existing information technology and other support services currently provided in Newfoundland and Labrador by FPI to OCI U.S. will continue for the duration of the agreement.
 - (d) FPI shall enter into a 7 year marketing agreement with OCI U.S., to ensure continued access to the North American market for all its own products as well as the products marketed on behalf of the other Newfoundland and Labrador based processors for which FPI provides marketing services. This agreement will: (i) have a one sided cancellation clause in favour of FPI; (ii) be renewable at the exclusive option of FPI for a subsequent term of 7 years, and (iii) have a clause requiring OCI U.S., at the request of FPI and upon FPI agreeing to co-fund with OCI US, to pursue market development for any new or recovering groundfish species which results in increased fish inventory at FPI.

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- (e) FPI shall continue its marketing service on behalf of other Newfoundland and Labrador fish processing companies, where demand warrants and supply of product of sufficient quality and quantity is available. Government will consider and evaluate, and Government and FPI, along with other industry parties, will discuss a loan guarantee program to be established by the Government of Newfoundland and Labrador on behalf of such companies.
 - (f) FPI shall invest C\$1.0 million over two years into research and development activities for enhanced processing technologies, enhanced harvesting technologies and or any other bona fide projects agreed by the parties, subject to receiving matching funds from an appropriate government agency.

Groundfish Undertakings

- (7) FPI agrees that regardless of the completion of the proposed income trust transaction, it shall commit to the following groundfish undertakings with respect to its operations in the Province of Newfoundland and Labrador, upon the changes to the FPI Act being implemented:
 - (a) FPI shall land and process any of its harvested groundfish quotas as described in the schedule hereto in the Province of Newfoundland and Labrador, in accordance with the provisions of the *Fish Inspection Act*. FPI agrees not to sell any of its groundfish Enterprise Allocations without the consent of the Minister of Fisheries and Aquaculture. These commitments will bind any successor or assign of any part or all of the quotas, or of its entire Enterprise Allocation, and FPI will require this as a condition of any transaction.
 - (b) This undertaking with respect to groundfish is subject to the undertaking by the Government of Newfoundland and Labrador, that it will treat FPI in no less favourable manner under the *Fish Inspection Act* than any other company which lands quotas in the Province of Newfoundland and Labrador.
 - (c) FPI shall continue to have the right to limited trading and or leasing of its quotas on commercially favourable terms to the company where it is economically not viable to harvest those limited quotas from time to time. For greater clarity this amount shall not be more than 10% of the total groundfish quota.

Default

- (8) If the Government of Newfoundland and Labrador believes that FPI has committed a material breach of an undertaking provided in sections 4, 5, 6, and 7:
 - (a) The Government of Newfoundland and Labrador shall within a reasonable period notify FPI that in its view a material breach of an undertaking under the Agreement has been committed.
 - (b) FPI shall reply within 14 days indicating whether it agrees or disagrees and in case of agreement shall have a period of not less than 30 days to remedy such breach.

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- (c) If FPI disagrees that a breach has occurred, or the time period for a remedy has elapsed, without the breach being remedied to the satisfaction of the Government of Newfoundland and Labrador, the parties shall seek to resolve the issue by mediation to be held in Newfoundland and Labrador.
- (d) If after mediation the Government of Newfoundland and Labrador still is of the view that a material breach of an undertaking has occurred and not been remedied, it may refer the question to a three person arbitration panel under the Arbitration Act of Newfoundland and Labrador, which panel shall determine whether a material breach has occurred and not been remedied.
- (e) Should the arbitration panel determine that a material breach has occurred, then FPI shall have 21 days to remedy such breach to the satisfaction of the Government of Newfoundland and Labrador. If the material breach has not been remedied (or is not capable of being remedied) then the Government of Newfoundland shall have the right to:
- (i) require FPI to transfer all its then current ground fish Enterprise Allocations, along with any specifically associated existing quotas, vessel designations and associated historic rights, to the Government of Newfoundland and Labrador; and
 - (ii) immediately thereafter activate a lease agreement with FPI, which lease agreement shall be negotiated and confirmed between the parties as part of the Agreement, under which the Government shall lease to FPI for a period of 10 years, renewable on agreement of the parties, those Enterprise Allocations, vessel designations and other historic rights transferred by FPI to the Government above, subject to the following:
 - (1) FPI, on an annual basis, shall have full access to and authority over the groundfish quotas so leased up to the quota limit in each individual species as existed at the time of the breach;
 - (2) FPI's leasehold payments respecting the quotas in (1) will only be that amount required to maintain the Enterprise Allocation registration;
 - (3) Such transfer and lease shall be subject to FPI's existing specific security encumbrances upon the quotas;
 - (4) Where in any given year there is quota in any individual species in excess of the limit in (a), such excess quota and any unused vessel designations shall first be made available to FPI to ensure full employment of its existing workforce, subject to a leasehold payment to be determined by the Minister at up to fair market value for such excess quotas but under no circumstances at a cost higher than offered to any other operator, and if offered to any other operator at a lower price FPI shall have a right of first refusal over same, and the remainder shall revert to the Government of Newfoundland and Labrador, for use at its sole discretion.
 - (5) In conjunction with the Government, FPI shall request to the Minister of Fisheries and Oceans that the Minister give such approvals as may be required for the implementation of this arrangement.

Cancellation clause

(9) The Agreement shall provide that the Agreement shall be terminated, and FPI and the Government released of any rights or obligations thereunder, upon the proclamation of subsequent Provincial legislation, including but not restricted to amendments to the *FPI Act*, which:

- (a) amends, releases, replaces, substitutes or alters the commitments made by either FPI or the Government under the Agreement; or
- (b) directly or indirectly creates a circumstance where FPI would be more likely to breach the Agreement as a result,

unless such legislation:

- (a) was approved by a prior resolution of the FPI Board agreeing to such legislation; or
- (b) applies generally to the fishing industry as a whole, and is not specific to FPI.

Good Faith

(10) The Parties agree that they shall act in good faith in the fulfillment of all the commitments and obligations of the Agreement.

Schedule A: Amendments to FPI Act

1. Add a new subsection 7(3)

(3) Subsection (1) does not apply to the sale by FPI Limited or Fisheries Products International Limited of marketing-related assets for the purposes of creating an income trust, including its interest in Fishery Products International Inc., where initially FPI Limited or Fisheries Products International Limited will retain controlling interest in the income trust.

2. Amend section 11 as follows with new section:

(1) Section 11.1 of the Act is repealed.

(2) Notwithstanding the repeal of section 11.1 of the Act, the section continues to apply to a cause of action arising before its repeal as if the section had not been repealed.

3. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.

Schedule B: Community Commitments

Marystown

Continue to operate the Marystown facility as its primary groundfish operation

Port au Choix

Continue to operate the Port au Choix facility as a cooked and peeled shrimp operation

Port Union

Continue to operate the Port Union facility as a cooked and peeled shrimp operation

Triton

Continue to operate the Triton facility as a crab operation with continued diversification of processing involving pelagic species

Bonavista

Recognizing that the Bonavista facility is in need of replacement, FPI undertakes to either replace it or combine it with its Port Union operations within two years, and to consult with both the FFAW/CAW and the community in determining its course of action.

Burin

Continue to operate as a secondary processing operation

Fortune

Operate as a secondary processing operation if such investment required by section 6(a) of the Agreement is made in that location.