



## RECEIVER'S INTERIM STATEMENT

(Subsection 246(2) of the *Bankruptcy and Insolvency Act*)

CHOCOLATERIE BERNARD CALLEBAUT PARTNERSHIP, 1013988 ALBERTA LTD.,  
CHOCOLATERIE BERNARD CALLEBAUT LTD. AND 1054796 ALBERTA LTD. – IN RECEIVERSHIP

Estate Nos. 25-094044, 25-094045, 25-094046, 25-094047

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### BACKGROUND

Pursuant to a Consent Order granted by the Court of Queen's Bench of Alberta (the "Court") on December 15, 2010 (the "Receivership Order"), Deloitte & Touche Inc. ("Deloitte") was appointed as receiver and manager (the "Receiver") of Chocolaterie Bernard Callebaut Partnership (the "Callebaut Partnership"), 1013988 Alberta Ltd., Chocolaterie Bernard Callebaut Ltd. ("CBCL") and 1054796 Alberta Ltd. ("105") (collectively "Callebaut" or the "Company"). Subsequently, on August 18, 2010, the Callebaut Partnership, CBCL and 105 made assignments in bankruptcy and Deloitte was appointed as trustee of the estates of the bankrupts. The receivership and bankruptcy proceedings are operating concurrently. Information on these proceedings can be accessed on Deloitte's website at [www.deloitte.ca](http://www.deloitte.ca) under the Insolvency and Restructuring link.

This is the first interim report pertaining to this matter, issued pursuant to subsection 246(2) of the *Bankruptcy and Insolvency Act* (the "BIA").

### STATEMENT OF RECEIPTS AND DISBURSEMENTS

The Receiver's Interim Statement of Receipts and Disbursements for the period from August 3, 2010 to February 3, 2011 is attached hereto as Appendix 1.

### STATEMENT OF PROPERTY

On October 19, 2010, the Court approved the sale of two parcels of lands (the "Hwy 1 Lands") owned by 105 and located off of Highway 1 in Rocky View County, Alberta to Mr. Murray Atkins (the "Hwy 1 Sale"). The Hwy 1 Sale has now been completed and net sale proceeds (the "Land Proceeds") of \$2,388,374 have been paid to the Receiver.

On October 21, 2010, The Court approved the sale of Callebaut Partnership's right, title and interest in all of the assets of the Callebaut Partnership (the "Partnership Assets") to 1563181 Alberta Ltd. ("156"). The sale of the Partnership Assets to 156 has now been completed and net sale proceeds of \$6,144,719 (the "Partnership Proceeds") have been paid to the Receiver (funds were also collected from the operations of the Callebaut Partnership; therefore, the cumulative funds received into the Callebaut Partnership will be referred to as the "Partnership Receipts").

Alberta Treasury Branches ("ATB") held registered security over all of the Company's present and after acquired property as well as a mortgage on the Hwy 1 Lands (the "ATB Security"). Invesco held a subsequent second mortgage on the Hwy 1 Lands (the "Invesco Mortgage"). Blakes, Cassels & Graydon LLP ("Blakes") completed a review of both the ATB Security and the Invesco Mortgage and determined that both were valid and enforceable. On October 21, 2011, the Court granted an Order approving payment of the full amount of \$4,022,717 (\$3,184,492 was paid directly to ATB and \$838,225 was paid to First Street Equities pursuant to a direction to pay provided to the Receiver from ATB) due pursuant to the ATB Security, without regard as to the allocation of funds to be paid from the Land Proceeds versus the Partnership Receipts.

Pursuant to their review of the Invesco Mortgage, Blakes noted that potential claims may exist against Bernard and Francesca Callebaut ("B&F Callebaut") in their capacity as the sole directors and officers of 105 for breach of fiduciary duty under Section 122 of the *Alberta Business Corporation Act* (the "ABCA") and/or as an oppression action under Section 242 of the ABCA (the "ABCA Claim"). This is based on the fact that it appears that the Invesco Mortgage was entered into in breach of the bylaws of 105. On February 1, 2011, the Trustee held an Inspectors' meeting for the Callebaut Partnership, CBCL and 105 and advised the inspectors of the ABCA Claim. A motion was approved by the inspectors that the Trustee would not pursue the ABCA Claim but would notify Callebaut's creditors of their ability to undertake proceedings with respect to the ABCA Claim pursuant to Section 38 of the BIA.

#### **OUTSTANDING MATTERS**

The Receiver has scheduled a Court application for February 10, 2011 (the "February 10 Application"), seeking approval of the following:

- a. Approval of a proposed allocation of the Land Proceeds and the Partnership Receipts as between ATB and Invesco, whereby Invesco would be paid the entirety of the Land Proceeds, net of the corresponding costs of the Receiver and the Receiver's legal counsel (the "Land Costs"), and ATB would be paid entirely out of the Partnership Receipts;
- b. Approval of the allocation of the professional fees and disbursements of both the Receiver and the Receiver's legal counsel between the Land Proceeds and the Partnership Receipts; and
- c. Approval of the payment of an interim distribution to Invesco, consisting of the Land Proceeds less the Land Costs in partial satisfaction of its secured claim.

Also, at the February 10 Application, the Receiver will be seeking a declaration that B&F Callebaut are in contempt of the Receivership Order and a direction that B&F Callebaut purge their contempt by delivering up any property of Callebaut that was removed from the Company prior to or after the date of Receivership Order as well as advice and direction with respect to any such property of Callebaut that is not delivered up by B&F Callebaut (the "Contempt Application"). The Contempt Application is based on information and affidavit evidence provided by the president of 156 and a former employee of the Callebaut Partnership and current employee of 156, which suggests that certain assets of Callebaut were

improperly removed from the Company prior to and after the date of the Receivership Order. Further information regarding the Contempt Application is available as part of the Third Report of the Court-appointed Receiver and Manager, which can be viewed on Deloitte's website.

Finally, at the February 10 Application, the Receiver will be seeking approval to pay any remaining funds held by or collectible by the Receiver, net of costs required to complete the administration of the receivership, into the bankrupt estate of the Callebaut Partnership, where such funds can be distributed to the unsecured creditors pursuant to the provisions of the BIA.

Following resolution of those matters being addressed as part of the February 10 Application; the only outstanding matters in the receivership will be the settlement of the final statement of adjustments in respect of the 156 Sale and the collection of an account receivable.

Dated at Calgary, Alberta, this 3<sup>rd</sup> day of February, 2011.

**DELOITTE & TOUCHE INC.**

In its capacity as Receiver and Manager of  
Chocolaterie Bernard Callebaut Partnership, 1013988 Alberta  
Ltd., Chocolaterie Bernard Callebaut Ltd. and 1054796 Alberta  
Ltd. and not in its personal capacity



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Victor P. Kroeger, CA•CIRP, CFE  
Senior Vice-President

**Chocolaterie Bernard Callebaut Partnership et. al. ("Callebaut")- in Receivership**  
**Consolidated Interim Statements of Receipts and Disbursements**  
**For the period from August 3, 2010 to February 3, 2011**

		<b>Notes</b>
<b>Receipts</b>		
Cash Held in Financial Institutions (CAD)	\$ 109,845	
Cash Held in Financial Institutions (US)	1,025	1
Net Proceeds from Sale of Land	2,388,374	2
Net Proceeds from Sale of Assets	6,144,719	3
Accounts Receivable	105,750	
GST Collected (Accounts Receivable)	5,288	
Dealer Orders (Post Receivership)	899,611	
Cash Receipts from Retail Locations	1,005,590	4
GST Collected	95,452	
Miscellaneous Receipts	1,397	
Receiver's Certificates	200,000	5
<b>Total Receipts</b>	<b>10,957,050</b>	
<b>Disbursements</b>		
<b>Operations</b>		
Rent	369,252	
Payroll	535,411	6
Benefits	23,534	7
Freight	23,213	8
Appraisals	8,429	
Repairs & Maintenance	13,098	8
Insurance	12,962	
Raw Materials	492,807	8
Operating Expenses	51,447	8
Business Taxes	10,836	
Storage	19,079	8
Packaging	117,537	8
Utilities	63,085	8
Employee Expenses	1,524	
Worker's Compensation Board	9,992	
Miscellaneous	15,538	
GST Paid	52,837	
Repayment of Receiver's Certificate	201,800	5
<b>Total Operations</b>	<b>2,022,380</b>	
<b>Administration of Receivership</b>		
Management Fees	45,000	9
Receiver's Legal Fees and Disbursements	236,590	10
Receiver's Fees and Disbursements	169,029	11
<b>Total - Administration of Receivership</b>	<b>450,619</b>	
<b>Total Disbursements</b>	<b>2,472,999</b>	
<b>Excess of Cash Receipts over Cash Disbursements</b>	<b>\$ 8,484,051</b>	
<b>Excess of Cash Receipts over Cash Disbursements represented by:</b>		
Cash in Bank	4,461,334	
Payment to Alberta Treasury Branches	3,184,492	
Payment to First Street Equities	838,225	12
	<b>\$ 8,484,051</b>	

**Chocolaterie Bernard Callebaut Partnership et. al. ("Callebaut")- in Receivership  
Consolidated Interim Statements of Receipts and Disbursements  
For the period from August 3, 2010 to February 3, 2011**

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**Notes:**

1. US funds have been converted at a rate of \$1.00 CAN = \$1.00 US.
2. The sale of two parcels of land, which were owned by 1054796 Alberta Ltd. and located off of Highway 1 in Rockyview County, Alberta, was approved pursuant to the Order granted by the Court of Queen's Bench of Alberta on October 19, 2010.
3. The sale of Callebaut's right, title and interest in the assets of Callebaut (the "Partnership Assets") was approved pursuant to the Order of the Court of Queen's Bench of Alberta granted on October 21, 2010.
4. Includes sales revenue collected from Callebaut's eight retail locations.
5. A Receiver's Certificate for \$200,000 (the "Certificate") was issued as approved in the Order granted by the Court of Queen's Bench of Alberta on August 3, 2010. The Certificate, including all applicable interest, has now been repaid by the Receiver.
6. Employees were paid on a bi-weekly basis. Payroll includes all corresponding Canada Revenue Agency payroll remittances.
7. Pre- Receivership employee benefits were provided by Great-West Life and paid monthly.
8. Selected post-closing amounts related to the sale of the Partnership Assets were paid by the Receiver but included in the statement of adjustments with respect to that sale.
9. Management fees were paid to Bernard Callebaut, who was retained by the Receiver on a contract basis during the post-Receivership period ended October 6, 2010.
10. The fees and disbursements of the Receiver's legal counsel, Blakes, Cassels & Graydon LLP have been paid in full for the period ended December 31, 2011.
11. Additional Fees and disbursements of the Receiver totaling \$305,295 were paid directly by Alberta Treasury Branches ("ATB"); therefore, are not reflected herein.
12. This amount was due to ATB pursuant to their secured claim; however was paid to First Street Equities pursuant to a direction to pay provided to the Receiver from ATB.