

**STRICTLY PRIVATE & CONFIDENTIAL**

**By E-mail**

Barry Kogan, Katherine Sozou and Matthew Caddy  
Administrators  
McGrathNicol  
Level 12, 20 Martin Place  
Sydney NSW 2000

12<sup>th</sup> June 2019

Dear Administrators,

**DOCA proposal for Focus on Furniture group of companies**

This letter sets out the summary terms of a deed of company arrangement (**DOCA**) proposal by Monash Investment Nominees Pty Limited (a wholly owned subsidiary of Monash Private Capital Pty Ltd) and Rob Santalucia (and entities and individuals associated with Rob Santalucia) (**the Deed Proponents**) in relation to the companies listed in Schedule 1 to this letter (**the FoF Group**). It should be noted that none of the Deed Proponents intend to participate in any other DOCA relating to the FoF Group, other than the one outlined herein.

The details of the proposal will be subject to further discussion with creditors and the Administrators, and will require the consent and agreement of the Commonwealth Bank of Australia (**CBA**) as the secured creditor with security over the FoF Group.

In order to demonstrate the intent of the Deed Proponents to proceed with a DOCA based on the terms set out in this proposal, on 11<sup>th</sup> June 2019 the Deed Proponents paid a \$1 million deposit into an interest-bearing trust account held by Administrators, on the following conditions:

- 1 the CBA confirms that it will consent to the terms of the DOCA proposal set out in this letter;
- 2 the Administrators confirm that they will recommend the DOCA proposal to the FoF Group creditors;
- 3 the Administrators agree to suspend any other sale process and deal exclusively with the Deed Proponents in relation to the sale of the FoF Group's business;

- 4 the deposit will be repayable immediately, plus any accumulated/accrued interest, if any of the following occur:
- (a) the creditors of the FoF Group do not, at the Second Creditors' Meeting, pass a resolution that the FoF Group companies execute a DOCA containing terms consistent with the terms of the DOCA proposal set out in this letter;
  - (b) the creditors of any company in the FoF Group pass a resolution that one or more FoF Group companies execute an alternative DOCA with deed proponents that are not the Deed Proponents;
  - (c) the Administrators extend the convening period for the Second Creditors' Meeting without the prior written consent of the Deed Proponents (such consent not to be unreasonably withheld in circumstances where the Deed Proponents have been granted exclusivity);
  - (d) the Administrators breach a condition set out in item 2 or 3 above; or
  - (e) CBA withdraws or otherwise revokes its consent to the terms of the DOCA proposal.

The conditions set out in paragraphs 1 through 3 above have been satisfied.

#### **Key DOCA terms**

The Deed Proponents propose that a single DOCA be entered into on behalf of all FoF Group companies, pursuant to which:

- 1 the shares in Focus on Furniture Pty Limited, and any other FoF Group company necessary for the operation of the FoF Group business, will be transferred from E-Commerce Ventures Pty Limited to an entity established by the Deed Proponents (**NewCo**);
- 2 a Creditors' Trust will be established for the purpose of paying the entitlements of creditors of the FoF Group;
- 3 the Deed Proponents will provide a total of \$10 million (inclusive of the \$1 million deposit and inclusive of GST) to the FoF Group companies, which will be distributed in the following order of priority (subject at all times to the Administrators' obligations at law):
  - (a) payment of remuneration, costs and expenses incurred by the Administrators (including, without limitation, all accrued expenses, employee entitlements

and lease obligations for the period of the administration) whether in their capacity as Administrators, Deed Administrators or Creditors' Trustees during the course of their appointments in relation to the FoF Group companies; then

- (b) to any FOF Group employees who are terminated prior to and including the date of DOCA effectuation (**Terminated Employees**) in respect of amounts for which they would be entitled to priority under sections 556 and 561 of the Corporations Act in a winding up of the FoF Group companies; then
  - (c) to the CBA in full satisfaction of amounts owing to the CBA and which are subject to the CBA's security (subject to **CBA conditions** below); then
  - (d) to non-priority unsecured creditors of the FoF Group;
- 4 any cash held by the FoF Group as at effectuation of the DOCA to be distributed to the Creditors' Trust;
- 5 at effectuation of the DOCA, an adjustment for Net Assets, defined as Inventory (in warehouse) less Customer Deposits. At all times Net Assets at effectuation of the DOCA must be no less than \$10.5 million. Any excess in Net Assets to the Reference Date will be an additional payment to the Administrators for distribution in accordance with the order of priority set out in item 3 above. This is a "one way" adjustment and no payment will be required should there be a shortfall in the Net Assets (subject to Net Assets being no less than \$10.5 million):

A\$'000	Reference Date: 30 April 2019	Example 1 at effectuation	Example 2 at effectuation
Inventory	20,576	20,000	16,000
Less...Customer Deposits	8,271	5,000	5,000
<b>Net Assets</b>	<b>12,305</b>	<b>15,000</b>	<b>11,000</b>
<b>Asset Adjustment</b>		<b>+\$2,695</b>	<b>Nil</b>

In Example 1, the Deed Proponents will contribute an additional \$2,695k in cash as an Asset Adjustment. In Example 2, there is no Asset Adjustment and the Deed Proponents accept the shortfall in Net Assets.

- 6 NewCo to recognise all employee entitlements for employees retained post-administration (**Continuing Employees**). Continuing Employees will not have their accrued entitlements paid out (in contrast to Terminated Employees), and instead will continue as employees of the FoF Group. It should be noted that NewCo will not

require any adjustment, usually included in transactions of this nature, to the purchase price for Continuing Employee liabilities;

- 7 NewCo to honour all customer deposits, product warranties and gift cards from pre- and post- Administration period;
- 8 all Claims against the FoF Companies (other than Excluded Claims) will be extinguished (described in more detail below under the heading “Other Conditions and Timing”); and
- 9 any of the Deed Proponents (or their related entities) with claims against any FoF Group company will not be entitled to any distribution from the Creditors’ Trust.

### **CBA conditions**

The DOCA proposal outlined in this letter will be conditional on the Deed Proponents entering into satisfactory arrangements with the CBA pursuant to which:

- 1 subject to paragraph 2 below, the CBA agrees to accept payment in full and final settlement of all amounts owing to the CBA by the FoF Group companies and to release its security over all FoF Group companies;
- 2 the CBA agrees, if required, to continue to provide bank guarantees (estimated for the purposes of this letter at approximately \$1.8 million) in respect of premises from which the FoF Group will continue to trade post-administration, with the Deed Proponents to provide cash-backing for the guarantees if requested by the CBA;
- 3 the CBA agrees to vote in favour of the DOCA proposal at the Second Creditors’ Meeting; and
- 4 the CBA continues to provide merchant facilities to the FoF Group of companies for an agreed period of time, with any security in respect of the merchant facilities to be limited to the value of the merchant facilities provided.

### **DOCA funding**

Funding for the DOCA will be sourced from the Deed Proponents, as well as selected private high net worth investors who have an association with the Deed Proponents. These sources have sufficient available cash funding available to complete the transaction as contemplated under the DOCA.

### **Other conditions and timing**

Upon effectuation of the DOCA all Claims (other than Excluded Claims) against the FoF Group companies and their respective directors will be released and extinguished. **Claims** means all debts payable by, and all claims against, a party, whether present or future, certain or contingent, ascertained or sounding only in damages, being debts or claims the circumstances giving rise to which occurred before the effectuation date of the DOCA, and whether or not they would be admissible to proof in the event of winding up of the Companies. **Excluded Claims** will be the subject of further drafting, but will include Continuing Employee claims, the claims of continuing Landlords and certain insured claims (relating to claims which a creditor has against an FoF Company and which would have received priority under s562 of the Corporations Act).

The proposal set out in this letter is made on the condition that there is no extension to the current timetable set for the Administration period, and may be withdrawn should an extension occur without the consent of the Deed Proponents.

The proposal is also made on the basis that FoF Group is run in the ordinary course during the Administration period, including the ongoing dialogue and cooperation between the Administrators and FoF Group's senior personnel. The Deed Proponents must also be satisfied that the FoF Group business is in a satisfactory condition at the time immediately before the Second Creditors' Meeting.

As set out above, the Deed Proponents' payment of the \$1 million deposit was also conditional on the Administrators granting the Deed Proponents exclusivity, and to the Administrators suspending any sale process involving other parties, both of which have occurred.

Subject to satisfaction of the conditions set out in this letter and formal legal documentation on mutually agreeable terms, the Deed Proponents' current intention is for a DOCA to be executed within 15 business days of the Second Creditors' Meeting, with effectuation occurring simultaneously.

### **The proposal maximises the chance of the FoF Group surviving**

The proposal in this letter maximises the chances of the FoF Group continuing and surviving in its restructured form. The restructured FoF Group will consist of the profitable parts of the existing FoF Group, with continuity of management and employees, and, crucially, further investment and commitment from Rob Santalucia, who is crucial to the successful operation of the business.

Further, the proposal would see over 60% of FoF Group employees continue to be employed in the FoF Group with full recognition of their accrued entitlements. In a liquidation scenario, those employees would be terminated and forced to find alternative employment.

The FoF Group will also be appropriately leveraged for its size, thereby reducing the likelihood that the group will experience cashflow issues again in the future. The proposal therefore represents the best available outcome for the FoF Group and maximises its chances of surviving and thriving in difficult market conditions for retailers. The Deed Proponents are also in a position to execute the proposal quickly, which will prevent any further harm to the FoF Group's business being caused by a prolonged administration.

Yours sincerely



**Joshua Bolot**  
Monash Investment Nominees Pty Limited

**SCHEDULE 1 – FoF Group companies**

<b>Company name</b>	<b>ACN</b>
E-Commerce Ventures Pty Limited	154 473 364
Focus on Furniture Pty Limited	089 394 712
Beds Online Australia Pty Limited	122 205 029
Pillows Online Australia Pty Limited	158 267 013
Trusted Web Sites Pty Limited	158 267 675
Pacific Global Furniture Pty Limited	106 668 026
Oz Retail Pty Limited	161 618 293
Furniture Online Australia Pty Limited	151 871 313
Loveadeal Pty Limited	107 198 578
Best Furniture Group Pty Limited	101 571 699
D. Gallery Pty Limited	131 012 318
United Furniture Warehouse Pty Limited	127 727 959