Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK INC.

APPLICANT

AFFIDAVIT OF GERALD BACHYNSKI
(Sworn March 25, 2015)

I, Gerald Bachynski, of the Town of Oakville, in the Province of Ontario, the President and Chief Executive Officer of the Applicant, Comark Inc. ("**Comark**" or the "**Company**"), MAKE OATH AND SAY:

1. I have been with Comark or one of its divisions for 39 years. I have held the positions of President and Chief Executive Officer of Comark since January 2008. Prior to that, I held the position of President of the Ricki's banner for almost 20 years. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and verily believe them to be true. In particular, I obtained much of the financial information in this Affidavit from the current, outgoing and the new, incoming Chief Financial Officers of Comark.

2. Comark is a leading Canadian specialty apparel retailer. It operates hundreds of retail stores across Canada, employing approximately 3,400 people. As set out in greater detail below, a combination of factors including a sharply worsening retail environment and the adverse effect of a weakening Canadian dollar have resulted in a severe liquidity crisis. In short, Comark is insolvent and is therefore making this application for relief under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). I believe such relief is the best way to maximize the possibility of an outcome which will preserve as many jobs and as much value for stakeholders as possible. I am swearing this Affidavit in support of Comark's application.

3. This Affidavit is organized in the following sections:

Introduction

4. As noted above, Comark is a leading Canadian specialty apparel retailer with a nationally recognized portfolio of banners and exclusive private label brands. It operates 343 retail stores across Canada under three distinct divisions: Ricki's, with 155 stores; Bootlegger, with 101 stores; and cleo, with 87 stores (together, the "**Banners**"). Comark's corporate headquarters (the "**Corporate Headquarters**") are in Mississauga, Ontario and have 83 full-time employees. The Corporate Headquarters support each of the three Banners by providing centralized systems and corporate support functions relating to finance, real estate, human resources and logistics. Comark also has three divisional operating offices, with one in Mississauga, Ontario, one in Richmond, British Columbia, and one in Winnipeg, Manitoba. It operates a central distribution centre in Laval, Quebec (the "**Distribution Centre**"). Comark also operates a website at www.comark.ca.

5. Comark is a privately-held corporation continued under the *Canada Business Corporations Act,* R.S.C. 1985, c. C-44. It has been in operation in Canada since 1976. As of February 2005, it is a portfolio company of an investment fund managed by KarpReilly, LLC ("**KarpReilly**"), a private investment firm based in Greenwich, Connecticut.

6. As at March 17, 2015, Comark has approximately 3,400 employees across Canada. In addition, over 300 product suppliers, primarily located in Asia and North America, supply Comark with products, along with hundreds of other suppliers of goods and services. These suppliers rely on the continued operation of Comark's stores to sell their goods. Other stakeholder groups include landlords and Comark's senior secured lender.

7. Until as recently as the spring of 2014, Comark's financial performance had been solid, highly profitable and relatively consistent with previous years. As discussed further below, a deterioration in sales, in particular in the Ricki's Banner, combined with cost pressures associated with the dramatic weakening of the Canadian dollar has had a significant, negative impact on Comark's financial position. This has been exacerbated by uncertainty associated with key management departures and other industry challenges, discussed further below. As a result, Comark has impaired cash flow and is experiencing a severe liquidity crisis. Without the relief sought in this application, it will not be able to continue as a going concern.

8. In particular, as described in greater detail below, Comark is financed primarily through a term loan and revolving credit facilities under a Credit Agreement dated as of October 31, 2014 between Comark, as the lead borrower, and Salus Capital Partners, LLC. ("**Salus**"), as administrative collateral agent and the lender thereto (the "**Salus Credit Agreement**"). As at March 17, 2015, there was approximately USD$43.1 million outstanding under the term loan facility and CAD$24.8 million outstanding under the revolving credit facility. The Salus Credit Agreement has a maturity date of October 31, 2018. All of the obligations of Comark under the Salus Credit Agreement are secured by all of Comark's assets.

9. As a result of the financial challenges currently facing Comark, Comark is unable to comply with certain financial and other covenants under the Salus Credit Agreement, including the minimum Consolidated Earnings Before Interest Taxes Depreciation and Amortization ("**EBITDA**") and consolidated leverage ratio covenants, which breaches constitute events of default under the agreement. As a result of said breaches, Salus has noted Comark in default, reserved its rights under the Salus Credit Agreement and made a demand for repayment. Comark is not able to honour its debt obligations to Salus.

10. Access to credit is critical to enable Comark to have sufficient liquidity to operate as a going concern as it attempts to restructure. Comark is facing the stark reality that it is unable to continue going concern operations to preserve enterprise value without access to the credit market. It is not practicable for Comark to find a replacement to the Salus Credit Agreement. Any replacement lender would need, at the very least, to:

(a) refinance the entire amount of Comark's outstanding indebtedness under the Salus Credit Agreement in the amount of approximately CAD$79.9 million as at March 17, 2015;

(b) provide liquidity of at least an additional CAD$20 million to allow for inventory purchases and payment of operating expenses;

(c) take into account the court-ordered charges proposed to be created in this proceeding; and

(d) conduct the necessary due diligence to conclude such a transaction.

11. Accordingly, as part of the relief sought in this application, Comark is seeking approval for a debtor-in-possession loan facility (the "**DIP Facility**") through the amendment and restatement of the existing loan arrangements. I believe that the DIP Facility is the only available option for Comark to keep the vast majority of its workers employed and maintain its enterprise value for the benefit of its stakeholders. Without the DIP Facility and the pledge by Comark of its assets as security for the funds to be advanced to Comark pursuant to the DIP Facility, Comark would: (a) not be able to operate in the ordinary course as a going concern; (b) not be able to satisfy its ongoing obligations to its employees, landlords, suppliers and other stakeholders; and (c) have no access to operating credit.

12. Comark is also seeking approval for a comprehensive sale and investor solicitation process (the "**SISP**"), to be conducted by its financial advisor, Houlihan Lokey, under the supervision of the Proposed Monitor. The SISP has been reviewed and approved by Salus and the Proposed Monitor.

13. It is my belief that Comark can be restructured to once again be a viable business with significant future potential. In order to continue going concern operations and to access the only credit available to it in the circumstances, Comark requires a stay of proceedings and related relief under the CCAA. A stay will enable Comark to evaluate restructuring options concurrently with a potential sale of all or a portion of its business, with the ultimate goal of developing a plan of arrangement or compromise to restructure the business in a manner designed to maximize value to the greatest extent possible for its stakeholders.

14. Comark is also seeking, among other relief, the following as part of the draft Initial Order: (i) appointment of Alvarez & Marsal Canada Inc. ("**Alvarez & Marsal**") to act as the Monitor of Comark under the CCAA (the "**Proposed Monitor**"); (ii) approval of a key employee retention plan; (iii) authorization to pay pre-filing amounts with the consent of the Proposed Monitor to certain critical suppliers in Comark's distribution network; (iv) authorization to remit charitable amounts donated by customers; and (v) a KERP Charge and a Directors' Charge (each defined herein).

Corporate Structure of Comark

15. When Comark began operations in Canada in 1976, it was a privately owned family business. In February 2005, Comark was acquired by a private equity fund. The fund is

currently managed by KarpReilly, a private investment firm based in Greenwich, Connecticut. KarpReilly indirectly holds the majority of shares in Comark, and the remaining shares are held by current and former employees of Comark and by one additional investment firm with industry expertise.

16. On March 25, 2015, the board of directors of Comark (the "**Board**") passed a resolution authorizing this Application under the CCAA.

The Canadian Apparel Retail Industry

17. The Canadian apparel retail industry is estimated to have CAD$73.6 billion in annual revenue. In 2013, the womenswear market in Canada was estimated to have CAD$14.6 billion in total annual revenue and was projected to reach CAD$16.3 billion by 2018. Specialty apparel retail is the leading distribution channel in the Canadian womenswear market, accounting for 74.6% of total market share as of 2013.

18. The womenswear and specialty retail industry is highly competitive. Comark competes with specialty apparel retailers, such as Reitmans, Laura, Banana Republic, The Gap and many others. Comark also competes with large "big box" retailers, such as Winners, The Bay, Old Navy, Sears and Marks, for fashion-conscious consumers.

19. The competitive retail industry in Canada has undergone significant changes in the last 2 years. This includes the entry of new retail concepts, the significant growth of online shopping and an increase in both the frequency and level of discounts offered by retailers through promotions delivered to customers in-store and online. As a result of these significant changes, many Canadian retailers have experienced serious financial challenges and have discontinued operations in the last 12 to 18 months, including Costa Blanca, Jacob, Mexx Canada, Smart Set, Bikini Village, Parasuco and Target Canada.

The Business of Comark

20. Comark has been providing specialty apparel for Canadian consumers for over thirty years. Following its establishment in 1976, Comark was built through a series of acquisitions. Comark acquired 58 Irene Hill stores in 1979, and the name was changed to "cleo" in 1994. It purchased Bootlegger in 1980, bringing 47 stores located in Western Canada under the Comark

umbrella. In 1982, Ricki's was purchased. Comark continued to acquire additional retail banners in the 1980s and 1990s, a number of which were subsequently divested.

21. Comark stores sell predominantly exclusive private label merchandise. Comark's product mix includes work attire and casual clothing for Canadian men and women aged 20 to 60 years old. By the end of 2004, the Comark platform consisted of its three current Banners, each of which has a distinctive brand identity, target market, and loyal customer base:

(a) Ricki's stores provide trend right, contemporary everyday work attire and casual clothing to Canadian women from 25 to 40 years of age;

(b) Bootlegger is a leading provider of jeans and other casual clothing for men and women between the ages of 20 to 35; and

(c) The cleo brand provides work wear and casual clothing for women aged 40 to 60 with a focus on comfort and fit for a more mature customer.

22. Comark has a significant ecommerce presence in Canada for all three Banners and is evolving towards an omni-channel retailing platform that offers an opportunity to further increase sales. As of fiscal year end 2014, approximately 71% of net revenues were generated from Comark's 2.1 million loyalty program members.

23. For the twelve months ended February 28, 2015, Comark estimates that approximately 7.1 million customers transacted at Ricki's, Bootlegger, and cleo.

24. For the fiscal year ended February 28, 2015, Comark generated approximately CAD$344.4 million in sales and CAD$16.5 million of adjusted EBITDA.

25. Subject to a successful restructuring in light of Comark's current difficulties, I believe that there is an opportunity for significant further growth in the business through improved operating efficiency, in-store sales increases and increases in online sales.

A. Store Formats & Locations

26. The typical format for a Ricki's, Bootlegger or cleo retail store is a strategically located store in a mall, well-positioned power centre or shopping centre in a suburb. The average

store size is approximately 3,300 square feet. In some locations, the retail space is shared by more than one Banner (for example, Ricki's/Bootlegger), and the average store size for these locations is 5,000 square feet. A typical Comark store is significantly smaller than some of its big-box retail store competitors, which have a typical store size in excess of 25,000 square feet.

27. As at March 17, 2015, Comark conducts business through 343 retail locations in all of Canada's provinces and territories, except for Quebec.

28. The following chart sets out Comark's current number of store locations by province as at March 17, 2015:

Province	**Stores**
Alberta	72
British Columbia	62
Manitoba	15
New Brunswick	7
Newfoundland	8
Nova Scotia	12
Ontario	133
PEI	2
Saskatchewan	31
Northwest Territories	1
Total	**343**

29. Some of these stores are currently unprofitable. As part of Comark's restructuring under these proceedings, Comark plans to close certain of those retail locations that are deemed to be unprofitable or that make marginal contributions to the overall profitability of Comark.

B. Real Estate and Leases

30. All of Comark's retail and other operations are conducted in facilities leased from approximately 60 third party landlord groups. Comark is the lessee for all of the leased facilities.

31. Comark leases three buildings which serve as the corporate and Banner headquarters. It leases a 42,957 square foot building in Mississauga, Ontario, which contains the offices of the Corporate Headquarters and cleo's headquarters. It also leases a 32,320 square foot building in Winnipeg, Manitoba that serves as Ricki's headquarters and a 23,510 square foot building in Richmond, British Columbia that serves as Bootlegger's headquarters.

32. Comark leases a 93,553 square foot building in Laval, Quebec which serves as its Distribution Centre. Shipments take place daily at competitive rates through a national third-party carrier, Purolator Inc. ("**Purolator**"), for store sales, and primarily through Canada Post for online orders. The Distribution Centre processes approximately 9.3 million and 2 million units of merchandise each year for physical stores and online sales, respectively. A 22,000 square foot mezzanine was constructed to accommodate projected growth in online shopping in 2012.

33. The leases for Comark's stores are generally for terms of seven to ten years and typically grant Comark options to renew the lease beyond the existing term. Many of Comark's store leases are with large retail landlords.

34. Comark, in consultation with the Proposed Monitor, is reviewing all of Comark's leases to determine if a reduction in store count will improve Comark's cash flows. It is anticipated that Comark will restructure its operations and disclaim certain leases in respect of Comark stores that are performing poorly or have negative cash flow shortly after the commencement of proceedings and during the initial stay period.

C. Merchandising and Sourcing

i) Branded Merchandise

35. As set out above, Comark is a leading retailer of branded and private label specialty apparel. Bootlegger sells a variety of branded merchandise, including Bench, Buffalo David Bitton, Mavi, Silver, Guess by Marciano, Miss Me, and Brody. Ricki's and cleo do not sell branded merchandise.

ii) Private Label Products

36. Comark offers private label products under its three Banners, Ricki's, Bootlegger and cleo. The Banners have a highly enthusiastic and loyal customer base. The private label products provide consumers with an enhanced value proposition, and thereby represent a significant percentage of Comark's total sales and gross profit.

37. Comark sources private label products from factories primarily in Asia to take advantage of lower costs. As at February 28, 2015, approximately 80% of Comark's unit purchases were sourced from foreign manufacturers, and these purchases are typically made in U.S. dollars. The remaining 20% of purchases are sourced in North America.

38. Comark is working with a third party inventory services firm to assist with inventory and supply chain management during these proceedings. It is intended that this third party service provider will assist with inventory management at store locations which are closed as a result of the restructuring.

D. Distribution

39. Comark's stores are replenished and stocked with Comark products through the Distribution Centre in Laval and through Purolator's "Direct-to-store" Distribution Centre in Vancouver ("**Purolator's DTS Centre**"). Each retail store has one or more computers that serve as point-of-sale terminals linked to the Corporate Headquarters via a digital subscriber line or cable. Comark uses this point-of-sale information network to monitor inventory on a store by store basis and across the Company. Through the information network, Comark updates its customer database and generates detailed store-level sales and margin information daily. The point-of-sale systems are also linked to the Distribution Centre through a system that moves to replenish a store's stock as inventory is sold.

40. Comark transports products to its stores through third-party transportation companies. Comark does not have its own transportation capability. Purolator is Comark's primary third-party transportation provider whose continued services are critical to the Company's ongoing operations. Approximately 90% of Comark's products are transported using Purolator.

41. The majority of products destined for store sale are transported to stores via two main channels. Approximately 40% of products are transported by Purolator from the Purolator's DTS Centre in Vancouver directly to Comark stores. For some foreign vendors, Comark needs to relabel and repackage products, which is done at its Distribution Centre. The repackaged products are then sent to Comark stores by Purolator. Replenishment of store inventory is also done through the Distribution Centre, which comprises 10% of product shipments. In total, approximately 60% of products are transported to the Distribution Centre, either for re-labeling/re-packaging or for replenishment.

42. All products purchased online are distributed through the Distribution Centre, from where they are shipped directly to the customer's preferred location via Canada Post or to stores for customer pick-up via Purolator. Online orders comprise 9.1% of product purchases by customers.

E. Internet Business

43. Comark is evolving towards an omni-channel retailing platform with ecommerce, mobile and programs such as "ship-to-store" in order to provide a seamless customer experience. Each Comark Banner operates a consumer direct website under the domain names www.rickis.com, www.bootlegger.com, and www.cleo.ca. Customers shopping on the website are able to access and purchase a variety of products for delivery or in-store pick-up at a store location. In addition, if a customer wishes to purchase a product at a particular location, the customer can use the website to confirm whether the product is available at that location.

44. Comark's revenue from online shopping (net of in-store returns) has grown to over CAD$31.2 million, or CAD$46.1 in gross revenue, as of February 28, 2015, which represents an 74.3% compound annual growth rate since fiscal year end 2011. It is expected that the websites will be an increasingly important sales tool and distribution channel in the future.

45. Net revenue from online sales is projected to be approximately 9.1% of company-wide sales in fiscal year end 2015 and each of the last several years online sales have grown substantially. It is expected that both revenue and profit growth from online shopping will continue and accelerate over the next several years.

F. Employees

46. Each of Comark's Banners has its own leadership team which consists of a President or General Manager and key senior management personnel responsible for Banner-specific planning, online sales, in-store sales, sourcing, and product development.

47. As at March 17, 2015, Comark had approximately 3,400 hourly and salaried employees, approximately 83 of whom are located at the Corporate Headquarters in Mississauga and approximately 95, 85, and 68 of whom work at the headquarters of Ricki's, Bootlegger and cleo, respectively. The vast majority of Comark's workforce consists of short-tenure, non-union retail employees. As at March 16, 2015, approximately 200 of Comark's employees work in the Distribution Centre.

48. A typical retail store is staffed with 5 to 10 hourly employees, with additional coverage during holidays and peak selling periods. The staff includes both full and part-time sales associates and a store manager. As at fiscal year-end February 28, 2018, Comark employed a total of 2,875 associates in its retail stores.

49. Comark employees are compensated through base salary and company-paid benefits, including for a very limited number of long service employees, as part of their compensation package, allowable RRSP contributions. In addition, some employees are eligible to receive bonuses. Comark has also established a Deferred Profit Sharing Plan (the "**DPSP**") and a group RRSP for eligible employees. The group RRSP is fully contributed by employees. It is anticipated that no further contributions will be made by Comark to the DPSP during these CCAA proceedings. Pursuant to the DPSP, the amounts already contributed by Comark vest in participants upon allocation to their accounts by the Trustee. A copy of the DPSP is attached at Exhibit "A".

50. Comark, in consultation with the Proposed Monitor, is evaluating its staffing requirements across the organization. Comark anticipates that as part its restructuring efforts, certain headcount reductions will take place shortly after the commencement of these proceedings and during the initial stay period.

G. Loyalty Programs

51. Each of Comark's Banners offer a loyalty program to customers (the "**Loyalty Programs**"), which can be obtained in any Ricki's, Bootlegger or cleo store, or through each Banner's website. By signing up for a loyalty card, a customer receives discounts and coupons for frequent purchases. Membership in the Loyalty Program is free for Ricki's and cleo, and there is a $10 fee for Bootlegger. Comark communicates with Loyalty Program members primarily through email messages. As of As at February 28, 2015, Comark has a total of approximately 1.5 million "active" Loyalty Program members (members who have purchased within the past 12 months).

52. Comark's Loyalty Programs drive a significant portion of sales and assist in the collection of customer data. As at February 28, 2015, sales to Loyalty Program members represented approximately 71% of Comark's sales. Therefore, Comark is seeking in the Initial Order that it be authorized, with the consent of the Proposed Monitor, to continue the Loyalty Programs and honour its obligations to customers thereto.

H. Gift Cards and Store Credit

53. Comark customers can purchase Banner-specific gift cards ("**Gift Cards**") in-store or online, to be redeemed for merchandise. The Gift Cards are managed through a master service agreement with ValueLink, LLC dated May 7, 2012.

54. Customers can also obtain in-store credit ("**Store Credit**") when they return merchandise, to be redeemed for other merchandise in any Comark store.

55. Similar to the Loyalty Programs, Comark's Gift Cards and Store Credit programs increase sales and improve the customer experience. As such, Comark also seeks in the Initial Order that it be authorized, with the consent of the Proposed Monitor, to continue providing and to honour Gift Cards and Store Credit during these proceedings.

I. Charitable Donations

56. Comark encourages its Banners and individual stores to be involved within the community and participate in charitable causes. Comark often participates in co-branded

community events or cause marketing with charitable organizations such as the Breast Cancer Society of Canada, the Canadian Women's Foundation and local food banks.

57. Since 2004, Ricki's has been involved in a charitable campaign through a corporate partnership with the Canadian Women's Foundation and its own charitable organization, Ricki's End Poverty for Women. Through this initiative, Ricki's raises funds to support economic development programs that help provide employment skills training to Canadian women living in poverty. Amongst other things, Ricki's holds an annual fundraising event, Ricki's Step Up Walk, to raise funds for this cause.

58. For over a decade, cleo has partnered with the Breast Cancer Society of Canada to raise money for research into the prevention, early detection and treatment of breast cancer. Cleo holds fundraising events throughout the year, including its annual Mother's Day Walk.

59. Bootlegger also supports charities at both local and national levels and provides donations and sponsorships for numerous events and fundraisers throughout the year.

60. The money donated by Comark's customers for various charitable initiatives is comingled with Comark's other funds. As at March 17, 2015, Ricki's has CAD$40,057, Bootlegger has CAD$108 and cleo has CAD$107,917 in funds received from customers in respect of donations to various charitable organizations. Comark is seeking authority in the Initial Order to pay these amounts donated by customers to the intended charitable organizations.

J. Cash Management System

61. Comark uses a centralized cash management system to deal with cash management, collections, disbursements and intercompany payments for all three Banners. This allows Comark to facilitate cash forecasting and reporting, monitor collection and disbursement of funds. The cash management system is managed from the Corporate Headquarters, where the Company reviews and monitors account activity on a daily basis, including the accounts payable systems and the weekly cash flow forecasts of each Banner. All of Comark's debit and credit card receipts are deposited daily into a deposit account with the Toronto-Dominion Bank ("**TD**"). All of Comark's cash receipts are deposited daily by each retail location into local

deposit accounts at various institutions and transferred daily into the same deposit account with TD.

62. Prior to March 9, 2015, receipts from operations were used to fund the Company's disbursements. To the extent that there was a shortfall, the Company would request funding from Salus pursuant to the Salus Credit Agreement.

63. On March 9, 2015, the control of incoming cash and the process for making disbursements changed as a result of the occurrence of an event of default under the Salus Credit Agreement. Under the terms of the Salus Credit Agreement, and the Blocked Depository Account Agreement dated October 31, 2014, among Comark, TD and Salus (the "**Blocked Account Agreement**"), upon the occurrence of an Event of Default (as defined in the Salus Credit Agreement), Comark is required to deposit into a blocked account maintained by TD and under the control of Salus (the "**Blocked Account**"), all cash, credit and debit receipts. On March 5, 2015, counsel to Salus delivered a letter to Comark wherein Salus gave formal notice to Comark of an Event of Default and reserved its rights and remedies (the "**Reservation of Rights Letter**"). In the Reservation of Rights Letter, Salus reserved the right to charge the default interest rate under the Salus Credit Agreement, to establish, implement or increase availability of reserves under the Salus Credit Agreement in its discretion, and to implement the cash management arrangements contemplated therein. On the same day, Salus delivered a letter to TD instructing TD to exercise control over the Blocked Account and transfer funds in accordance with the Blocked Account Agreement. A copy of the Blocked Account Agreement is attached as Exhibit "B". A copy of the Reservation of Rights Letter is attached as Exhibit "C". A copy of the letter from Salus to TD is attached as Exhibit "D".

64. As a result of the Event of Default, currently and since March 9, 2015, Comark deposits all cash, credit and debit receipts into the Blocked Account (the "**Current Cash Management System**"). On each day, at the request of Salus, TD initiates a transfer of the funds in the Blocked Account to an account designated and controlled by Salus, which has the effect of reducing the amounts outstanding under the Salus Credit Agreement. Given that the Blocked Account has now been activated, Comark does not have access to any cash to pay its disbursements. Accordingly, Comark's current practice is to make borrowings from Salus on an as-needed basis. If approved, the borrowing requests are funded by Salus by transferring funds

from the Blocked Account into Comark's main disbursement account at TD (the "**Disbursement Account**").

65. Upon receipt of a list of needed disbursements from Comark, which cannot exceed CAD$1 million, TD pays the respective list of disbursements irrespective of whether or not there is sufficient cash in the Disbursement Account. The only exception to this is the payment of Comark's monthly rent roll, which is excluded from the CAD$1 million cap and for which TD requires confirmation from Comark that there is sufficient cash in the Disbursement Account. The disbursement payments are made by TD within a day of receiving Comark's list of needed disbursements.

66. In order to secure TD's banking system, in the event that there is a delay between payment by TD of Comark's disbursements and the receipt of funds in the Disbursement Account to pay such disbursements, Comark has set up a term deposit in the amount of CAD$1.1 million, which term deposits are assigned to TD as security for any indebtedness of Comark to TD in respect of the arrangement.

67. As at March 17, 2014, Comark has made three borrowing requests pursuant to the Current Cash Management System described above.

68. Comark is seeking in the draft Initial Order that Comark be permitted to continue to use the Current Cash Management System, including the daily deposit of receipts into the Blocked Account and the transfer of those funds to Salus to reduce the obligations owing under the Salus Credit Agreement.

K. Currency

69. The vast majority of Comark's foreign product purchases are denominated in USD.

70. In order to manage its foreign currency exposure arising from anticipated cash flows in the normal course of business, Comark entered into foreign exchange forward contracts and options through TD (the "**Foreign Exchange Contracts**") for terms not exceeding 9 months. As at March 16, 2015, the aggregate notional net amounts purchased under the forward contracts

and options were USD$19 million at forward rates ranging from 1.1087 to 1.2535. A copy of the Foreign Exchange Contracts is attached as Exhibit "E".

71. The foregoing contracts outstanding as at March 16, 2015, have maturity dates ranging from March 18, 2015 to August 26, 2015. In the event that the TD hedging contracts become "out of the money", any indebtedness that that may be owing by Comark to TD is secured by an assignment of a term deposit account in the amount of US$1.75 million.

72. When Comark entered into the Salus Credit Agreement, some collateral had to be diverted from the Foreign Exchange Contracts to secure the loan made by Salus. As such, Comark's hedges of its foreign currency risk were reduced, leaving Comark further exposed to the deteriorating Canadian dollar.

The Financial Position of Comark

73. A copy of Comark's unaudited financial statements for the fiscal year ended February 28, 2015 is attached as Exhibit "F". A copy of Comark's audited financial statements as of February 22, 2014 are attached as Exhibit "G". A review of the information contained in the 2015 unaudited financial statements is summarized below.

74. Comark has experienced declining financial results over the past two fiscal years. Net revenue decreased from CAD$345 million in fiscal 2013 to CAD$344.4 million in fiscal 2015. Adjusted EBITDA was CAD$42.7 million in fiscal year ended February 2013, CAD$32.2 million in fiscal year ended February 2014 and CAD$16.5 million in fiscal year ended February 2015.

A. Assets

75. As at February 28, 2015, Comark had total assets of CAD$112.4. This included current assets of CAD$61.8 and consolidated non-current assets of CAD$50.6. The majority of Comark's current assets consist of inventory, cash, accounts receivable, and prepaid expenses and deposits. The majority of Comark's non-current assets consist of property and equipment and future income taxes. A detailed breakdown of Comark's assets based on the 2015 unaudited financial statements can be found at Exhibit "H".

B. Liabilities

76. As at February 28, 2015, Comark's total indebtedness was approximately CAD$126.1. That debt consisted of current liabilities of approximately CAD$67.7 and non-current liabilities of approximately CAD$58.4. Comark's current liabilities mainly consist of accounts payable and accrued liabilities and current portions of long-term debt and deferred revenue. Non-current liability mainly consist of long-term debt, accrued rent and lease inducements. A detailed breakdown of Comark's liabilities based on its 2015 unaudited financial statements can be found at Exhibit "I".

C. Secured Debt & Credit Facility

i) Credit Agreement

77. On or around July 30, 2013, Comark entered into an Amended and Restated Financing agreement with Cerebus Business Finance, LLC ("**Cerebrus**") as Collateral Agent, and Wells Fargo Foothill Canada ULC ("**Wells Fargo**") as Administrative Agent (the "**Cerebrus Financing Agreement**"). Cerebrus had been Comark's lender since 2005. A copy of the Cerebrus Financing Agreement is attached as Exhibit "J".

78. Pursuant to the above agreement, Comark issued a dividend of CAD$85 million to shareholders on July 30, 2013 (the "**Dividend**"). The Dividend was financed in part by stock option proceeds and excess cash on Comark's balance sheet and in part by new debt raised from Cerberus. This was not the first time Comark had issued a dividend that was financed in part by debt. Comark had done this on three previous occasions since 2005 with funds provided by Cerebrus or with Cerebrus' support. At the time Comark issued the Dividend, Comark's adjusted EBITDA for the immediately previous fiscal year was CAD$42.7 million, which was higher than its consolidated adjusted EBITDA for the prior three fiscal years.

79. As noted above, on October 31, 2014, Comark entered into the Salus Credit Agreement which provided for a term loan commitment in the aggregate amount of USD$50 million (the "**Salus Term Loan Facility**") and a revolving loan commitment in the maximum amount of CAD$32 million (the "**Salus Revolver Facility**"). The Salus Credit Agreement was entered into in order to refinance the obligations of Comark under the Cerberus Financing

Agreement. The facilities extended under the Salus Credit Agreement provide Comark with liquidity for working capital and general corporate purposes. A copy of the Salus Credit Agreement is attached as Exhibit "K"

80. The obligations of Comark under the Salus Credit Agreement are secured by first-priority liens in all of Comark's present or future property, assets or interests in property or assets of any kind, wherever located (collectively, the "**Collateral**"). Salus has security over the Collateral pursuant to a general security agreement dated as of October 31, 2014 (the "**General Security Agreement**") and other security documents. A copy of the General Security Agreement is attached as Exhibit "L" to this Affidavit.

81. The amount available for borrowing under Salus Revolver Facility is subject to a borrowing base formula linked to the value of certain of Comark's credit card receivables plus the cost of certain eligible inventory less the amount of certain reserves established pursuant to the terms of the Salus Credit Agreement, including reserves as Salus determines in its permitted discretion to being appropriate to *inter alia*: (i) reflect the impediments of Salus' ability to realize upon its Collateral; or (ii) reflect claims and liabilities that will need to be satisfied in connection with the realization of Collateral. Accordingly, borrowing availability under the Salus Revolver Facility fluctuates from month to month.

82. The Salus Term Loan Facility bears interest at an adjusted LIBO rate plus 8.50% and any borrowings outstanding under the Salus Revolver Facility bear interest at an adjusted LIBO rate plus 3.75%. As a result of the Event of Default referenced in the Reservation of Rights Letter, interest on these loans is now being charged at the default rate of interest which is an additional 2% on each facility.

83. As at March 17, 2015, the amount currently outstanding under the Salus Term Loan Facility is approximately USD$43.1 million and approximately CAD$24.7 million under the Salus Revolver Facility.

84. As discussed below, once Comark is able to draw on the DIP Facility, it required to use receipts from operations to pay down the outstanding pre-filing obligations under the Salus Revolver Facility by maintaining the Current Cash Management System.

ii) Default Under the Credit Agreement

85. An event of default under the Salus Credit Agreement occurs, *inter alia* when Comark's Consolidated EBITDA (as defined under the Salus Credit Agreement) falls below the minimum requirement of CAD$18 million for the fiscal year ended February 28, 2015. Upon the occurrence of an Event of Default, Salus has the right to terminate the Salus Credit Agreement and declare that all obligations under it are automatically due and payable without presentment, demand, protest or other notice of any kind.

86. Comark's Consolidated EBITDA as at February 28, 2015 was CAD$16.5 million.

87. As described above, Salus delivered the Reservation of Rights Letter on March 5, 2015. On March 25, 2015, Salus made a demand for repayment for all amounts owing under the Salus Credit Agreement. A copy of the demand letter from Salus dated March 25, 2015 is attached as Exhibit "M".

88. Comark is not able to pay the full amount owing under the Salus Credit Agreement, which has become immediately due and payable as a result of the Event of Default and the demand made by Salus. Accordingly, Comark is insolvent and has commenced this CCAA proceeding.

D. Trade Creditors

89. As at March 14, 2015, Comark had approximately CAD$23.7 million in outstanding accounts payable to trade creditors and accrued but not yet due payables of approximately CAD$8.0 million. Of this amount, approximately CAD$24.5 million was owing to trade creditors located outside of North America. As set out above at paragraph 37, the ability of Comark to secure continued supply to stores from North American and Asian suppliers is a crucial aspect of Comark's ongoing operations.

90. In order to meet the needs of Comark's customers over the next shopping season, it is essential that certain of Comark's suppliers that are critical to Comark's ability to operate during its restructuring under these proceedings continue to supply Comark over this period, and that Comark has access to sufficient credit to maintain required levels of inventory. In order to ensure the continuity of Comark's supply chain, Comark is proposing to continue to pay amounts

owing to certain critical trade vendors and suppliers in the ordinary course, both before and after the date of filing. The draft Initial Order contemplates that the Proposed Monitor's consent would be required prior to any such payments being made.

The Urgent Need for Relief under the CCAA

91. As described herein, since Salus has exercised Cash Dominion pursuant to the Blocked Account Agreement and the Salus Credit Agreement, and has made demand under the Salus Credit Agreement, Comark does not have access to liquidity to discharge its financial obligations. Comark is thus insolvent. In the past two years, and in particular since the end of 2014, Comark has experienced significant declines in revenue and EBITDA, attributable primarily to the decline of Canadian currency and industry-specific challenges.

92. The Canadian dollar has dropped nearly 20% against the U.S. dollar since the start of 2014 and has dropped approximately 14% since October 31 2014, the date the Salus Credit Agreement was entered into. This has had a significant impact on Comark's financial performance because it purchases the majority of its inventory in U.S. currency, while its sales are in Canadian currency. Approximately 66% of Comark's product purchases are in USD. Hence, the decline in Canadian currency relative to U.S. currency has resulted in increased cost to Comark and a significant decrease in Comark's profit margins.

93. Since the Salus Term Loan Facility under the Salus Credit Agreement is in USD, Comark's indebtedness has also increased with the weakened Canadian currency.

94. Although Comark has historically entered into Foreign Exchange Contracts, as described in paragraphs 65 and 66, it was not able to hedge all foreign exchange risk because of restrictions in the Salus Credit Agreement.

95. Moreover, Comark operates in a competitive industry where production levels and cash flows in any period are materially affected by the timing and commercial success of product releases, as well consumer shopping trends. Statistics Canada reported that retail sales in Canada fell 2% to CAD$42.1 billion in December 2014, the largest decline since April 2010. In particular, sales fell by 5.6% for clothing and accessories stores. Statistics Canada suggests that

consumer confidence may be deteriorating with the drop in crude oil prices through the second half of 2014.

96. This negative trend in retail sales was exacerbated by the fact that several key senior merchandising and buying employees left Ricki's in 2012, which resulted in instability and change within that Banner. In particular, the position of General Merchandise Manager remained vacant for 18 months until Comark found a replacement. Because inventory is chosen and subsequently sourced up to one year in advance, these staffing issues impacted revenue in late 2013 and 2014.

97. As described, the decrease of Comark's EBITDA in late 2014 triggered an Event of Default under the Salus Credit Agreement. Salus has made a demand for repayment of Comark's debt obligations under the agreement, which Comark is unable to repay. If the relief requested herein is not granted, I believe that Comark would not be in a position to continue its operations, thereby significantly reducing the value of the Company to its stakeholders.

Relief Sought

A. Stay of Proceedings

98. Accordingly, and for the reasons set out herein, Comark is insolvent as it has debt in excess of CAD$5 million and cannot satisfy its obligations. Hence, a restructuring of Comark under these CCAA proceedings is urgently required.

99. In order to prevent a fast erosion of enterprise value and to permit Comark to continue to operate as going concerns, Comark requires a stay of proceedings. Comark is concerned about its inability to make payments owing under the Salus Credit Agreement, as well as the potential termination of contracts by key suppliers and the inability to force suppliers to provide future product. It would be detrimental to Comark's ability to restructure if proceedings were commenced or continued or rights and remedies were exercised against Comark.

100. The stay will provide management with the breathing space it needs to develop and oversee an orderly restructuring of the business with minimal disruptions to their current business operations, as well as to consider any operational restructuring initiatives. This, in turn,

will help to protect the interests of Comark's stakeholders, including employees, suppliers, landlords, customers and lenders. Having regard to the circumstances, and in an effort to preserve the value of the Comark's business, the granting of a stay of proceedings is in the best interests of Comark and its stakeholders

B. DIP Financing

101. Because of Comark's current liquidity challenges, and as demonstrated in the Cash Flow Forecast (as defined and described below), Comark requires interim financing for working capital and general corporate purposes and for post-filing expenses and costs during the CCAA Proceedings. Subject to certain terms and conditions, Salus has agreed to act as DIP lender (the "**DIP Lender**") and provide an interim financing through the availability of further drawdowns under an Amended and Restated Credit Agreement with Salus (the "**DIP Facility**") of approximately USD$32 million at an interest rate of adjusted LIBO plus 5.75% (representing the default rate of interest on the Salus Revolver Facility) and an interest rate of adjusted LIBO plus 10.5% on the Salus Term Loan Facility representing the default rate on the Salus Term Loan Facility. A copy of the DIP Facility is attached hereto as Exhibit "N"

102. Under the DIP Facility, Comark has agreed to pay Salus a DIP exit fee upon termination of the DIP Facility equal to 4% of all of the revolving commitments, including the Salus Revolver Facility, and the Salus Term Loan Facility (the "**DIP Exit Fee**"). Under the Salus Credit Agreement, Comark was required to pay an early termination fee in the amount of 3% on the outstanding balance of each of the Salus Term Loan Facility and the Salus Revolver Facility if the termination thereof occurred on or before October 31, 2015 (the "**Early Termination Fee**"). Under the DIP Facility, the DIP Exit Fee replaces the Early Termination Fee. In addition to the DIP Exit Fee, and consistent with the fees charged under the Salus Credit Agreement, Comark is required to pay a collateral monitoring fee of US$84,000 per year and a commitment fee of 0.375% of the undrawn amount under the revolving DIP Facility.

103. The DIP Facility is proposed to be secured by a Court-ordered security interest, lien and charge (the "**DIP Lender's Charge**") on all of the present and future assets, property and undertakings of Comark (the "**Property**") that will secure all post-filing advances. The DIP Lender's Charge is to have priority over all other security interests, charges and liens other than

the Administration Charge, the KERP Charge and the D&O Charge (each as defined below, and collectively, with the DIP Charge, the "**Charges**") up to the lesser of the amount advanced under the DIP Facility and CAD$32 million. The DIP Lender's Charge will not secure any obligation, including any amount advanced under the Salus Revolver Facility and the Salus Term Loan Facility prior to the date of the Initial Order.

104. In accordance with the requirements of the DIP Facility, and consistent with the Current Cash Management System in effect, Comark's cash from business operations is required to be deposited into the Blocked Account and swept by Salus in order to reduce the obligations outstanding under the Salus Revolver Facility prior to the commencement of the proceedings. As cash from operations are swept from the Blocked Account and then used to pay the Salus Revolver Facility, this will result in increased availability under the DIP Facility thereby allowing Comark to drawdown from the DIP Facility as a post filing advance to fund, among other things, its working capital requirements. The DIP Facility expressly provides that Comark may not use any advances under the DIP Facility to repay any indebtedness outstanding prior to the date of the commencement of this proceeding.

105. As the Current Cash Management System does not permit Comark access to any cash on hand, Comark is therefore seeking approval of the proposed DIP Facility to accommodate its anticipated liquidity requirements during this CCAA proceeding. The proposed DIP Facility will provide additional assurances to Comark's employees, critical suppliers, creditors and other stakeholders that Comark will be able to continue going concern operations while pursuing the implementation of the restructuring.

106. Because the proposed DIP Facility is being provided by Salus, and Salus is the Comark's senior secured creditor, Comark is of the view that there will be no material prejudice to any of its existing creditors. Further, I am advised that Salus will oppose any other DIP financing which seeks to prime Salus. Accordingly, the DIP Facility provided by Salus is the only realistic means for Comark to keep operating while it attempts to restructure its business and continue as a going concern.

C. Key Employee Retention Plan

107. In order to ensure the continued participation of Comark's senior management in the business, and so that senior management will guide the business through a restructuring and preserve enterprise value, Comark proposes a key employee retention plan (the "**KERP**") for certain key management employees (the "**Key Employees**").

108. There are a total of 35 Key Employees eligible for payments under the KERP, for a total payment of CAD$1,806,968. The reason that this number of employees have been identified as important is that Comark has a leadership team for each Banner, in addition to the overall leadership at the Corporate Headquarters and certain district and regional managers that oversee store operations. The Key Employees work in the areas of finance, operations, logistics, real estate, human resource, online sales, sourcing and marketing.

109. I believe that each of these Key Employees is critical to a successful proceeding under the CCAA because they possess unique professional skills and in-depth knowledge of, and experience with, Comark's business and operations. The Key Employees will provide positive leadership and assist with formulating and executing sale strategies, which will facilitate the optimal value realization.

110. The current job market in which Comark operates is robust and competitive. I believe that the KERP is necessary in order to ensure that the Key Employees remain in their current employment during these CCAA proceedings. Without the retention of the Key Employees, the ability to maximize stakeholder value during the restructuring would be seriously compromised. Comark has already experienced significant upheaval as a result of the departure of key employees in the Ricki's Banner, which led to adverse results in that segment of the business which have contributed to Comark's current difficulties. It is critical that, to the extent possible, Comark avoid having a similar situation arise during the restructuring. Accordingly, I believe it is very important that the Key Employees be incented to remain with Comark despite the uncertainty and upheaval associated with the current restructuring.

111. I am advised that the Proposed Monitor agrees that the KERP, including the identity of the Key Employees and the amounts proposed to be paid to them, is reasonable in the circumstances. Salus also agrees that the KERP is reasonable.

112. Payments under the KERP are to be made incrementally under the following schedule: (a) 25% at 3 months; and (b) 75% at the earlier of the conclusion of a sale, the completion of a liquidation of the Banner that employs the respective Key Employee or at 15 months. In the event that, at the end of Phase 1 of the SISP, Comark, in consultation with the Monitor, the Financial Advisor and Salus determines that the Banner that employs the respective KERP Employee should be liquidated, the KERP amount for that KERP Employee will be reduced by 30% and will be payable in a lump sum upon termination of that KERP Employee. Comark is seeking a charge in the amount of CAD$1,806,968 (the "**KERP Charge**") to secure the amounts payable under the KERP. The KERP Charge would rank behind the Administrative Charge and in priority to the Directors' Charge and the DIP Lender's Charge.

113. A more detailed explanation of the KERP, including the names of the Key Employees and the KERP amounts, are set out in a confidential KERP schedule (the "**Confidential KERP Schedule**"). The disclosure of the information in the Confidential KERP Schedule would be harmful to the privacy interests of the Key Employees. Therefore, Comark is requesting that the Confidential KERP Schedule be sealed on the Court file. A copy of the Confidential KERP Schedule is attached as an Exhibit "O".

D. Directors' and Officers' Protection

114. A successful restructuring of Comark will only be possible with the continued participation of Comark's directors (the "**Comark Directors**"), management and employees. These personnel are essential to the viability of Comark's continuing business.

115. I am advised by Marc Wasserman of Osler, Hoskin & Harcourt LLP, counsel for Comark, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities. Comark estimates, with the assistance of the Proposed Monitor, that these obligations may include unpaid accrued wages, unremitted source reductions, unpaid accrued vacation pay, unpaid sales and service taxes, unpaid termination pay, unpaid employee health tax and unpaid workers' compensation which could amount to as much as CAD$3.14 million, CAD$1.17 million, CAD$182,500, CAD$2.43 million, CAD$143,000, CAD$70,000 and CAD$19,600, respectively, for a total potential director liability of approximately CAD$7.15 million.

116. The Comark Directors have indicated that, in light of the uncertainty surrounding available directors' and officers' insurance, their continued service and involvement in this restructuring is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the directors and officers of Comark in the amount of CAD$3 million on the property of Comark (the "**Directors' Charge**"). The Directors' Charge would stand in priority to the proposed DIP Charge, but subordinate to the proposed Administration Charge to be created in favour of counsel for Comark, the Proposed Monitor and counsel for the Proposed Monitor. The Directors' Charge would act as security for indemnification obligations for the Comark Directors' potential liabilities as set out above.

117. Comark recently renewed its Directors and Officers Liability Insurance ("**D&O Insurance**"). Notwithstanding this renewal, it is uncertain whether the D&O Insurance will be renewed again in the future.

118. The Directors' Charge is necessary so that Comark may benefit from its directors' and officers' experience with the business and the apparel retail industry and so that its directors and officers can guide the Company's restructuring efforts.

E. Payments during this CCAA Proceeding

i) Payment in respect of Pre-Filing Obligations

119. During the course of this CCAA proceeding, Comark intends to make payments for goods and services supplied post-filing as set out in the cash flow projections described above and as permitted by the draft Initial Order.

120. Comark is also proposing in the draft Initial Order that Comark be authorized, with the consent of the Proposed Monitor, to make certain payments to certain critical third parties that provide services that are critical to Comark's ability to operate during, and implement, its restructuring under these proceedings. These third parties include key logistics or supply chain providers and parties providing transportation and logistics services.

121. As described in paragraphs 39 to 41, Comark relies exclusively on Purolator for the transportation of products within its distribution network. As such, Purolator's continued services are critical to the Company's ongoing operations. Based on Purolator Courier's

historical integration into Comark's business, it is Comark's belief that it would be unable to transition its business to a different third-party transportation provider in time to service Comark's ongoing needs. Comark is proposing to pay Purolator for amounts incurred before and after the commencement of these proceedings in order to ensure the ordinary flow of inventory through its supply chain during these proceedings and to preserve Comark's enterprise value.

122. Continued supply from certain overseas and domestic suppliers of both Comark's branded and private label merchandise is also crucial to the success of this restructuring and the ordinary course operations of Comark's Banners. Thus, in order to ensure continued supply from certain foreign suppliers during the CCAA proceedings and to preserve Comark's enterprise value, Comark is proposing to pay such suppliers for amounts incurred before and after the commencement of these proceedings.

ii) Payment in respect of Charitable Donations

123. Subject to the approval of this Court, Comark intends to remit funds that were donated by Comark's customers to various charitable organizations. As noted above, these donated amounts are currently comingled with Comark's other funds.

F. Sale Process

124. One of the restructuring alternatives to be pursued by Comark is the sale of all or a portion of its business.

125. In 2012, Comark undertook a process to sell its business. Oppenheimer & Co. was retained to canvass the market and identify interested parties. Comark received an offer in 2013 but it did not result in the completion of a transaction.

126. In mid-2014, Comark was advised by Cerberus that Cerberus wanted Comark to seek refinancing of the debt owed to Cerberus. Comark engaged Houlihan Lokey shortly thereafter to canvas the market and identify interested parties who would be prepared to refinance Comark and take out the Cerberus debt. Houlihan Lokey prepared disclosure and marketing materials, in consultation with Comark, that were distributed to potential lenders. This process resulted in Salus providing Comark with the funds under the Salus Credit Agreement.

127. On March 6, 2015, Houlihan Lokey was again retained by Comark to advise on a restructuring, refinancing or sale for Comark, pursuant to an engagement letter between Comark and Houlihan Lokey (the "**HL Engagement Letter**"). Pursuant to the HL Engagement Letter, Comark shall pay Houlihan Lokey a monthly fee of USD$100,000 (the "**Monthly Fee**"), as well as an incremental Sale Transaction Fee and a Restructuring Transaction Fee (as defined in the HL Engagement Letter). Beginning with the third month, 50% of the Monthly Fee will be credited against the next Transaction Fee. A copy of the HL Engagement Letter is attached as Exhibit "P".

128. Given their knowledge of and experience with Comark's business, I believe that Houlihan Lokey is well-placed to work with Comark's management team to canvass potential purchasers during the CCAA proceedings without any significant learning curve.

129. Subject to approval by this Court, Comark has agreed that Houlihan Lokey (the "**Financial Advisor**"), under the supervision of the Proposed Monitor and with the assistance of Comark, will conduct a sale and investor solicitation process in the form set out in the SISP. The purpose of the SISP is to seek out competing offers for the acquisition of or investment in Comark's business and property. I believe that the SISP will help Comark identify the best opportunities for optimizing returns for its stakeholders and creditors. A copy of the SISP is attached as Schedule "A" to the draft Initial Order.

130. Comark has agreed that the SISP will be conducted in two phases. In the first phase ("**Phase 1**"), for a period of 40 days following the date of the Initial Order, the Financial Advisor will solicit non-binding indications of interest in the form of non-binding letters of intent ("**LOIs**") from prospective financial or strategic parties who may be interested in: (i) acquiring all or a portion of the assets and undertakings of Comark or all or a portion of the assets and undertakings relating to a Banner or a combination of Banners on a liquidation or going concern basis; or (ii) making an investment in the business of Comark. During Phase 1, the Financial Advisor will provide qualified interested parties that have executed a non-disclosure agreement ("**Qualified Bidders**") with a confidential information memorandum (the "**CIM**") and access to an electronic data room of due diligence information (the "**Data Room**").

131. Qualified Bidders that wish to pursue a sale proposal or an investment proposal must deliver an LOI to the Financial Advisor and the Proposed Monitor by the Phase 1 Bid

Deadline. The requirements of a qualifying LOI are set out in the SISP. At the end of Phase 1, the Proposed Monitor, in consultation with the Financial Advisor, Comark and Salus, will assess the qualifying LOIs received, if any, and determine whether there is a reasonable prospect of obtaining an offer or combination of offers that are in an amount sufficient to pay in cash the full amount owing to Salus under the Salus Credit Agreement or the DIP Facility (a "**Qualified Bid**").

132. The following factors will be considered in the assessment of the qualifying LOIs, *inter alia*: (i) the form and amount of consideration being offered, including any purchase price adjustments and/or any non-cash considerations; (ii) the demonstrated financial capability of the Qualified Bidder to consummate the proposed transaction; (iii) the conditions to closing of the proposed transaction; and (iv) the estimated time required to complete the proposed transaction and whether, in the Proposed Monitors' reasonable business judgment, it is likely to close on or before August 15, 2015.

133. If one or more qualifying LOI is received, the Proposed Monitor, exercising its reasonable business judgment and following consultation with the Financial Advisor, Comark and Salus will either recommend to the Board that the most favourable qualifying LOI be selected as the Stalking Horse Bid, or that the SISP continue into phase 2 ("**Phase 2**"). If the Board recommends, with the consent of Salus, that a qualifying LOI be selected as the Stalking Horse, Comark shall apply to the Court to approve the Stalking Horse Bid and the terms of the SISP will be automatically terminated.

134. If the Board recommends that the SISP continue into Phase 2 and the Proposed Monitor, after consultation with the Financial Advisor and Comark, determines that there is a reasonable prospect of obtaining a Qualified Bid, the SISP will continue for a further 40 days. If it is determined that no qualifying LOI has been received and there is no reasonable prospect of one resulting in a Qualified Bid, Salus may, in its sole and absolute discretion, designate one or more LOIs as a qualifying LOI. If no qualifying LOIs are received or designated by Salus, any of Comark, the Proposed Monitor or Salus may apply to the Court for further advice and directions including with respect to termination of the SISP.

135. If the SISP continues to Phase 2, Qualified Bidders, along with their legal, financial advisors and/or lenders, would be granted further access to due diligence materials and

information relating to the business and financial affairs of Comark, on-site presentations by Comark's senior management, facility tours and access to further information in the Data Room. Selected due diligence materials may be withheld from certain Phase 2 Qualified Bidders if Comark and the Financial Advisor, in consultation and with the approval of the Proposed Monitor, determine such information to represent proprietary or sensitive competitive information.

136. Qualified Bidders that wish to pursue a sale proposal or an investment proposal must submit a final, binding proposals (the **"Final Bid"**) to the Financial Advisor and the Monitor by the Phase 2 Bid Deadline (as defined in the SISP). In order to be considered a Qualified Bid, a Final Bid must meet the criteria set out in the SISP. Among other things, a Final Bid must include an irrevocable offer letter, written evidence of a firm, irrevocable commitment for financing, and a duly executed purchase agreement or investment agreement. A Qualified Bid cannot be conditional on due diligence or financing.

137. In evaluating Qualified Bids, the Proposed Monitor, in consultation with the Financial Advisor and Comark, will consider, *inter alia:* (i) the purchase price and net value or the amount of equity and debt investment; (ii) the firm, irrevocable commitment for financing the transaction; (iii) the counterparties to the transaction; (iv) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (iv) planned treatment of stakeholders; and (v) the likelihood and timing of consummating the transaction.

138. If one or more Qualified Bids is received, the Proposed Monitor, exercising its reasonable business judgment and in consultation with the Financial Advisor and Comark may recommend to the Board that the most favourable Qualified Bid(s) be selected (the "**Successful Bid**"). The Board shall have no obligation to enter into a Successful Bid, and reserves the right, after consultation with the Proposed Monitor and the Financial Advisor, to reject any or all Qualified Bids.

139. If it is determined that no Qualified Bid has been received at the end of Phase 2, Salus may, in its sole and absolute discretion, designate one or more Final Bids as Qualified Bids. If no Qualified Bid is received or designated by Salus, any of Comark, the Proposed

Monitor or Salus may apply to the Court for further advice and directions including with respect to termination of the SISP.

140. Comark will apply to the Court for an order approving the Successful Bid(s) and authorizing Comark to enter into any and all necessary agreements with respect to such bid. All Qualified Bids other than the Successful Bid will be deemed rejected on the date of approval of the Successful Bid.

141. The Financial Advisor is of the view that the timeframes set out in the SISP are reasonable in the circumstances. I believe it is important to start the SISP promptly to maximize opportunities to identify appropriate interested parties while preserving the enterprise value of the business.

G. Monitor

142. On or around February 26, 2015, Alvarez & Marsal was retained by Salus to provide advice on Comark's financial situation and potential restructuring alternatives. On March 19, 2015, Alvarez & Marsal was retained by Comark to advise on its restructuring options with a view to acting as Monitor in potential CCAA proceedings. In the course of fulfilling its mandate for both Salus and Comark, Alvarez & Marsal has become intimately familiar with Comark's business and its current financial needs. Although Alvarez & Marsal has assisted Salus and Comark as an insolvency consultant by providing advice with respect to Comark's restructuring alternatives, Alvarez & Marsal has always been aware of the potential of a CCAA filing and I am advised by Alvarez & Marsal that it has maintained its independence so that it can properly execute its duties as Monitor. Alvarez & Marsal has also been involved in discussions with respect to the DIP Facility and is familiar with the events leading to the commencement of this CCAA proceeding. Subject to Court approval, Alvarez & Marsal has consented to act as the Monitor of Comark in this CCAA proceeding and in my view it is a fit and proper organization to do so.

143. Comark, with the assistance of its financial advisor, has prepared 13-week cash flow projections (the "**Cash Flow Forecast**") as required by the CCAA. Alvarez & Marsal have reviewed the Cash Flow Forecast. A copy of the Cash Flow Forecast is attached as Exhibit "P".

144. Comark proposes that the Proposed Monitor provide oversight and assistance and will report to the Court in respect of Comark's actual results relative to Cash Flow Forecast during this proceeding. Existing accounting procedures will provide the Proposed Monitor with the ability to track the flow of funds.

145. I am confident that granting the draft Initial Order sought by Comark, including the DIP financing arrangement, is in the best interests of Comark and all interested parties. Comark is currently in a very challenging financial position. Without the DIP Facility, Comark faces a cessation of going concern operations, the liquidation of its assets and the loss of its employees' jobs. Comark requires an immediate and realistic dialogue to ensue with and among its stakeholders in the hopes of maximizing the ongoing value of the business and continuing employment for its employees. The granting of the requested stay of proceedings will maintain the "status quo" and permit an orderly restructuring and analysis of Comark's affairs, with minimal short-term disruptions to Comark's business.

SWORN BEFORE ME at the Town of Oakville, in the Province of Ontario, this 25th day of March, 2015.	}	
Commissioner for Taking Affidavits		Gerald Bachynski

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF GERALD BACHYNSKI SWORN BEFORE ME THIS 25TH DAY OF MARCH 25, 2015

A Commissioner for taking Affidavits