

**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 PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
COMARK INC. (THE "APPLICANT")**

**FIRST REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
MARCH 26, 2015**

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## 1.0 INTRODUCTION

1.1 On March 26, 2015, Comark Inc. (the “**Applicant**”), applied for and was granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Monitor**”) was appointed Monitor of the Applicant in the CCAA proceedings. The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.

1.2 In connection with the Applicants’ application for protection under the CCAA, A&M provided to this Court a pre-filing report (the “**Pre-Filing Report**”) dated March 25, 2015 in its capacity as proposed monitor.

1.3 The purpose of this first report (the “**First Report**”) is to provide supplemental information requested by the Court in connection with the Applicant’s cash management system, the terms of the Salus Credit Agreement and the proposed DIP Facility.

## 2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing the First Report, the Monitor has been provided with and has relied upon, unaudited financial information; books, records and financial information prepared by certain senior management of the Applicant (“**Senior Management**”); and discussions with Senior Management (collectively, the “**Information**”). Except as otherwise described in this First Report, in respect of the Applicant’s cash flow forecast:

- a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor 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 Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

b) some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

2.2 Future oriented financial information referred to in this First Report was prepared based on Senior Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.3 This First Report should be read in conjunction with the Affidavit of Gerald Bachynski, Chief Executive Officer of the Applicant, sworn March 26, 2015 (the “**Second Bachynski Affidavit**”) and the Pre-Filing Report.

2.4 Capitalized terms not otherwise defined in this First Report are as defined in the Pre-Filing Report and the Second Bachynski Affidavit, as applicable.

2.5 Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

### 3.0 **THE PRE-EXISTING REVOLVING CREDIT FACILITY**

3.1 As is described in further detail in the Pre-Filing Report, the Applicant is financed by Salus pursuant to a Credit Agreement dated October 31, 2014 (the “**Salus Credit**”

**Agreement**”). The Salus Credit Agreement includes both a term loan facility (the “**Term Loan Facility**”) and an asset based revolving credit facility (the “**Revolving Credit Facility**”). By their nature, small to mid-market retail operators, of which the Applicant is one, are typically financed by way of asset based lending (“**ABL**”) facilities, given the requirement to finance inventory purchases that would exceed the financing available under conventional cash flow lending.

3.2 The Salus Credit Agreement was the product of an extensive marketing process to obtain replacement financing conducted by Houlihan Lokey, Inc. (“**Houlihan**”) throughout the summer and fall of 2014. As described in the Second Bachynski Affidavit, discussions were held by the Applicant with nine prospective lenders regarding a refinancing of its existing credit facility. The outcome of that process was that Salus was the only financier willing to provide the Applicant with the necessary funding on commercially reasonable terms.

3.3 At the time the Salus Credit Agreement was entered into, the Applicant was operating in a challenging retail environment. The Applicant’s business had been struggling financially for over a year, principally as a result of deteriorating operating performance at its Ricki’s division and the impact of the declining Canadian dollar.

3.4 The terms of the Salus Credit Agreement and the Blocked Depository Account Agreement (the “**Blocked Account Agreement**”), which were entered into at the same time, provide for a blocked account mechanism whereby, upon the failure to comply with certain financial covenants or an event of default under the Salus Credit Agreement, all of the cash, credit and debit receipts of the Applicant would be directed into an account

under the control of Salus rather than the Applicant (the “**Blocked Account Mechanism**”).

- 3.5 It is the Monitor’s view that the terms and structure of the Revolving Credit Facility, in particular the Blocked Account Mechanism, have become standard in ABL facilities. Both the terms and structure are consistent with numerous other ABL facilities (in both healthy and distressed environments) made in Canada, by both Canadian and U.S. lenders.
- 3.6 Pursuant to the terms of the Salus Credit Agreement and the Blocked Account Agreement, following an Event of Default by the Applicant, the Blocked Account Mechanism was activated on March 9, 2015.

#### **4.0 THE PROPOSED DIP FACILITY**

- 4.1 As is more fully described at paragraphs 9.1 to 9.18 of the Pre-Filing Report, the Applicants are seeking approval of an ABL DIP Facility agreed to by Salus, which, among other things, continues the Blocked Account Mechanism.
- 4.2 The Monitor has reviewed the terms, pricing and structure of the DIP Facility and is satisfied, based on its knowledge and review of similar transactions and distressed financing arrangements, that the terms, pricing and structure of the DIP Facility (including, specifically, the Blocked Account Mechanism) and the corresponding requirement for a DIP Lender’s Charge, are commercially reasonable and representative of the market. The Monitor is further satisfied that there is no commercially reasonable alternative financing available to the Applicant in these circumstances.

4.3 As described in the Applicant's cash flow forecast for the 13-week period ending June 27, 2015, attached as Appendix A to the Pre-Filing Report (the "**Cash Flow Forecast**"), the forecast borrowing requirements under the DIP Facility do not exceed \$28 million. Further, for the two week period ending April 11, 2015 the forecast borrowing requirements under the DIP Facility do not exceed \$15 million.


**5.0 MONITOR'S RECOMMENDATIONS**

5.1 For the reasons set out in this First Report and in the Pre-Filing Report, the Monitor recommends: (i) that this Court approve the DIP Facility and the DIP Lender's Charge of up to a maximum of \$28 million in accordance with the Applicant's Cash Flow Forecast, provided that the DIP Lender's Charge not exceed \$15 million prior to a comeback hearing on April 7, 2015; and (ii) that this Court grant the relief described in the Applicant's revised draft order to be presented to the Court later today.

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All of which is respectfully submitted to this Court this 26<sup>th</sup> day of March, 2015.

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor of Comark Inc.**

  
Per: John Walker  
Senior Vice President

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**FIRST REPORT OF THE MONITOR**

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