

**SUPERIOR COURT OF PRINCE EDWARD ISLAND  
(GENERAL SECTION)**

**BETWEEN:**

**ROYAL BANK OF CANADA**

**APPLICANT**

**- and -**

**DME LIMITED PARTNERSHIP, DME GENERAL PARTNER INC., ATLANTIC  
SYSTEMS MANUFACTURING (2016) LTD., DME CANADA ACQUISITIONS INC. and  
DME US HOLDCO INC.**

**RESPONDENTS**

**FIRST REPORT OF THE RECEIVER  
JANUARY 18, 2019**

## **TABLE OF CONTENTS**

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>2</b>
<b>2.0</b>	<b>TERMS OF REFERENCE AND DISCLAIMER .....</b>	<b>3</b>
<b>3.0</b>	<b>BACKGROUND.....</b>	<b>4</b>
<b>4.0</b>	<b>FUNDING OF THE PROCEEDINGS &amp; RECEIPTS AND DISBURSEMENTS.....</b>	<b>7</b>
<b>5.0</b>	<b>SALE PROCESS .....</b>	<b>9</b>
<b>6.0</b>	<b>RECEIVER'S ACTIVITIES .....</b>	<b>15</b>
<b>7.0</b>	<b>CONCLUSIONS AND RECOMMENDATIONS .....</b>	<b>17</b>

## **INDEX TO APPENDICES**

<b>Appendix A</b>	<b>Appointment Order dated November 26, 2018</b>
<b>Confidential Appendix B</b>	<b>Summary of the Abbotsford and Other Liquidation Bids</b>
<b>Appendix C</b>	<b>Redacted Infinity Auction and Liquidation Services Agreement</b>
<b>Confidential Appendix D</b>	<b>Unredacted Infinity Auction and Liquidation Services Agreement</b>

## 1.0 INTRODUCTION

- 1.1 This report (the “**First Report**”) is filed by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as Court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties of each of DME Limited Partnership, DME General Partner Inc., Atlantic Systems Manufacturing (2016) Ltd., DME Canada Acquisitions Inc. and DME US Holdco Inc. (collectively, the “**DME Group**”).
- 1.2 Pursuant to an order of the Supreme Court of Prince Edward Island (General Section) (the “**Court**”) made on November 26, 2018 (the “**Appointment Order**”), A&M was appointed Receiver of the DME Group. A copy of the Appointment Order is attached hereto as **Appendix “A”**.
- 1.3 The purpose of this First Report is to:
- (a) provide background information with respect to the DME Group and an overview of the receivership proceedings to date (the “**Proceedings**”);
  - (b) summarize the Sale Process (as defined below) pursuant to which the DME Group’s businesses and assets were marketed for sale;
  - (c) describe the Receiver’s activities since the date of the Appointment Order; and
  - (d) support the Receiver’s motion for an order (the “**Abbotsford Sales Order**”), among other things:
    - i. approving this First Report and the activities of the Receiver described herein;

- ii. authorizing and directing the Receiver to continue the Sale Process for (a) the DME Charlottetown (as defined herein) business and assets; and (b) the ASM business and assets, on the basis described herein;
- iii. approving the Abbotsford Transaction (as defined and described below); and
- iv. sealing Confidential Appendix B and Confidential Appendix D (each defined below) until further order of the Court.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

- 2.1 In preparing this First Report, the Receiver has relied upon unaudited financial information, books and records and other documents provided by the former management of the DME Group, and discussions with former management (collectively, the **“Information”**).
- 2.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (**“CASs”**) pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

- 2.3 This First Report has been prepared for the use of this Court and the DME Group's stakeholders as general information relating to the DME Group and to assist the Court in making a determination of whether to approve the relief sought herein. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report different than the provisions of this paragraph.
- 2.4 The information contained in this First Report is not intended to be relied upon by any investor or purchaser in any transaction with the Receiver.
- 2.5 Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.
- 2.6 Further information about the DME Group, its background and copies of materials filed in the Proceedings are available on the Receiver's website at: <https://www.alvarezandmarsal.com/DMEGroup> (the "Case Website").

### **3.0 BACKGROUND**

- 3.1 Background with respect to the DME Group, as well as a description of the circumstances leading to the appointment of the Receiver, are contained in the application record filed by Royal Bank of Canada ("**RBC**") dated November 26, 2018, including the affidavit of Gary Ivany sworn November 23, 2018 (collectively the "**RBC Application Record**"). The RBC Application Record and other Court-filed documents and notices in these proceedings have been posted to the Case Website.

- 3.2 As described in the RBC Application Record, the DME Group is a designer, manufacturer and installer of industrial process equipment primarily used in the craft beer industry. Over 90% of the DME Group's revenue was derived from the sale of brewing equipment systems to craft brewers, regional brewers and brewpubs. The remaining revenue was generated from the sale of industrial process equipment to the seafood, marine, cannabis and other industries.
- 3.3 The DME Group has considerable expertise designing and fabricating standard and customized systems and has strong brand recognition for its brewing systems across North America and abroad and has built and installed more than 1,600 brewery systems for customers in over 70 countries.
- 3.4 The DME Group operates through three divisions, each from independent manufacturing facilities in Canada:
- (a) the Charlottetown, PEI operations ("**DME Charlottetown**") are housed in owned premises and include the DME Group's head office and senior management;
  - (b) the Abbotsford, BC operations (the "**Abbotsford Plant**") are housed in leased premises and consist primarily of a manufacturing and fabrication operation; and
  - (c) Atlantic Systems Manufacturing ("**ASM**") is a small subsidiary within the DME Group that manufactured equipment for the seafood processing industry and operated independently in leased premises in Charlottetown, PEI.
- 3.5 As at November 26, 2018, the approximate employee count of each division was as follows:

DME Charlottetown	150
Abbotsford Plant	100
ASM	13
<b>Total</b>	<b>263</b>

- 3.6 Following the Appointment Order, the Receiver retained: (a) approximately 50 staff at DME Charlottetown and has continued certain of the operations of the business, including the manufacturing, fabrication and delivery of brewing systems and related equipment to customers where the Receiver was able to reach satisfactory terms of sale; and (b) three staff at the Abbotsford Plant to assist the Receiver with its activities. No staff were retained at ASM and the businesses at the Abbotsford Plant and ASM are currently not operating.

#### Senior Secured Lender

- 3.7 The RBC Application Record provides a comprehensive overview of the DME Group's loan arrangements with RBC and related guarantees and security.
- 3.8 As at the date of the Appointment Order, the DME Group's indebtedness under a credit agreement dated November 17, 2015, as amended or otherwise modified, with RBC totaled approximately \$17.1 million, plus interest and fees which continue to accrue.

#### Other Creditors

- 3.9 According to the DME Group's books and records, as at the date of the Appointment Order, the DME Group's unsecured obligations totaled approximately \$8.9 million.



- 3.10 The RBC Application Record provides a summary of other registered secured creditors, which consist of various equipment and vehicle lease registrations.

#### **4.0 FUNDING OF THE PROCEEDINGS & RECEIPTS AND DISBURSEMENTS**

##### Receiver's Borrowings

- 4.1 To the extent required, the Appointment Order authorizes the Receiver to borrow up to \$2.0 million pursuant to Receiver's Certificates. Advances under the Receiver's Certificates are secured by a charge on the assets of the DME Group subject only to the Receiver's Charge (as defined in the Appointment Order).
- 4.2 As at the date of this First Report, the Receiver has borrowed \$930,000 from RBC under Receiver's Certificates.

##### Interim Receipts and Disbursements

- 4.3 A summary of the Receiver's interim receipts and disbursements from November 26, 2018 to January 11, 2019 is provided below (all amounts are inclusive of HST where applicable):

<b>Receipts &amp; Disbursements</b>	<b>\$000's</b>
<b>Receipts</b>	<b>\$2,085</b>
<b>Disbursements</b>	
Post-filing payroll	(268)
Rent, utilities & insurance	(251)
Raw materials & supplies	(57)
Other costs	(19)
<b>Total Disbursements</b>	<b>(595)</b>
<b>Net subtotal</b>	<b>\$1,490</b>
Pre-filing payroll & vacation pay	(1,070)
Professional fees	(370)
Appraisal fees	(49)
<b>Net cash flow</b>	<b>\$1</b>
<b>Beginning Cash balance</b>	<b>-</b>
Net cash flow	1
Receiver's Certificates	930
<b>Closing cash balance</b>	<b>\$931</b>

- 4.4 The closing cash balance in the Receiver's trust accounts as at January 11, 2019 was approximately \$931,000. Those funds, together with operating cash flow and net realizations anticipated to be generated from the Abbotsford Transaction (as defined below) are forecast to provide sufficient liquidity through the completion of the Sale Process and the remainder of the Proceedings.

## 5.0 SALE PROCESS

5.1 A copy of the Sale Process schedule is attached as Schedule “B” to the Receivership Order (attached to this First Report as **Appendix “A”**). Capitalized terms not otherwise defined in this Section are as defined in the Sale Process.

### Summary

5.2 A summary of the Sale Process is as follows:

- the purpose of the Sale Process is to identify one or more purchasers of the Businesses and Property of the DME Group;
- Interested Parties who have executed a confidentiality agreement will have access to a virtual data room and the Receiver will coordinate requests for additional information and due-diligence;
- a form of Asset Purchase Agreement (“**APA**”) will be posted in the virtual data room;
- bids will be required to be submitted to the Receiver no later than 5:00 p.m. (Eastern Time) on January 7, 2019, or such other later date or time as may be agreed by the Receiver upon consultation with RBC (the “**Bid Deadline**”);
- the Receiver, in consultation with RBC, shall evaluate any and all bids on various grounds, including, but not limited to, purchase price, treatment of employees, certainty of closing and other factors;

- the Receiver, in consultation with RBC, shall have the right to modify and/or adopt such other rules for the Sale Process as it considers appropriate. Material modifications or a termination of the Sale Process would require Court approval; and
- the Receiver will make a motion to the Court to obtain approval of the successful bid(s) and one or more vesting orders with respect to the asset purchase agreement(s) entered into with the ultimate successful bidder(s).

#### Overview and Implementation of Sale Process

5.3 In accordance with the Sale Process, the following activities were undertaken by the Receiver:

- a list of prospective parties to contact and invite to participate in the Sale Process was prepared by the Receiver based on its research of industry participants, financial sponsors the Receiver believed might have an interest and discussions with former management of the DME Group;
- the Receiver contacted or received inbound inquiries with respect to the Sale Process from 111 parties and provided a “teaser”/investment overview letter and a form of Confidentiality Agreement (“CA”) to the extent that such potential bidder indicated they were interested in receiving same;
- a Confidential Information Memorandum (“CIM”) was prepared for prospective bidders who executed a CA. The CIM included detailed information about the

DME Group and historical financial results. 70 parties executed a CA and received the CIM;

- a virtual data room was established and made accessible to prospective bidders who executed a CA. The virtual data room contained information regarding the DME Group’s financial, operational, human resources, legal, customer and supplier information to assist parties in analyzing the DME Group and their interest in submitting a bid; and
- the Receiver coordinated requests for additional due-diligence, including, among other things, addressing financial and operational information requests and organizing management meetings, site tours and plant visits.

5.4 On or before the Bid Deadline, the Receiver received 16 bids, comprised of the following:

- (a) three (3) bids for the DME Charlottetown business (the “**DME Charlottetown Bids**”);
- (b) four (4) bids for the assets of ASM (the “**ASM Bids**”); and
- (c) nine (9) bids that included liquidation or similar proposals for the assets of either:
  - (i) the Abbotsford Plant on a stand-alone basis; or (ii) all of the assets of the DME Group (the “**Abbotsford and Other Liquidation Bids**”).

#### Overview of the DME Charlottetown Bids

5.5 The DME Charlottetown Bids were submitted in the form of non-binding letters of intent.

- 5.6 During the period of January 8<sup>th</sup> to 10<sup>th</sup>, 2019, the Receiver organized conference calls with certain bidders to review their bids, highlight areas that required clarification and provide bidders with an opportunity to enhance their bids.
- 5.7 Also, during the period of January 8<sup>th</sup> to 10<sup>th</sup>, 2019, in accordance with the Sale Process, and in consultation with RBC, the Receiver continued to have discussions with potential bidders to assess if further bids might be submitted. On January 9, 2019, the Receiver received one additional bid for the DME Charlottetown business.
- 5.8 After analyzing the DME Charlottetown Bids and consulting with RBC, the Receiver determined that one of the bids was superior to the other offers submitted for reasons including, but not limited to, purchase price, closing risk, available financing and employment opportunities for retained and former employees.
- 5.9 During January 10<sup>th</sup> and 11<sup>th</sup>, 2019, the Receiver and this bidder, together with their respective legal counsel, worked to negotiate the bid and enter an exclusivity period to allow the Receiver and the bidder to negotiate an APA and to allow the bidder to complete its final due diligence.
- 5.10 The Receiver will update the Court on the progress of the APA negotiations as information becomes available or at the time the Receiver seeks Court approval for the sale transaction contemplated thereunder.

#### Overview of the ASM Bids

- 5.11 The ASM Bids were submitted in the form of “marked-up” APAs.

- 5.12 After analyzing the ASM Bids and consulting with RBC, the Receiver determined that a continuation of the Sale Process to allow the Receiver to complete one of the ASM Bids would be beneficial to the Sale Process.
- 5.13 The Receiver is currently in discussions with a party who submitted a bid on the assets of ASM to negotiate an APA.
- 5.14 The Receiver will update the Court on the progress of the ongoing negotiations as information becomes available or at the time the Receiver seeks Court approval for a sale transaction.

#### Overview of the Abbotsford and Other Liquidation Bids

- 5.15 The Abbotsford and Other Liquidation Bids were submitted in various forms depending on the assets being bid upon and the proposed transaction structure.
- 5.16 During the period of January 8<sup>th</sup> to 10<sup>th</sup>, 2019, the Receiver organized conference calls with certain bidders to review the bids and highlight areas that required clarification and additional information.
- 5.17 A summary of the Abbotsford and Other Liquidation Bids is provided in **Confidential Appendix “B”** attached hereto. The Receiver’s rationale for its request that this information be sealed at this time is provided in Section 7.2 of this First Report.
- 5.18 After analyzing the offers and consulting with RBC, the Receiver determined that the joint offer submitted by Infinity Asset Solutions Inc. and Joiner Sales Corp. (“**Infinity**”) in the form of an Auction and Liquidation Services Agreement (the “**Infinity**”

**Agreement**”) was superior to the other offers submitted based on the consideration of various factors, including:

- (a) the efficiency and expertise of the bidders;
- (b) the inclusion or exclusion of certain asset parcels of the Abbotsford Plant;
- (c) the total proceeds of the bids, including consideration of net minimum guarantees and mechanisms for the sharing of proceeds above the net minimum guarantees; and
- (d) the proposed timing to complete the liquidation process.

5.19 The Infinity Agreement provides for the sale of the Abbotsford Plant assets to Infinity, in exchange for a net minimum guarantee plus the sharing of additional proceeds if such proceeds exceed certain minimums. The liquidation sale is anticipated to be completed by March 31, 2019 (the “**Abbotsford Transaction**”).

5.20 Between January 11<sup>th</sup> and 17<sup>th</sup>, 2019, the Receiver and its legal counsel worked with Infinity and its legal counsel to finalize the Infinity Agreement and on January 17, 2019, the Infinity Agreement was executed by the Receiver and Infinity, subject to Court approval.

5.21 A redacted version of the Infinity Agreement is attached hereto to this First Report as **Appendix “C”**, and an unredacted version will be filed as **Confidential Appendix “D”**.



## **6.0 RECEIVER'S ACTIVITIES**

6.1 In addition to the activities described above, the Receiver's activities since the commencement of these Proceedings have included the following:

- reviewing and commenting on Court materials filed in the context of the Proceedings;
- carrying out the Receiver's duties and responsibilities in accordance with the Appointment Order, including securing the real property and overseeing certain operations at DME Charlottetown;
- opening receivership bank accounts, transferring funds from the DME Group's bank accounts and controlling receipts and disbursements;
- addressing employee issues, including convening employee meetings at the DME Group's premises immediately following the granting of the Appointment Order and discussing with certain employees the terms of continued employment with the Receiver;
- preparation of Wage Earner Protection Program claims packages and correspondence with former employees regarding same;
- communicating with the DME Group's third-party payroll service provider to process payroll for former and retained employees;
- attending at the DME Group's premises and assisting with continuing certain operations at DME Charlottetown;

- collecting outstanding accounts receivable and other amounts owed to the DME Group;
- reviewing the DME Group's assets and operations in the United States to determine what actions, if any, might be necessary;
- assisting in communications with key stakeholders, including the DME Group's former employees, customers, landlords and suppliers;
- communicating with legal counsel to the Receiver on a number of receivership matters;
- at the request of a purchaser, attending at the Supreme Court of British Columbia in connection with an application for the approval of a sale and vesting order for certain equipment sold to the purchaser;
- establishing and maintaining the Case Website;
- liaising with the DME Group's insurance broker to arrange for continued coverage for the Property;
- arranging for the DME Group's accounting records to be updated through the date of the Appointment Order;
- preparing this First Report and reviewing and commenting on materials in respect of this motion; and
- addressing all other matters pertaining to the Proceedings.

## **7.0 CONCLUSIONS AND RECOMMENDATIONS**

7.1 The Receiver is of the view that the Abbotsford Transaction should be approved by the Court for the following reasons:

- (a) the Sale Process was carried out in accordance with the terms of the Court-approved Sale Process, and was commercially reasonable;
- (b) the duration of the Sale Process was sufficient to allow parties to perform diligence and submit offers on the assets related to the Abbotsford Plant;
- (c) the sale of the Abbotsford Plant assets will not impact the ongoing Sale Process as it relates to DME Charlottetown or ASM; and
- (d) further time spent marketing the business and assets related to the Abbotsford Plant would not result in a superior transaction.

7.2 The Receiver recommends that: (a) the summary of the Abbotsford and Other Liquidation Bids; and (b) the unredacted Infinity Agreement be filed with the Court on a confidential basis and remain sealed until further order of the Court, as disclosure of this commercially sensitive information and/or the identities of the other bidders and the terms of their bids could negatively affect any future Sale Process transactions if the Abbotsford Transaction does not close for any reason. The Receiver is not aware of any party that would be prejudiced if this information is sealed on the terms described above.

- 7.3 Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief sought in the Receiver's Notice of Motion and detailed in Section 1.3(d) of this First Report.

All of which is respectfully submitted this 18<sup>th</sup> day of January 2019.

**Alvarez & Marsal Canada Inc., in its capacity as Receiver of  
DME Limited Partnership, DME General Partner Inc., Atlantic Systems  
Manufacturing (2016) Ltd., DME Canada Acquisitions Inc. and DME US Holdco  
Inc., and not in its personal capacity**



Per: Alan J. Hutchens, Senior Vice-President