Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF *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

MOTION RECORD

(Stay Extension and Approval of Amended and Restated Order)

April 15, 2015

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TO: **THE SERVICE LIST**

CCAA Proceedings of Comark Inc., Court File No. CV15-10920-00CL

Service List – Stay Extension Motion
(as at April 15, 2015)

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Tab 1

Court File No. CV15-10920-00CL

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

NOTICE OF MOTION
(Stay Extension and Approval of Amended and Restated Initial Order Returnable April 21, 2015)

The Applicant will make a motion before the Honourable Senior Regional Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on April 21, 2015 at 8:30AM, or as soon after that time as the motion can be heard, at 330 University Ave, Toronto, Ontario.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "A":

   (a) abridging the time for and validating service of this Notice of Motion and supporting materials such that the motion is properly returnable on April 21, 2015 and dispensing with further service thereof; and

   (b) extending the Stay Period, as defined in paragraph 14 of the Initial Order of Senior Regional Justice Morawetz dated March 26, 2015 (the "**Initial Order**"), until and including June 12, 2015;

2. An Order substantially in the form attached hereto as Schedule "B" (the "**Draft Amended and Restated Initial Order**") amending and restating the Initial Order to include certain amendments at the request of the Applicant's landlords, and to allow the Applicant to continue to pay rent in arrears for the Percentage-Rent Leases (as defined below) in accordance with the terms of those leases. A backline of the Draft Amended and Restated Initial Order to the Initial Order is attached hereto as Schedule "C"; and

3. Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

4. On March 26, 2015, this Honourable Court granted protection to the Applicant under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 as amended (the "**CCAA**") in the form of the Initial Order;

5. Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the monitor in the CCAA proceedings (the "**Monitor**");

6. The Court approved the engagement of Houlihan Lokey Capital, Inc. as financial advisor (the "**Financial Advisor**") to Comark;

7. The Applicant was authorized to obtain and borrow up to $28 million under a revolving credit facility (the "**DIP Facility**") from its secured lender, Salus Capital Partners, LLC. ("**Salus**");

8. Since the granting of the Initial Order, Comark has been operating its business as a going concern in close consultation with the Monitor;

Communications with Stakeholders

9. As part of the continued operations of its business, the Applicant has developed and implemented a comprehensive communications plan with the assistance of its communications consultant in order to inform its stakeholders about the CCAA proceedings and respond to inquiries;

10. The Applicant, in close consultation with the Monitor, has been working with and engaged in communications and discussions with members of its various stakeholder groups;

11. The Applicant has been in contact with a large number of suppliers to ensure the continued supply of goods and services to Comark;

12. On March 31, 2015, the Applicant, with the consent of the Monitor, delivered disclaimer notices to the landlords of certain leases in respect of Comark stores that were identified as having poor performance or negative cash flow. Subsequently, a number of landlords contacted the Applicant regarding possible amendments to these leases and thus the Applicant has engaged in negotiations with certain landlords regarding lease terms;

The Sale and Investor Solicitation Process

13. In the Initial Order, the Court directed Comark to immediately commence a sale and investor solicitation process (the "**SISP**");

14. The Applicant, together with the Financial Advisor and the Monitor, has been working diligently to conduct the SISP pursuant to its terms;

Amended and Restated Initial Order

15. Following the granting of the Initial Order, counsel to the Applicant was approached by counsel to a group of landlords to discuss certain concerns with respect to the Initial Order and the CCAA proceedings. As a result of these discussions, the Applicant, in consultation with the Monitor, has agreed to certain amendments to the Initial Order for the benefit of landlords, subject to the approval of this Court;

16. In addition, the Applicant has become aware that certain leases provide for the payment of rent based on a percentage of the previous month's sales (the "**Percentage-Rent Leases**") and thus must be paid in arrears. The amendment to the Initial Order sought by the Applicant will allow for rent for these leases to be paid in arrears in the ordinary course;

17. The Monitor and Salus consent to the above amendments;

Stay Extension

18. The Initial Order granted a stay of proceedings until and including April 24, 2015, or such later date as this Court may order;

19. Since the granting of the Initial Order, the Applicant, in close consultation and with the assistance of the Monitor, has acted and continues to act in good faith and with due diligence;

20. The Applicant has made progress in restructuring its business and continuing going concern operations; however, ongoing issues continue to arise on a daily basis which require the attention of Comark's management team;

21. An extension of the Stay Period until June 12, 2015 is appropriate in the circumstances as it will allow the Applicant, in close consultation with the Monitor, to continue to conduct the SISP in accordance with its terms and to engage in discussions and consultations with its stakeholders;

22. It is necessary and in the best interests of the Applicant and its stakeholders that the Stay Period be extended and that the Applicant be afforded the "breathing space" it needs to engage in an orderly restructuring of its business and continue going concern operations;

23. The Applicant has sufficient liquidity to be able to continue operating in the ordinary course during the requested Stay Period;

24. The extension of the Stay Period is supported by the Monitor;

25. The provisions of the CCAA and, in particular, Section 11 thereof;

26. The inherent and inequitable jurisdiction of this Honourable Court;

27. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act,* R.S.O. 1990, c. C. 43, as amended; and

28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

29. The Affidavit of Neville Lewis sworn April 15, 2015 and the exhibits attached hereto;

30. The Affidavit of Gerald Bachynski sworn March 25, 2015;

31. The Supplementary Affidavit of Gerald Bachynski sworn March 26, 2015;

32. The Second Report of the Monitor, to be filed;

33. The Initial Order dated March 26, 2015; and

34. Such further and other material as counsel may advise and this Honourable Court may permit.

April 15, 2015

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Lawyers for the Applicant

TO: THE SERVICE LIST

IN THE MATTER OF *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

Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION
(Stay Extension and Approval of Amended and Restated Initial Order Returnable April 21, 2015)

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Matter No: 1163824

Tab A

Schedule "A"

Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL SENIOR JUSTICE MORAWETZ	)))	TUESDAY, THE 21ST DAY OF APRIL, 2015

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

STAY EXTENSION ORDER

THIS MOTION, made by Comark Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, *inter alia*, extending the Stay Period (as defined in paragraph 14 of the Initial Order dated March 26, 2015) until and including June 12, 2015 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Neville Lewis sworn April 15, 2015 and the Second Report of Alvarez & Marsal Canada Inc., in its capacity as monitor (the "**Monitor**") dated April ●, 2015 and on hearing the submissions of counsel for the Applicant, Salus Capital Partners, LLC, the Monitor and such other counsel as were present and on being advised that the Service List was served with the Motion Record herein;

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF THE STAY PERIOD

2. THIS COURT ORDERS that the Stay Period (as defined in paragraph 14 of the Initial Order) is hereby extended until and including June 12, 2015.

_____

Tab B

Schedule "B"

Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL SENIOR JUSTICE MORAWETZ	)))	THURSDAY, THE 26TH DAY OF MARCH, 2015

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

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Comark Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Gerald Bachynski sworn March 25, 2015 and the Exhibits thereto (the "**Initial Affidavit**"), the supplementary affidavit of Gerald Bachynski sworn March 26, 2015 (the "**Supplementary Affidavit**" together with the Initial Affidavit, the "**Bachynski Affidavit**), the Affidavit of Neville Lewis sworn April 15 2015 (the "**Stay Extension Affidavit**"), the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant dated March 25, 2015 and the Second Report of A&M dated April ●, 2015 and on hearing the submissions of counsel for the Applicant, Salus Capital Partners, LLC ("**Salus**"), and A&M and on reading the consent of A&M to act as the monitor of the Applicant (the "**Monitor**"),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, appraisers, valuators, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the Current Cash Management System (as defined and described in the Bachynski Affidavit) or, with the consent of the Monitor and Salus, replace it in part or in whole with another substantially similar central cash management system and that any present or future bank or other Person (as hereinafter defined) providing any part of the Current Cash Management System, including The

Toronto Dominion Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Current Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Current Cash Management System, shall be entitled to provide the Current Cash Management System without any liability in respect thereof to any Person other than the Applicant and Salus, pursuant to the terms of the documentation applicable to the Current Cash Management System, and shall be, in its capacity as provider of the Current Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Current Cash Management System.

6. THIS COURT ORDERS that, subject to availability under the DIP Facility (as defined herein) and in accordance with the Budget (as defined in the DIP Agreement), the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and reasonable expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) amounts necessary in order to continue to honour or comply with existing return policies, customer deposits, pre-payments, gift cards and similar programs offered by the Applicant;

(c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;

(d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicant prior to the date of this order or to obtain the release of goods contracted for prior to the date of this Order by:

(i) logistics or supply chain providers, including customs brokers, freight forwarders and transportation providers;

(ii) amounts payable in respect of customs and duties for goods;

(iii) providers of credit, debit and gift card processing related services; and

(iv) other third party suppliers, including payments in respect of outstanding documentary credits or deposits, if, in the opinion of the Applicant, the supplier is critical to the Business and ongoing operations of the Applicant;

(e) any other costs or expenses that are deemed necessary for the preservation of the Property and/or the Business by the Applicant with the consent of the Monitor and Salus.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, and subject to availability under the DIP Facility and in accordance with the Budget, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and directors and officers tail insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant; and

(d) to the applicable charitable organization, any donations collected by the Applicant from its customers whether prior to or after the date of this Order in respect of the various charitable initiatives of the Applicant as described in the Bachynski Affidavit.

9. THIS COURT ORDERS that, except as specifically permitted herein and subject to the Budget and the terms of the DIP Facility, the Applicant is hereby directed, until further Order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date, provided however that the Applicant is hereby authorized and directed to make all such payments under the DIP Agreement, including (i): amounts under the Pre-Petition Revolving Loans and interest thereon; and (ii) interest on the Term Loan (each as defined in the DIP Agreement) in accordance with the DIP Facility;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and

(c) to not grant credit or incur liabilities except in the ordinary course of the Business.

10. THIS COURT ORDERS that, other than in respect of Percentage-Rent Leases (as defined in the Stay Extension Affidavit), until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, in respect of Percentage-Rent Leases, until a Percentage-Rent Lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay Rent for the period commencing from and including the date of this Order monthly in arrears pursuant to and in accordance with the terms of the Percentage-Rent Leases.

RESTRUCTURING

12. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $75,000 in any one transaction or $500,000 in the aggregate provided that, with respect to any leased premises, the Applicant may permanently but not temporarily cease, downsize or shut down unless provided for in the applicable lease;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) in accordance with paragraphs 13 and 14, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such

terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;

(d) disclaim, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA, with such disclaimers to be on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan;

(e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court obtained before any material refinancing; and

(f) market the Business and Property in accordance with the SISP (as defined herein).

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective

tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

15. THIS COURT ORDERS that until and including April 24, 2015, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, transportation services, freight services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $3 million, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 50 and 52 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

MARKETING OF SALE AND INVESTMENT OPPORTUNITY

24. THIS COURT ORDERS AND DIRECTS the Applicant to immediately commence a Sale and Investor Solicitation Process in accordance with the terms attached hereto as Schedule "A" to this Order (the "**SISP**") for the purpose of offering the opportunity for potential investors to purchase all or part of the Property or invest in the Business and operations of the Applicant.

25. THIS COURT ORDERS that the SISP is hereby approved and the Applicant, the Monitor and the Financial Advisor (as defined herein) are hereby authorized and directed to perform each of their obligations.

26. THIS COURT ORDERS that: (i) nothing in the SISP shall amend or vary, or be deemed to amend or vary the terms of a real property lease; and (ii) where any real property leases are not, in accordance with their terms, transferrable or assignable to a successful bidder(s) who has submitted the Successful Bid(s) (as defined in the SISP), without first obtaining the consent of the applicable landlord, none of the real property leases shall be transferred conveyed, assigned or vested in any such successful bidder(s), save and except: (A) to the extent that the respective consents have been obtained from the applicable landlords; or (B) upon further Order of this Court.

FINANCIAL ADVISOR

27. THIS COURT ORDERS that the Applicant is authorized to carry out and perform its obligations under its engagement letter with Houlihan Lokey Capital, Inc. (the **"Engagement Letter")** as financial advisor to the Applicant (the **"Financial Advisor"),** including payment of the amounts due to be paid pursuant to the terms of the Engagement Letter, including the monthly work fee (the "**Financial Advisor Retainer**") and any success or transaction fee under the Engagement Letter.

28. THIS COURT ORDERS that all claims of the Financial Adviser pursuant to the Engagement Letter are not claims that may be compromised pursuant to any Plan under the CCAA or any proposal **("Proposal")** under the *Bankruptcy and Insolvency Act* (the "**BIA**") and no such Plan or Proposal shall be approved that does not provide for the payment of all amounts due to the Financial Advisor pursuant to the terms of the Engagement Letter.

29. THIS COURT ORDERS that notwithstanding any order in these proceedings, the Applicant is authorized to make all payments required by the Engagement Letter, including all fees and expenses, if and when due.

KEY EMPLOYEE RETENTION PROGRAM

30. THIS COURT ORDERS that the Key Employee Retention Plan (the "**KERP**"), as described in the Bachynski Affidavit with respect to key employees, including certain key officers (the "**Key Employees**") is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

31. THIS COURT ORDERS that the Applicant is authorized and directed to perform the obligations under the KERP, including making all payments to the Key Employees of amounts due and owing under the KERP at the time specified and in accordance with the terms of the KERP.

32. THIS COURT ORDERS that the Applicant is hereby authorized to execute and deliver such additional documents as may be necessary to give effect to the KERP, subject to prior approval of such documents by the Monitor or as may be ordered by this Court.

33. THIS COURT ORDERS that the Key Employees referred to in the KERP shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.81 million to secure amounts owing to such Key Employees. The KERP Charge shall have the priority set out in paragraphs 50 and 52 herein.

34. THIS COURT ORDERS that the Confidential KERP Schedule (as defined in the Bachynski Affidavit) be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

APPOINTMENT OF MONITOR

35. THIS COURT ORDERS that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor

in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

36. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) liaise with Assistants with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(d) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(e) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis in accordance with the Definitive Documents;

(f) advise the Applicant in its development of the Plan and any amendments to the Plan;

(g) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(i) consult with the Applicant and any Assistants retained in connection with the Restructuring;

(j) be at liberty to engage independent legal counsel or such other persons, or utilize the services of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

37. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

38. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

39. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

40. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

41. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amounts of $100,000, $50,000 and $125,000 respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

42. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

43. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel and the Financial Advisor solely with respect to the Financial Advisor Retainer payable to the Financial Advisor under the terms of the Engagement Letter, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.2 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 50 and 52 hereof.

DIP FINANCING

44. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a revolving credit facility (the "**DIP Facility**") from Salus (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures pursuant and subject to the terms and conditions set forth in the Amended and Restated Credit Agreement between the Applicant and the DIP Lender dated as of March 26, 2015 (the "**DIP Agreement**"), provided that borrowings under such DIP Facility shall not exceed the principal amount of $28 million unless permitted by further Order of this Court, and further provided that borrowings under the DIP Facility shall not exceed $15 million prior to April 7, 2015, the date of the Comeback Hearing (as defined herein).

45. THIS COURT ORDERS that the DIP Facility and the DIP Agreement be and are hereby approved and the Applicant is hereby authorized and directed to executed and deliver the DIP Agreement.

46. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, amendments and other definitive documents (collectively, and together with the DIP Agreement, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

47. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the DIP Facility. The DIP Lender's Charge shall not secure any obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 50 and 52 hereof.

48. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 3 business days' notice to the Applicant and the Monitor and upon approval of this Court, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

49. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any Proposal filed by the Applicant under the BIA, with respect to all advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

50. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $1.2 million);

Second – KERP Charge (to the maximum amount of $1.81 million);

Third – Directors' Charge (to the maximum amount of $3 million); and

Fourth – DIP Lender's Charge.

51. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the KERP Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

52. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, other than: (i) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation; (ii) security interests in favour of TD solely to secure amounts that may be owing by the Applicant to TD in respect of services provided under the Current Cash Management System; and (iii) claims which may be asserted under Section 81.3, 81.4, 81.5 and 81.6 of the BIA or other statutory liens and deemed trusts which cannot, by law, be subordinated to the Charges.

53. THIS COURT ORDERS that any Charge created by this Order over leases of real property shall only be a Charge in the Applicant's interest in such real property leases.

54. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

55. THIS COURT ORDERS that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the

declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Definitive Documents caused by or resulting from the Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicant pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

56. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

57. THIS COURT DECLARES that, pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and any regulations promulgated under authority of the Act, as applicable (the "**Relevant Enactment**"), the Applicant, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom

such personal information is disclosed enter into confidentiality agreements with the Applicant binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall, upon the request of the Applicant, return the personal information to the Applicant or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Applicant.

SERVICE AND NOTICE

58. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) and La Press a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names or addresses of individuals who are creditors of the Applicant publicly available.

59. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/ shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure.

Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://alvarezandmarsal.com/comark (the "**Monitor's Website**").

60. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

61. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

62. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

63. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

64. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

65. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

66. A comeback hearing in this matter shall be held on April 7, 2015 (the "**Comeback Hearing**").

67. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

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Tab C

Schedule "C"

Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL SENIOR JUSTICE MORAWETZ	)))	THURSDAY, THE 26TH DAY OF MARCH, 2015

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

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Comark Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Gerald Bachynski sworn March 25, 2015 and the Exhibits thereto (the "**Initial Affidavit**"), the supplementary affidavit of Gerald Bachynski sworn March 26, 2015 (the "**Supplementary Affidavit**" together with the Initial Affidavit, the "**Bachynski Affidavit**"~~) and~~, the Affidavit of Neville Lewis sworn April 15 2015 (the "**Stay Extension Affidavit**"), the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant dated March 25, 2015 and the Second Report of A&M dated April ●, 2015 and on hearing the submissions of counsel for the Applicant, Salus Capital Partners, LLC ("**Salus**"), and A&M and on reading the consent of A&M to act as the monitor of the Applicant (the "**Monitor**"),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, appraisers, valuators, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the Current Cash Management System (as defined and described in the Bachynski Affidavit) or, with the consent of the Monitor and Salus, replace it in part or in whole with another substantially similar central cash management system and that any present or future bank or other Person (as hereinafter defined) providing any part of the Current Cash Management System, including The

Toronto Dominion Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Current Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Current Cash Management System, shall be entitled to provide the Current Cash Management System without any liability in respect thereof to any Person other than the Applicant and Salus, pursuant to the terms of the documentation applicable to the Current Cash Management System, and shall be, in its capacity as provider of the Current Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Current Cash Management System.

6. THIS COURT ORDERS that, subject to availability under the DIP Facility (as defined herein) and in accordance with the Budget (as defined in the DIP Agreement), the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and reasonable expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) amounts necessary in order to continue to honour or comply with existing return policies, customer deposits, pre-payments, gift cards and similar programs offered by the Applicant;

(c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;

(d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicant prior to the date of this order or to obtain the release of goods contracted for prior to the date of this Order by:

(i) logistics or supply chain providers, including customs brokers, freight forwarders and transportation providers;

(ii) amounts payable in respect of customs and duties for goods;

(iii) providers of credit, debit and gift card processing related services; and

(iv) other third party suppliers, including payments in respect of outstanding documentary credits or deposits, if, in the opinion of the Applicant, the supplier is critical to the Business and ongoing operations of the Applicant;

(e) any other costs or expenses that are deemed necessary for the preservation of the Property and/or the Business by the Applicant with the consent of the Monitor and Salus.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, and subject to availability under the DIP Facility and in accordance with the Budget, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and directors and officers tail insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant; and

(d) to the applicable charitable organization, any donations collected by the Applicant from its customers whether prior to or after the date of this Order in respect of the various charitable initiatives of the Applicant as described in the Bachynski Affidavit.

9. THIS COURT ORDERS that, except as specifically permitted herein and subject to the Budget and the terms of the DIP Facility, the Applicant is hereby directed, until further Order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date, provided however that the Applicant is hereby authorized and directed to make all such payments under the DIP Agreement, including (i): amounts under the Pre-Petition Revolving Loans and interest thereon; and (ii) interest on the Term Loan (each as defined in the DIP Agreement) in accordance with the DIP Facility;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and

(c) to not grant credit or incur liabilities except in the ordinary course of the Business.

10. THIS COURT ORDERS that, other than in respect of Percentage-Rent Leases (as defined in the Stay Extension Affidavit), until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, in respect of Percentage-Rent Leases, until a Percentage-Rent Lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay Rent for the period commencing from and including the date of this Order monthly in arrears pursuant to and in accordance with the terms of the Percentage-Rent Leases.

RESTRUCTURING

12. ~~11.~~ THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $75,000 in any one transaction or $500,000 in the aggregate provided that, with respect to any leased premises, the Applicant may permanently but not temporarily cease, downsize or shut down unless provided for in the applicable lease;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) in accordance with paragraphs ~~12~~13 and ~~13~~14, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim any real property lease and any ancillary agreements

relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;

(d) disclaim, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA, with such disclaimers to be on such terms as may be agreed upon between the ~~Petitioners~~Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan;

(e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court obtained before any material refinancing; and

(f) market the Business and Property in accordance with the SISP (as defined herein).

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. ~~12.~~ THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

14. ~~13.~~ THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

15. ~~14.~~ THIS COURT ORDERS that until and including April 24, 2015, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. ~~15.~~ THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. ~~16.~~ THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. ~~17.~~ THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, transportation services, freight services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. ~~18.~~ THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. ~~19.~~ THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. ~~20.~~ THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. ~~21.~~ THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $3 million, as security for the indemnity provided in paragraph ~~20~~21 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~48~~50 and ~~50~~52 herein.

23. ~~22.~~ THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~20~~21 of this Order.

MARKETING OF SALE AND INVESTMENT OPPORTUNITY

24. ~~23.~~ THIS COURT ORDERS AND DIRECTS the Applicant to immediately commence a Sale and Investor Solicitation Process in accordance with the terms attached hereto as Schedule "A" to this Order (the "**SISP**") for the purpose of offering the opportunity for potential investors to purchase all or part of the Property or invest in the Business and operations of the Applicant.

25. ~~24.~~ THIS COURT ORDERS that the SISP is hereby approved and the Applicant, the Monitor and the Financial Advisor (as defined herein) are hereby authorized and directed to perform each of their obligations.

26. THIS COURT ORDERS that: (i) nothing in the SISP shall amend or vary, or be deemed to amend or vary the terms of a real property lease; and (ii) where any real property leases are not, in accordance with their terms, transferrable or assignable to a successful bidder(s) who has submitted the Successful Bid(s) (as defined in the SISP), without first obtaining the consent of the applicable landlord, none of the real property leases shall be transferred conveyed, assigned or vested in any such successful bidder(s), save and except: (A) to the extent that the respective consents have been obtained from the applicable landlords; or (B) upon further Order of this Court.

FINANCIAL ADVISOR

27. ~~25.~~ THIS COURT ORDERS that the Applicant is authorized to carry out and perform its obligations under its engagement letter with Houlihan Lokey Capital, Inc. (the **"Engagement Letter")** as financial advisor to the Applicant (the **"Financial Advisor"),** including payment of the amounts due to be paid pursuant to the terms of the Engagement Letter, including the monthly work fee (the "**Financial Advisor Retainer**") and any success or transaction fee under the Engagement Letter.

28. ~~26.~~ THIS COURT ORDERS that all claims of the Financial Adviser pursuant to the Engagement Letter are not claims that may be compromised pursuant to any Plan under the CCAA or any proposal **("Proposal")** under the *Bankruptcy and Insolvency Act* (the "**BIA**") and no such Plan or Proposal shall be approved that does not provide for the payment of all amounts due to the Financial Advisor pursuant to the terms of the Engagement Letter.

29. ~~27.~~ THIS COURT ORDERS that notwithstanding any order in these proceedings, the Applicant is authorized to make all payments required by the Engagement Letter, including all fees and expenses, if and when due.

KEY EMPLOYEE RETENTION PROGRAM

30. ~~28.~~ THIS COURT ORDERS that the Key Employee Retention Plan (the "**KERP**"), as described in the Bachynski Affidavit with respect to key employees, including certain key officers (the "**Key Employees**") is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

31. ~~29.~~ THIS COURT ORDERS that the Applicant is authorized and directed to perform the obligations under the KERP, including making all payments to the Key Employees of amounts due and owing under the KERP at the time specified and in accordance with the terms of the KERP.

32. ~~30.~~ THIS COURT ORDERS that the Applicant is hereby authorized to execute and deliver such additional documents as may be necessary to give effect to the KERP, subject to prior approval of such documents by the Monitor or as may be ordered by this Court.

33. ~~31.~~ THIS COURT ORDERS that the Key Employees referred to in the KERP shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.81 million to secure amounts owing to such Key Employees. The KERP Charge shall have the priority set out in paragraphs ~~48~~50 and ~~50~~52 herein.

34. ~~32.~~ THIS COURT ORDERS that the Confidential KERP Schedule (as defined in the Bachynski Affidavit) be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

APPOINTMENT OF MONITOR

35. ~~33.~~ THIS COURT ORDERS that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

36. ~~34.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) liaise with Assistants with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(d) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(e) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis in accordance with the Definitive Documents;

(f) advise the Applicant in its development of the Plan and any amendments to the Plan;

(g) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(i) consult with the Applicant and any Assistants retained in connection with the Restructuring;

(j) be at liberty to engage independent legal counsel or such other persons, or utilize the services of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

37. ~~35.~~ THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

38. ~~36.~~ THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

39. ~~37.~~ THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

40. ~~38.~~ THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

41. ~~39.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amounts of $100,000, $50,000 and $125,000 respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

42. ~~40.~~ THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

43. ~~41.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel and the Financial Advisor solely with respect to the Financial Advisor Retainer payable to the Financial Advisor under the terms of the Engagement Letter, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.2 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such

counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~48~~50 and ~~50~~52 hereof.

DIP FINANCING

44. ~~42.~~ THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a revolving credit facility (the "**DIP Facility**") from Salus (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures pursuant and subject to the terms and conditions set forth in the Amended and Restated Credit Agreement between the Applicant and the DIP Lender dated as of March 26, 2015 (the "**DIP Agreement**"), provided that borrowings under such DIP Facility shall not exceed the principal amount of $28 million unless permitted by further Order of this Court, and further provided that borrowings under the DIP Facility shall not exceed $15 million prior to April 7, 2015, the date of the Comeback Hearing (as defined herein).

45. ~~43.~~ THIS COURT ORDERS that the DIP Facility and the DIP Agreement be and are hereby approved and the Applicant is hereby authorized and directed to executed and deliver the DIP Agreement.

46. ~~44.~~ THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, amendments and other definitive documents (collectively, and together with the DIP Agreement, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

47. ~~45.~~ THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the DIP Facility. The DIP Lender's Charge shall not secure any obligation that exists before this

Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~48~~50 and ~~50~~52 hereof.

~~46.~~ 48. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 3 business days' notice to the Applicant and the Monitor and upon approval of this Court, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

~~47.~~ 49. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any Proposal filed by the Applicant under the BIA, with respect to all advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

~~48.~~ 50. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $1.2 million);

Second – KERP Charge (to the maximum amount of $1.81 million);

Third – Directors' Charge (to the maximum amount of $3 million); and

Fourth – DIP Lender's Charge.

51. ~~49.~~ THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the KERP Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

52. ~~50.~~ THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, other than: (i) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation; (ii) security interests in favour of TD solely to secure amounts that may be owing by the Applicant to TD in respect of services provided under the Current Cash Management System; and (iii) claims which may be asserted under Section 81.3, 81.4, 81.5 and 81.6 of the BIA or other statutory liens and deemed trusts which cannot, by law, be subordinated to the Charges.

53. ~~51.~~ THIS COURT ORDERS that any Charge created by this Order over leases of real property shall only be a Charge in the Applicant's interest in such real property leases.

54. ~~52.~~ THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

55. ~~53.~~ THIS COURT ORDERS that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Definitive Documents caused by or resulting from the Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicant pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

56. ~~54.~~ THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

57. ~~55.~~ THIS COURT DECLARES that, pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and any regulations promulgated under authority of the Act, as applicable (the "**Relevant Enactment**"), the Applicant, in the course of these proceedings, are permitted to, and hereby shall, disclose

personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Applicant binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall, upon the request of the Applicant, return the personal information to the Applicant or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Applicant.

SERVICE AND NOTICE

58. ~~56.~~ THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) and La Press a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names or addresses of individuals who are creditors of the Applicant publicly available.

59. ~~57.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of

documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/ shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://alvarezandmarsal.com/comark (the "**Monitor's Website**").

60. ~~58.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

61. ~~59.~~ THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

62. ~~60.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

63. ~~61.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

64. ~~62.~~ THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

65. ~~63.~~ THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

66. ~~64.~~ A comeback hearing in this matter shall be held on April 7, 2015 (the "**Comeback Hearing**").

67. ~~65.~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

Tab 2

Court File No. CV15-10920-00CL

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 NEVILLE LEWIS
(Sworn April 15, 2015)

(Stay Extension and Approval of Amended and Restated Initial Order)

I, Neville Lewis, of the Town of Caledon, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Financial Officer of the Applicant, Comark Inc. ("**Comark**" or the "**Company**"). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and verily believe them to be true. I swear this Affidavit in support of the motion brought by Comark seeking, among other things, an extension of the stay of proceedings and approval of the Amended and Restated Initial Order.

Background

2. On March 26, 2015, Comark was granted protection under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 as amended (the "**CCAA**") pursuant to an initial order of the Superior Court of Ontario (Commercial List) (the "**Initial Order**"). A copy of the Initial Order is attached as Exhibit "A" to this Affidavit.

3. Gerald Bachynski, the President and Chief Executive Officer of Comark, swore an affidavit on March 25, 2015 (the "**Initial Affidavit**") and an affidavit on March 26, 2015 (the "**Supplementary Affidavit**", together with the Initial Affidavit, the "**Bachynski Affidavit**"),

each in support of the initial application of Comark. A copy of the Initial Affidavit and the Supplementary Affidavit are attached without exhibits as Exhibit "B" and Exhibit "C" to this Affidavit. Capitalized terms contained herein that are not otherwise defined have the meaning ascribed to them in the Bachynski Affidavit.

4. In the Initial Order, the Court, among other things:

(a) granted a stay of proceedings in favour of Comark until and including April 24, 2015, or such later date as the Court may order (the "**Stay Period**");

(b) authorized Comark to obtain and borrow under a revolving credit facility (the "**DIP Facility**") from its secured lender, Salus Capital Partners, LLC. ("**Salus**"), in an amount not to exceed the principal amount of CAD$28 million in total and CAD$15 million prior to April 7, 2015;

(c) appointed Alvarez & Marsal Canada Inc. as the monitor (the "**Monitor**");

(d) approved the engagement of Houlihan Lokey Capital, Inc. as financial advisor ("**Financial Advisor**") to Comark;

(e) directed Comark to immediately commence a sale and investor solicitation process attached to the Initial Order (the "**SISP**") for the purpose of offering the opportunity for potential investors to purchase or invest in Comark's business or property;

(f) entitled Comark to pay reasonable expenses incurred by Comark in carrying on its business in the ordinary course (subject to the terms of and availability under the DIP Facility), including payments for goods or services supplied to Comark prior to the date of the Initial Order, with the consent of the Monitor, and goods or services supplied to Comark following the date of the Initial Order; and

(g) entitled Comark to continue to utilize the Current Cash Management System.

5. Pursuant to the Initial Order, Comark attended a comeback hearing on April 7, 2015 (the "**Comeback Hearing**"). The Comeback hearing was unopposed.

Overview of Comark's Activities Since the Initial Order

6. As a result of a combination of challenges, Comark faced a severe liquidity crisis in March 2015 and sought and received Court protection pursuant to the CCAA.

7. Since the granting of the Initial Order, Comark has been operating its business as a going concern in close consultation with the Monitor.

8. As part of the continued operations of its business Comark has, among other things, developed and executed an extensive communications plan with the assistance of its communications consultant in order to inform its stakeholders about the CCAA proceedings. In addition, Comark has engaged with its various stakeholder groups and commenced the SISP, all in an effort to continue going concern operations and maximize value for its stakeholders.

9. Since the granting of the Initial Order, Comark's business has been performing positively. Revenue since the CCAA filing has exceeded budget by a significant margin. Further, for the two weeks ending April 11, 2015, revenue has increased by approximately 12% as compared to the prior year.

Communication with Stakeholders

10. Comark, with the assistance of its communications consultant, has implemented a comprehensive communications plan for its employees, landlords, creditors and suppliers, and has responded and continues to respond to numerous inquiries from Comark's various stakeholders.

11. Following the granting of the Initial Order, Comark sent employees an email providing information about the CCAA proceedings. In addition, a general hotline and general email address were established by the Monitor to deal with inquiries from all stakeholders related to the CCAA proceedings.

12. In accordance with the Initial Order, on March 26, 2015, the Monitor made the Initial Order publicly available in the manner prescribed under the CCAA. On March 30, 2015, the Monitor sent a notice to all of Comark's known creditors and landlords or property managers

to whom the Applicant owed more than CAD$1,000, and made a list of the names, addresses and amounts owing to those creditors, excluding individuals publically available on its website.

13. On March 26, 2015, the Company issued a press release advising of the CCAA Proceedings and on April 2, 2015, the Company issued a press release announcing the commencement of the SISP. Also on April 2, 2015, in accordance with the SISP, I understand the Monitor published in the Globe and Mail (National Edition) and the Wall Street Journal (National Edition), a notice regarding the commencement of the SISP.

A. Employees

14. Comark has been working diligently to engage in communications with its employees across Canada. Following the granting of the Initial Order, Comark held three town hall meetings for the head office employees, one for each of its Banners. The town hall meeting for the Corporate Headquarters and for cleo employees was held in Mississauga, the meeting for Ricki's employees was held at the Ricki's headquarters in Winnipeg, and the meeting for Bootlegger was held at the Bootlegger headquarters in Vancouver.

15. On March 31 and April 1, 2015, Comark delivered letters to 35 key management employees (the "**Key Employees**") informing them that they were eligible to participate in a key employee retention plan (the "**KERP**"), which was approved by the Court in the Initial Order. The KERP was established in order to ensure that Key Employees remain in their current employment during these CCAA proceedings. All 35 Key Employees have continued their employment at Comark and will receive payments pursuant to the KERP.

16. In connection with certain store closures, on March 31, 2015, Comark delivered notices of termination to 354 employees at Comark's store locations. On March 31, 2015 and April 1, 2015, Comark also delivered notices of termination to 42 non-store employees located at the Corporate Headquarters, Banner headquarters and the Distribution Centre. In addition, continuance payments that were being made to former employees on account of termination and severance obligations prior to commencement of these CCAA proceedings were stopped.

17. As described further below, following the decision to close certain stores (the "**Closing Stores**") and disclaim the relevant real property lease for each such Closing Store, Comark has been in discussions with certain landlords of the Closing Stores to withdraw the

lease disclaimers and enter into real property lease amendments on terms beneficial to Comark. For those lease disclaimers that are withdrawn, Comark will continue to operate the continuing stores in the normal course and, accordingly, employees at the continuing store locations will be offered re-employment with the Company.

B. Suppliers

18. Since the granting of the Initial Order, Comark, in close consultation with the Monitor, has been in contact with a large number of suppliers to ensure the continued supply of goods and services to Comark.

19. On March 26, 2015 and March 27, 2015, Comark sent letters to all of its key suppliers to advise them of the CCAA proceedings and to advise them that Comark will continue going concern operations during its restructuring and that it intends to pay its suppliers in the normal course. Comark's senior management ("**Senior Management**") also initiated calls with the Company's most critical suppliers. The Monitor participated in the majority of these calls.

20. Since the filing date, Comark has also engaged in a number of in-person meetings with certain suppliers, which have involved Comark's management travelling abroad or representatives of foreign suppliers travelling to Canada in order to meet with Senior Management and the Monitor. In instances where Senior Management travelled abroad, the Monitor participated in such meetings telephonically.

21. As described in the Bachynski Affidavit, Comark sources private label products from factories primarily in Asia. Comark works with an agent (the "**Agent**") to manage a number of the Company's Asian based suppliers and to assist in negotiating pricing with the Asian suppliers. On April 1, 2015 and April 2, 2015, the Agent attended the Company's premises to meet with Senior Management and the Monitor to discuss proposed go-forward supply and payment terms and to better understand the CCAA proceedings. The Agent also arranged for Senior Management to attend meetings in Hong Kong on April 13, 2015 and April 14, 2015 with 17 of Comark's key suppliers in order to assist the Company in making arrangements for the go-forward supply of goods, to agree on payment terms and to provide those suppliers with a better understanding of the CCAA proceedings.

22. A large number of Comark's most significant suppliers have continued to supply goods to the Company, albeit on shorter payment terms than were previously in place.

23. In addition, as provided in the Initial Order, Comark has continued to pay its logistics and supply chain providers, including customs brokers, freight forwarders and transportation providers, amounts owing for goods supplied to the Company during the CCAA proceedings.

C. Landlords

i) Disclaimers

24. Comark and the Monitor have engaged in discussions various landlords and their counsel in respect of these CCAA proceedings.

25. In the Bachynski Affidavit, it was noted that shortly after the commencement of proceedings and during the initial stay period, Comark anticipated that it would disclaim certain leases in respect of Comark stores that were performing poorly or had negative cash flow. In consultation with the Monitor, Comark reviewed all of its leases and identified 55 leases to be disclaimed, representing 60 store locations. On March 30, 2015, Comark, with the consent of the Monitor, delivered disclaimer notices to the landlords of these leases.

26. Subsequent to March 30, 2015, Comark was contacted by a number of landlords regarding possible amendments to certain leases that Comark was disclaiming. Comark has subsequently engaged in negotiations with landlords with respect to amendments to leases for approximately 16 store locations on terms that are beneficial to Comark. For the leases that are amended, Comark will withdraw the relevant lease disclaimer by seeking the consent of the relevant landlord and by sending a notice of withdrawal to the relevant landlord.

ii) Amendments to the Initial Order

27. In addition, following the granting of the Initial Order, counsel to Comark was approached by counsel to a group of landlords to discuss certain concerns with respect to the Initial Order and the CCAA proceedings. As a result of these discussions, Comark, in consultation with the Monitor, has agreed to certain amendments to the Initial Order for the

benefit of the landlords, subject to the approval of this Court. I am advised by my counsel that these amendments are consistent with the rights of landlords under the CCAA.

iii) Percentage Rent Leases

28. Subsequent to the granting of the Initial Order, it became apparent to Comark that 32 of its leases provide for the payment of rent based on a percentage of the previous month's sales (the "**Percentage-Rent Leases**"). Accordingly, rent for these leases must be paid in arrears. For the month of March, the total payment of rent for the Percentage-Rent Leases is approximately CAD$177,000, out of a total rent liability of CAD$5.7 million.

29. The Initial Order states that Comark must pay Rent (as defined in the Initial Order) for the period following and including March 26, 2015 in advance, but not in arrears. In order to continue to pay rent for the Percentage-Rent Leases in the ordinary course, Comark is seeking approval of an Amended and Restated Initial Order which, among other things, will allow Comark to continue to pay rent for the Percentage-Rent Leases in arrears. A copy of the Amended and Restated Initial Order is attached as Exhibit "B" to the Notice of Motion.

30. For the period covering March 26, 2015 to March 31, 2015, Comark intends to pay rent for the Percentage-Rent Leases on the date on which rent is payable in the ordinary course. The total amount of these payments will be CAD$177,000. I am advised by the Monitor and Salus that they each consent to these payments.

DIP Facility

31. Comark is authorized to obtain and borrow up to CAD$28 million under the DIP Facility from Salus. Of that amount, Comark was permitted to borrow no more than CAD$15 million prior to April 7, 2015, the date of the Comeback Hearing. As of April 14, 2015, Comark has made 3 borrowing requests and has borrowed approximately CAD$20.5 million under the DIP Facility.

32. Pursuant to the terms of the DIP Facility, Comark has delivered a borrowing base certificate to Salus weekly.

33. As noted above, the Comeback Hearing was unopposed and Comark's entitlement to the remainder of the principal amount under the DIP Facility after April 7, 2014 was not disputed.

34. In accordance with the DIP Facility and consistent with the Cash Management System, 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. Since the filing date, the cash from operations deposited to the Blocked Account have reduced the Salus Revolver Facility by CAD$22.8 million and accordingly, as of April 15, 2015, approximately CAD$2.7 million remains outstanding under the Salus Revolver Facility and CAD$20.5 million under the DIP Facility.

Cash Management System

35. Comark has continued to utilize the Current Cash Management System.

36. Subsequent to the granting of the Initial Order, the Toronto-Dominion Bank ("**TD**") reached out to Comark to discuss certain issues related to these CCAA Proceedings and its provision of the Current Cash Management System. Comark has since then had multiple discussions, including an in-person meeting, with counsel for TD.

37. TD continues to maintain the Current Cash Management System, as described in the Bachynski Affidavit.

Inventory Assistance

38. As described in the Bachynski Affidavit, and pursuant to the terms of the DIP Facility, on March 18, 2015, Comark engaged a third party inventory services firm, 360 Merchant Solutions, LLC ("**360**"), to assist the Company with inventory management at store locations which are being closed.

39. The Company has been working closely with 360 and the Monitor with respect to maximizing value from the inventory at the Closing Stores.

Sale and Investor Solicitation Process

40. Pursuant to the terms of the SISP, Phase 1 of the SISP commenced on the date that the Initial Order was granted. Since then, Comark has been working with the Financial Advisor and the Monitor to implement the terms of the SISP.

41. Prior to the granting of the Initial Order, the Financial Advisor, in consultation with Comark, Salus and the Monitor and their respective advisors, prepared a list of persons who may have interest in bidding for the sale of or investment in Comark's business (the "**Known Potential Bidders**").

42. I understand that on March 27, 2015, pursuant to the terms of the SISP, the Financial Advisor, under the supervision of the Monitor, began to contact Known Potential Bidders to determine if they were interested in the sale and investment opportunity in Comark. For the Known Potential Bidders who expressed an interest in the SISP or who otherwise did not respond, an initial offering summary, along with a copy of the SISP, was distributed which notified the interested Known Potential Bidders of the existence of the SISP and invited them to express their interest in accordance with the terms of the SISP.

43. On April 2, 2015, in accordance with the terms of the SISP, the Monitor caused a notice of the SISP to be published in the Wall Street Journal (National Edition) and the Globe and Mail (National Edition). In accordance with the SISP, on the same day, Comark issued a press release setting out the notice and such other information pertaining to the SISP.

44. The Known Potential Bidders who expressed interest were provided with a draft form of non-disclosure agreement ("**NDA**"). In order to participate in the SISP and receive further due diligence information about Comark, each bidder must deliver an executed NDA to the Financial Advisor and Monitor.

45. Comark, in consultation with the Monitor, is currently in the process of negotiating the NDAs with bidders that have expressed an interest. Multiple NDAs have been signed, and many more are in the late stages of negotiations. Parties who have executed an NDA have been provided with access to a preliminary data room with information about the Company and it is expected that a confidential information memorandum will be available to them imminently.

46. Qualified Bidders that wish to pursue a sale or investment proposal must submit non-binding letters of intent to the Financial Advisor and the Monitor by 5:00PM EST on May 5, 2015, forty days following the date of the Initial Order (the "**Phase 1 Bid Deadline**"). The SISP provides that the Monitor, in consultation with the Financial Advisor, Comark and Salus, will assess the qualifying LOIs received, if any. Additional information will be provided with respect to the SISP in subsequent affidavits.

Stay Extension is Appropriate

47. Comark has continued to operate the business in the normal course with the benefit of the stay of proceedings and the DIP Facility, which have provided stability to the business and alleviated the liquidity crisis that Comark had faced at the time of filing the application for the Initial Order.

48. Comark seeks an extension of the Stay Period up to and including June 12, 2015. The extension is necessary and appropriate in the circumstances to allow for the continued operations of Comark's business and for Comark to continue to develop and implement a restructuring plan, to continue the SISP in accordance with its terms, and to continue discussions with its stakeholders.

49. I believe that Comark has acted and is continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. As described above, Comark has been working diligently with the Monitor and the Financial Advisor to carry out the SISP and has been in discussions with its stakeholders, including landlords, employees, suppliers and creditors.

50. As set out in the Bachynski Affidavit, with the DIP Facility, Comark has sufficient liquidity to fund operations during the requested extension of the Stay Period.

51. The Monitor and Salus have each expressed their support for the extension of the Stay Period to June 12, 2015.

SWORN BEFORE ME at the City of }
}
Toronto, in the Province of Ontario, this }
}
15th day of April, 2015. }

Commissioner for Taking Affidavits

Neville Lewis

IN THE MATTER OF *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

Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF NEVILLE LEWIS
(Stay Extension and Approval of Amended and Restated Initial Order)

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Lawyers for the Applicant

Matter No: 1163824

Tab A

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF NEVILLE LEWIS SWORN BEFORE ME THIS 15th DAY OF APRIL, 2015

A Commissioner for taking Affidavits

Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL SENIOR JUSTICE MORAWETZ	)))	THURSDAY, THE 26TH DAY OF MARCH, 2015

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

INITIAL ORDER

THIS APPLICATION, made by Comark Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Gerald Bachynski sworn March 25, 2015 and the Exhibits thereto (the "**Initial Affidavit**"), the supplementary affidavit of Gerald Bachynski sworn March 26, 2015 (the "**Supplementary Affidavit**" together with the Initial Affidavit, the "**Bachynski Affidavit**) and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant dated March 25, 2015 and on hearing the submissions of counsel for the Applicant, Salus Capital Partners, LLC ("**Salus**"), and A&M and on reading the consent of A&M to act as the monitor of the Applicant (the "**Monitor**"),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, appraisers, valuators, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the Current Cash Management System (as defined and described in the Bachynski Affidavit) or, with the consent of the Monitor and Salus, replace it in part or in whole with another substantially similar central cash management system and that any present or future bank or other Person (as hereinafter defined) providing any part of the Current Cash Management System, including The

Toronto Dominion Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Current Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Current Cash Management System, shall be entitled to provide the Current Cash Management System without any liability in respect thereof to any Person other than the Applicant and Salus, pursuant to the terms of the documentation applicable to the Current Cash Management System, and shall be, in its capacity as provider of the Current Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Current Cash Management System.

6. THIS COURT ORDERS that, subject to availability under the DIP Facility (as defined herein) and in accordance with the Budget (as defined in the DIP Agreement), the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and reasonable expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) amounts necessary in order to continue to honour or comply with existing return policies, customer deposits, pre-payments, gift cards and similar programs offered by the Applicant;

(c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;

(d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicant prior to the date of this order or to obtain the release of goods contracted for prior to the date of this Order by:

(i) logistics or supply chain providers, including customs brokers, freight forwarders and transportation providers;

(ii) amounts payable in respect of customs and duties for goods;

(iii) providers of credit, debit and gift card processing related services; and

(iv) other third party suppliers, including payments in respect of outstanding documentary credits or deposits, if, in the opinion of the Applicant, the supplier is critical to the Business and ongoing operations of the Applicant;

(e) any other costs or expenses that are deemed necessary for the preservation of the Property and/or the Business by the Applicant with the consent of the Monitor and Salus.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, and subject to availability under the DIP Facility and in accordance with the Budget, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and directors and officers tail insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant; and

(d) to the applicable charitable organization, any donations collected by the Applicant from its customers whether prior to or after the date of this Order in respect of the various charitable initiatives of the Applicant as described in the Bachynski Affidavit.

9. THIS COURT ORDERS that, except as specifically permitted herein and subject to the Budget and the terms of the DIP Facility, the Applicant is hereby directed, until further Order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date, provided however that the Applicant is hereby authorized and directed to make all such payments under the DIP Agreement, including (i): amounts under the Pre-Petition Revolving Loans and interest thereon; and (ii) interest on the Term Loan (each as defined in the DIP Agreement) in accordance with the DIP Facility;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and

(c) to not grant credit or incur liabilities except in the ordinary course of the Business.

10. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $75,000 in any one transaction or $500,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) in accordance with paragraphs 12 and 13, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;

(d) disclaim, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA, with such disclaimers to be on such terms

as may be agreed upon between the Petitioners and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan;

(e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court obtained before any material refinancing; and

(f) market the Business and Property in accordance with the SISP (as defined herein).

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including April 24, 2015, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data

services, centralized banking services, payroll and benefits services, insurance, transportation services, freight services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $3 million, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 48 and 50 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

MARKETING OF SALE AND INVESTMENT OPPORTUNITY

23. THIS COURT ORDERS AND DIRECTS the Applicant to immediately commence a Sale and Investor Solicitation Process in accordance with the terms attached hereto as Schedule "A" to this Order (the "**SISP**") for the purpose of offering the opportunity for potential investors to purchase all or part of the Property or invest in the Business and operations of the Applicant.

24. THIS COURT ORDERS that the SISP is hereby approved and the Applicant, the Monitor and the Financial Advisor (as defined herein) are hereby authorized and directed to perform each of their obligations.

FINANCIAL ADVISOR

25. THIS COURT ORDERS that the Applicant is authorized to carry out and perform its obligations under its engagement letter with Houlihan Lokey Capital, Inc. (the **"Engagement Letter"**) as financial advisor to the Applicant (the **"Financial Advisor"**), including payment of the amounts due to be paid pursuant to the terms of the Engagement Letter, including the monthly work fee (the "**Financial Advisor Retainer**") and any success or transaction fee under the Engagement Letter.

26. THIS COURT ORDERS that all claims of the Financial Adviser pursuant to the Engagement Letter are not claims that may be compromised pursuant to any Plan under the CCAA or any proposal **("Proposal")** under the *Bankruptcy and Insolvency Act* (the "**BIA**") and no such Plan or Proposal shall be approved that does not provide for the payment of all amounts due to the Financial Advisor pursuant to the terms of the Engagement Letter.

27. THIS COURT ORDERS that notwithstanding any order in these proceedings, the Applicant is authorized to make all payments required by the Engagement Letter, including all fees and expenses, if and when due.

KEY EMPLOYEE RETENTION PROGRAM

28. THIS COURT ORDERS that the Key Employee Retention Plan (the "**KERP**"), as described in the Bachynski Affidavit with respect to key employees, including certain key officers (the "**Key Employees**") is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

29. THIS COURT ORDERS that the Applicant is authorized and directed to perform the obligations under the KERP, including making all payments to the Key Employees of amounts due and owing under the KERP at the time specified and in accordance with the terms of the KERP.

30. THIS COURT ORDERS that the Applicant is hereby authorized to execute and deliver such additional documents as may be necessary to give effect to the KERP, subject to prior approval of such documents by the Monitor or as may be ordered by this Court.

31. THIS COURT ORDERS that the Key Employees referred to in the KERP shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.81 million to secure amounts owing to such Key Employees. The KERP Charge shall have the priority set out in paragraphs 48 and 50 herein.

32. THIS COURT ORDERS that the Confidential KERP Schedule (as defined in the Bachynski Affidavit) be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

APPOINTMENT OF MONITOR

33. THIS COURT ORDERS that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

34. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) liaise with Assistants with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(d) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(e) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis in accordance with the Definitive Documents;

(f) advise the Applicant in its development of the Plan and any amendments to the Plan;

(g) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(i) consult with the Applicant and any Assistants retained in connection with the Restructuring;

(j) be at liberty to engage independent legal counsel or such other persons, or utilize the services of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

35. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

36. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

37. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

38. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

39. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges by the Applicant as part of the costs of these proceedings. The Applicant is

hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amounts of $100,000, $50,000 and $125,000 respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

40. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

41. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel and the Financial Advisor solely with respect to the Financial Advisor Retainer payable to the Financial Advisor under the terms of the Engagement Letter, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.2 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 48 and 50 hereof.

DIP FINANCING

42. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a revolving credit facility (the "**DIP Facility**") from Salus (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures pursuant and subject to the terms and conditions set forth in the Amended and Restated Credit Agreement between the Applicant and the DIP Lender dated as of March 26, 2015 (the "**DIP Agreement**"), provided that borrowings under such DIP Facility shall not exceed the principal amount of $28 million unless permitted by further Order of this Court, and further provided that borrowings under the DIP Facility shall not exceed $15 million prior to April 7, 2015, the date of the Comeback Hearing (as defined herein).

43. THIS COURT ORDERS that the DIP Facility and the DIP Agreement be and are hereby approved and the Applicant is hereby authorized and directed to executed and deliver the DIP Agreement.

44. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, amendments and other definitive documents (collectively, and together with the DIP Agreement, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

45. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the DIP Facility. The DIP Lender's Charge shall not secure any obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 48 and 50 hereof.

46. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 3 business days' notice to the Applicant and the Monitor and upon approval of this Court, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a

bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

47. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any Proposal filed by the Applicant under the BIA, with respect to all advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

48. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $1.2 million);

Second – KERP Charge (to the maximum amount of $1.81 million);

Third – Directors' Charge (to the maximum amount of $3 million); and

Fourth – DIP Lender's Charge.

49. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the KERP Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

50. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, other than: (i) any Person with a properly perfected

purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation; (ii) security interests in favour of TD solely to secure amounts that may be owing by the Applicant to TD in respect of services provided under the Current Cash Management System; and (iii) claims which may be asserted under Section 81.3, 81.4, 81.5 and 81.6 of the BIA or other statutory liens and deemed trusts which cannot, by law, be subordinated to the Charges.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property shall only be a Charge in the Applicant's interest in such real property leases.

52. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

53. THIS COURT ORDERS that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Definitive Documents caused by or resulting from the Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicant pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

54. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

55. THIS COURT DECLARES that, pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and any regulations promulgated under authority of the Act, as applicable (the "**Relevant Enactment**"), the Applicant, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Applicant binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall, upon the request of the Applicant, return the personal information to the Applicant or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue

to use the personal information in a manner which is in all respects identical to the prior use thereof by the Applicant.

SERVICE AND NOTICE

56. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) and La Press a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names or addresses of individuals who are creditors of the Applicant publicly available.

57. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/ shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://alvarezandmarsal.com/comark (the "**Monitor's Website**").

58. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be

received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

59. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

62. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. A comeback hearing in this matter shall be held on April 7, 2015 at 8:30 a.m. (the "**Comeback Hearing**").

65. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 27 2015

Schedule "A"

Comark Inc.
Sale and Investor Solicitation Process

Introduction

On March 26, 2015, Comark Inc. ("**Comark**" or the "**Applicant**") obtained an initial order (the "**Initial Order**") under the Companies' Creditors Arrangement Act ("**CCAA**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Pursuant to the Initial Order, the Court approved this sale and investor solicitation process ("**SISP**"). The purpose of this SISP is to seek Sale Proposals and Investment Proposals from Qualified Bidders and to implement one or a combination of them in respect of the Property and the Business.

This SISP describes, among other things: (a) the Property, including the Divisions available for sale and the opportunity for an investment in the Business of Comark; (b) the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property and the Business; (c) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively; (d) the manner in which a Qualified Bidder may become a Stalking Horse Bidder; (e) the process for the evaluation of bids received; (e) the process for the ultimate selection of a Successful Bidder; and (f) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of a Successful Bid (collectively, the "**Solicitation Process**").

Capitalized terms used in this SISP and not otherwise defined have the meanings given to them in paragraph 1 below.

Defined Terms

1. The following capitalized terms have the following meanings when used in this SISP:

   (a) "Approval Motion" is defined in paragraph 37.

   (b) "Board of Directors" means the board of directors of Comark.

   (c) "Business" means the business of Comark.

   (d) "Business Day" means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario.

   (e) "Claims and Interests" is defined in paragraph 10.

   (f) "Confidential Information Memorandum" is defined in paragraph 4.

   (g) "Credit Agreement" means the Credit Agreement between Comark, as borrower and the Lenders dated October 31, 2014.

   (h) "Data Room" is defined in paragraph 15.

   (i) "Deposit" is defined in paragraph 29(l).

(j) "DIP Agreement" means the Amended and Restated Credit Agreement dated March 26, 2015 for a debtor in possession financing facility between Comark, as borrower and the Lenders in the CCAA proceedings.

(k) "Division" means any of the Cleo division of the Comark Business, the Ricki's Division of the Comark Business or the Bootlegger division of the Comark Business.

(l) "Final Bid" is defined in paragraph 28.

(m) "Financial Advisor" means Houlihan Lokey Inc.

(n) "Form of Investment Agreement" means the form of equity investment agreement to be developed by Comark in consultation with the Monitor and the Financial Advisor and provided to those Qualified Bidders that submitted a Qualified LOI for an Investment Proposal.

(o) "Form of Purchase Agreement" means the form of purchase and sale agreement to be developed by Comark in consultation with the Monitor and the Financial Advisor and provided to those Qualified Bidders that submitted a Qualified LOI for a Sale Proposal.

(p) "Investment Proposal" is defined in paragraph 17(b)(ii).

(q) "Known Potential Bidders" is defined in paragraph 6.

(r) "Lender Claims" means the aggregate amount owing to the Lenders arising from or related to the Credit Agreement and the DIP Agreement, which shall include, without limitation, all accrued and unpaid principal, interest, default interest and reasonable fees, costs, charges and expenses all as may be due and payable under the aforementioned credit facilities and/or other financing and any ancillary documents.

(s) "Lenders" mean Salus Capital Partners, LLC as administrative agent and collateral agent to the lenders party to the Credit Agreement and the DIP Agreement.

(t) "LOI" is defined in paragraph 14.

(u) "Monitor" means Alvarez & Marsal Canada Inc.

(v) "NDA" means a non-disclosure agreement in form and substance satisfactory to the Monitor, the Financial Advisor and the Applicant, which will inure to the benefit of any purchaser of the Property or any investor in the Business or Comark.

(w) "Outside Date" means August 15, 2015, or such later date as may be agreed to by the Applicant, the Financial Advisor, the Monitor and the Lenders.

(x) "Phase 1" is defined in paragraph 14.

(y) "Phase 1 Bid Deadline" is defined in paragraph 16.

(z) "Phase 2" is defined in paragraph 21.

(aa) "Phase 2 Bid Deadline" is defined in paragraph 28.

(bb) "Potential Bidder" is defined in paragraph 11.

(cc) "Property" means all of property, assets and undertakings of Comark.

(dd) "Qualified Bid" means: a third party offer or combination of third party offers, in the form of a Sale Proposal(s) or an Investment Proposal(s) or including elements of both, the aggregate purchase price or funds to be invested are in an amount sufficient to pay the Lender Claims in full in cash and which, in any case, meets the requirements in paragraph 29.

(ee) "Qualified Bidder" is defined in paragraph 12.

(ff) "Qualified LOI" is defined in paragraph 17.

(gg) "Sale Proposal" is defined in paragraph 17(b)(i).

(hh) "Stalking Horse Assets" means all or a portion of the Property proposed to be acquired by the Stalking Horse Bidder.

(ii) "Stalking Horse Bid" means the bid of a Stalking Horse Bidder for the Stalking Horse Assets.

(jj) "Stalking Horse Bidder" means a bid submitted by a Qualified Bidder for the Stalking Horse Assets and designated by the Monitor, exercising its reasonable business judgement, in consultation with the Financial Advisor, Comark and the Lenders, as the stalking horse bidder in order to set a floor price for the purchase of the Stalking Horse Assets;

(kk) "Successful Bid" is defined in paragraph 34.

(ll) "Teaser Letter" is defined in paragraph 6.

Supervision of the SISP

2. The Initial Order and the SISP shall exclusively govern the process for soliciting and selecting bids for the sale of or investment in the Applicant's business.

3. The Monitor will supervise, in all respects, the SISP and any attendant sales or investments and, in particular, will supervise the Financial Advisor's performance under its engagement by Comark in connection therewith. Comark is required to assist and support the efforts of the Monitor and the Financial Advisor as provided for herein. In the event that there is disagreement or clarification required as to the interpretation or application of this SISP or the responsibilities of the Monitor, the Financial Advisor or Comark hereunder, the Court will have jurisdiction to hear such matter and provide

advice and directions, upon application of the Monitor or Comark. For the avoidance of doubt, with respect to the Monitor's role in regards to the SISP, the terms of the Initial Order concerning the Monitor's rights and duties in this CCAA proceeding shall govern.

Sale and Investment Opportunity

4. A confidential information memorandum (the "**Confidential Information Memorandum**") describing the opportunity to acquire all or a portion of the Property or invest in the Business will be made available by the Financial Advisor to Qualified Bidders. One or more Qualified Bids for all or a portion of the Property relating to the Comark Business, all or a portion of the Property relating to a Division or any combination of Divisions will be considered, either alone or in combination as a Qualified Bid, Final Bid or a Successful Bid.

5. A bid may, at the option of the Qualified Bidder, involve, among other things, one or more of the following: a restructuring, recapitalization or other form of reorganization of the business and affairs of Comark as a going concern; a sale of the Property or any part thereof as contemplated herein to the Qualified Bidder or to a newly formed acquisition entity; or a plan of compromise or arrangement pursuant to the CCAA or any corporate or other applicable legislation.

Solicitation of Interest and Publication Notice

6. The Financial Advisor, in consultation with Comark, the Lenders and the Monitor and their respective advisors, has prepared a list of persons who may have interest in bidding for the sale of or investment in the Business (the "**Known Potential Bidders**"). Concurrently, the Financial Advisor, in consultation with Comark, the Lenders, the Monitor and their respective advisors, has prepared an initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders of the existence of the Solicitation Process and inviting the Known Potential Bidders to express their interest in accordance with the terms of the SISP.

7. Commencing upon the granting of the Initial Order, the Financial Advisor, under the supervision of the Monitor, shall distribute to the Known Potential Bidders the Teaser Letter, as well as a copy of the SISP and a draft form of NDA.

8. As soon as reasonably practicable after the granting of the Initial Order, but in any event no more than five (5) Business Days after the issuance of the Initial Order, the Monitor will cause a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Financial Advisor and Comark, considers appropriate) to be published in The Wall Street Journal (National Edition) and The Globe and Mail (National Edition). On the same date, Comark will issue a press release setting out the notice and such other information, in form and substance satisfactory to the Monitor in consultation with the Financial Advisor, the Lenders and Comark, with Canada Newswire designating dissemination in Canada and major financial centres in the United States.

"As Is, Where Is"

9. The sale of the Property or investment in the Business of Comark will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, Comark or any of their respective agents or estates, except to the extent set forth in the definitive sale or investment agreement executed with a Successful Bidder.

Free Of Any And All Claims and Interests

10. In the event of a sale of all or a portion of the Property, all of the rights, title and interests of Comark in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**") pursuant to such court orders as may be desirable, except to the extent otherwise set forth in the definitive sale or investment agreement executed with a Successful Bidder.

Participation Requirements

11. In order to participate in the SISP, each person (a "**Potential Bidder**") must deliver to the Financial Advisor with a copy to the Monitor at the addresses specified in Schedule "A" hereto (including by email or fax transmission):

    (a) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the principals of the Potential Bidder; and

    (b) an executed NDA which shall include provisions whereby the Potential Bidder agrees to accept and be bound by the provisions contained herein.

12. A Potential Bidder that has executed an NDA, and has delivered the documents and information described above, and that the Monitor, in its reasonable business judgement, in consultation with the Financial Advisor and Comark, determines is likely, based on the availability of financing, experience and other considerations, to be able to consummate a Sale Proposal or an Investment Proposal on or before the Outside Date will be deemed a "**Qualified Bidder**", and will be promptly notified of such determination by the Financial Advisor. In no event shall the Lenders constitute a Qualified Bidder.

13. At any time during Phase 1 or Phase 2, the Monitor may, in its reasonable business judgment and after consultation with the Financial Advisor and Comark and with the consent of the Lenders, recommend to the Board of Directors that a Qualified Bidder be eliminated from the SISP. If the Board of Directors accepts the Monitor's recommendation, such bidder will be eliminated from the SISP and will no longer be a "Qualified Bidder" for the purposes of this SISP. If the Board of Directors does not accept the Monitor's recommendation, the Monitor will seek advice and directions of the Court.

SISP – PHASE 1

Phase 1 Initial Timing

14. For a period of forty (40) days following the date of the Initial Order ("**Phase 1**"), the Financial Advisor (with the assistance of Comark and under the supervision of the Monitor and in accordance with this SISP) will solicit non-binding indications of interest in the form of non-binding letters of intent ("**LOIs**") from: (i) Qualified Bidders who may be interested in acquiring all or a portion of the Property relating to the Comark Business, all or a portion of the Property relating to a Division or any combination of Divisions; and (ii) Potential Bidders who may be interested in making an investment in the Business.

Due Diligence

15. The Financial Advisor will provide each Qualified Bidder with a copy of the Confidential Information Memorandum and access to an electronic data room of due diligence information for Qualified Bidders (the "**Data Room**"). The Monitor, the Financial Advisor and Comark make no representation or warranty as to the information (i) contained in the Confidential Information Memorandum or the Data Room, (ii) provided through the due diligence process in Phase 1 or Phase 2 or (iii) otherwise made available, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder executed and delivered by Comark.

Non-Binding Letters of Intent from Qualified Bidders

16. A Qualified Bidder that wishes to pursue a Sale Proposal or an Investment Proposal must deliver a LOI to the Financial Advisor and the Monitor at the addresses specified in Schedule "A" hereto (including by email or fax transmission), so as to be received by it not later than 5:00 PM (Eastern Standard Time) on or before forty (40) days following the date of the Initial Order, unless such day is not a Business day, in which case, on the next Business Day (the "**Phase 1 Bid Deadline**"). The Financial Advisor shall deliver all submitted LOIs to the Monitor and to the Lenders.

17. A LOI so submitted will be considered a qualified LOI (a "**Qualified LOI**") only if:

    (a) the LOI is submitted on or before the Phase 1 Bid Deadline by a Qualified Bidder;

    (b) it contains an indication of whether the Qualified Bidder is offering to:

        (i) acquire all or a portion of the Property relating to the Comark Business, all or a portion of the Property relating to a Division or any combination of Divisions on a liquidation or going concern basis (a "**Sale Proposal**"); or

        (ii) make an investment in, or refinance the Business of Comark (an "**Investment Proposal**").

    (c) in the case of a Sale Proposal, it identifies or contains the following:

(i) the purchase price range in Canadian dollars (and U.S. dollar equivalent), including details of any liabilities to be assumed by the Qualified Bidder;

(ii) the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

(iii) specific indication of the sources of capital for the Qualified Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the Financial Advisor and the Applicant and each of their respective advisors to make a reasonable business or professional judgment as to the Qualified Bidder's financial or other capabilities to consummate the transaction;

(iv) the structure and financing of the transaction (including, but not limited to, the sources of financing of the purchase price, preliminary evidence of the availability of such financing, steps necessary and associated timing to obtain such financing and any related contingencies, as applicable);

(v) any anticipated corporate, unit holder, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;

(vi) specific statements concerning the treatment of employees and plans for the ongoing involvement and roles of Comark employees;

(vii) specific additional due diligence required to be conducted during Phase 2, if any;

(viii) all conditions to closing that the Qualified Bidder may wish to impose; and

(ix) any other terms or conditions of the Sale Proposal which the Qualified Bidder believes are material to the transaction;

(d) in the case of an Investment Proposal, it identifies the following:

(i) a detailed description of the structure of the transaction;

(ii) the aggregate amount of the equity and debt investment to be made in the Business of Comark in Canadian dollars (and U.S. dollar equivalent) (including the sources of such capital, preliminary evidence of the availability of such capital and steps necessary and associated timing to obtain the capital and any related contingencies, as applicable);

(iii) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);

(iv) equity, if any, to be allocated to the secured and unsecured creditors of Comark;

(v) specific indication of the sources of capital for the Qualified Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the Financial Advisor and the Applicant and each of their respective advisors to make a reasonable business or professional judgment as to the Qualified Bidder's financial or other capabilities to consummate the transaction

(vi) the structure and financing of the transaction, including a sources and uses analysis;

(vii) any anticipated corporate, unitholder, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;

(viii) specific statements concerning the treatment of employees and plans for the ongoing involvement and roles of Comark employees;

(ix) specific additional due diligence required to be conducted during Phase 2, if any;

(x) all conditions to closing that the Qualified Bidder may wish to impose; and

(xi) any other terms or conditions of the Investment Proposal which the Qualified Bidder believes are material to the transaction;

(e) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Monitor, in consultation with the Financial Advisor and Comark; and

(f) the purchase price or funds to be invested, as assessed pursuant to paragraph 17 hereof, are in an amount that can reasonably be expected to be sufficient to pay the Lender Claims in full on closing thereof unless other arrangements are made that are acceptable to the Lenders.

18. The Monitor, in consultation with the Financial Advisor and Comark, may waive compliance with any one or more of the requirements specified above, except the requirement contained in paragraph 17(f) of this SISP, and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Assessment of Qualified LOIs and Continuation or Termination of SISP

19. Within three (3) Business Days following the Phase 1 Bid Deadline, or such later date as may be determined by the Monitor, the Monitor will, in consultation with the Financial

Advisor, the Applicant and the Lenders, assess the Qualified LOIs received during Phase 1, if any, and will determine whether there is a reasonable prospect of obtaining a Qualified Bid. For the purpose of such consultations and evaluations, the Financial Advisor and/or the Monitor may request clarification of the terms of Qualified LOIs.

20. In assessing the Qualified LOIs, the Monitor, following consultation with the Financial Advisor, the Applicant and the Lenders, will consider, among other things, the following:

    (a) the form and amount of consideration being offered, including any purchase price adjustments and/or any non-cash consideration;

    (b) the demonstrated financial capability of the Qualified Bidder to consummate the proposed transaction;

    (c) the conditions to closing of the proposed transaction; and

    (d) the estimated time required to complete the proposed transaction and whether, in the Monitor's reasonable business judgment, it is reasonably likely to close on or before the Outside Date.

21. If one or more Qualified LOI is received, the Monitor, exercising its reasonable business judgment and following consultation with the Financial Advisor, Comark and the Lenders, will either:

    (a) recommend to the Board of Directors that the most favourable Qualified LOI be selected as the Stalking Horse Bid and that the Financial Advisor, the Monitor, Comark and their advisors negotiate and settle the terms of a definitive agreement with the Stalking Horse Bidder acceptable to the Lenders; or

    (b) recommend to the Board of Directors that the SISP continue into phase 2 in accordance with these SISP procedures ("**Phase 2**").

22. Based on the recommendation of the Monitor and the consent of the Lenders, if the Board of Directors recommends that a Qualified LOI be selected as a Stalking Horse Bidder: (i) Comark shall apply to the Court in accordance with paragraphs 37 and 38 herein to approve the Stalking Horse Bid and any stalking horse bidding procedures in connection therewith; and (ii) the terms of this SISP shall automatically terminate.

23. Based on the recommendation of the Monitor, if the Board of Directors determines that the SISP should continue into Phase 2 pursuant to these SISP procedures and the Monitor, in consultation with the Financial Advisor and Comark, determines there is a reasonable prospect of obtaining a Qualified Bid, the Monitor shall continue the SISP for a further forty (40) days in accordance with these SISP Procedures.

24. At any time during Phase 2, the Monitor, in consultation with the Financial Advisor, the Applicant and the Lenders may extend Phase 2 by an additional fifteen (15) days (provided that in no event shall Phase 2 be longer than fifty-five (55) days total).

25. If the Monitor, after consultation with the Financial Advisor and Comark, determines that (a) no Qualified LOI has been received, and (b) there is no reasonable prospect of a

Qualified LOI resulting in a Qualified Bid and the SISP moving to Phase 2, the Lenders may, in their sole and absolute discretion designate one or more LOIs as a Qualified LOI. If no Qualified LOI is received or designated by the Lenders, any of the Lenders, the Monitor, or Comark may apply to the Court for further advice and directions including with respect to the termination of the SISP.

26. If: (a) one or more Qualified LOIs are received; and (b) the Monitor, in its reasonable business judgment, in consultation with the Financial Advisor and the Applicant, determines that another Qualified Bidder's LOI has a reasonable prospect of becoming a Qualified Bid, the Monitor, on notice to the Lenders may designate such LOI as a Qualified LOI.

PHASE 2

Due Diligence

27. During Phase 2, each Qualified Bidder with a Qualified LOI that is not eliminated from the SISP, and at the request of such Qualified Bidder, the legal and financial advisor(s) and/or lenders of such Qualified Bidder, provided that, in each case, such advisor or lender: (a) is reasonably acceptable to the Financial Advisor; and (b) has executed or is bound by an NDA, will be granted further access to such due diligence materials and information relating to the Property and the Business as the Financial Advisor, in its reasonable business judgment, in consultation with the Monitor and the Applicant, determines, including, as appropriate, information or materials reasonably requested by Qualified Bidders, on-site presentation by senior management of Comark, facility tours and access to further information in the Data Room. In addition, 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 Monitor, determine such information to represent proprietary or sensitive competitive information.

Final Bids from Qualified Bidders

28. A Qualified Bidder that is not eliminated from the SISP and that wishes to pursue a Sale Proposal or an Investment Proposal must deliver a final binding proposal (the "**Final Bid**"):

    (a) in the case of a Sale Proposal, a duly authorized and executed purchase agreement based on the Form of Purchase Agreement and accompanied by a mark-up of the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

    (b) in the case of an Investment Proposal, a duly authorized and executed investment agreement based on the Form of Investment Agreement and accompanied by a mark-up of the Form of Investment Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

to the Financial Advisor and to the Monitor at the addresses specified in Schedule "A" hereto (including by email or fax transmission) so as to be received by it not later than 5:00 pm (Eastern Standard Time) on the date which is forty (40) days following the commencement of Phase 2, or such other date as determined by the Monitor, in consultation with the Financial Advisor, and the Applicant (provided that Phase 2 shall not be more than fifty-five (55) days) unless in each case, such day is not a Business Day, in which case, on the next Business Day (the "**Phase 2 Bid Deadline**"). The Financial Advisor shall deliver all submitted Final Bids to the Lenders.

29. A Final Bid will be considered a Qualified Bid only if (a) it is submitted by a Qualified Bidder who submitted a Qualified LOI on or before the Phase 1 Bid Deadline; and (b) the Final Bid complies with, among other things, the following requirements:

(a) it includes a letter stating that the bidder's offer is irrevocable until the earlier of (a) the approval by a court of competent jurisdiction of a Successful Bid and (b) ten (10) days following the Phase 2 Bid Deadline, provided that if such bidder is selected as the Successful Bidder, its offer will remain irrevocable until the closing of the transaction with such Successful Bidder;

(b) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor, in consultation with the Financial Advisor and Comark, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by its Final Bid;

(c) in respect of a Sale Proposal, the Property to be included and in the case of an Investment Proposal, any Property to be divested or disclaimed prior to closing;

(d) it includes full details of the proposed number of employees of the Applicant who will become employees of the bidder (in the case of a Sale Proposal) or shall remain as employees of the Applicant (in the case of an Investment Proposal) and, in each case, provisions setting out the terms and conditions of employment for continuing employees;

(e) details of any liabilities to be assumed by the Qualified Bidder;

(f) it is not conditional upon, among other things:

(i) the outcome of unperformed due diligence by the Qualified Bidder; or

(ii) obtaining financing;

(g) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of such participation;

(h) it outlines any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;

(i) it identifies with particularity the contracts and leases the bidder wishes to assume and reject, contains full details of the bidder's proposal for the treatment of related cure costs (and provides adequate assurance of future performance thereunder); and it identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;

(j) it provides a timeline to closing with critical milestones;

(k) it includes evidence, in form and substance reasonably satisfactory to the Monitor and the Applicant, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;

(l) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to not less than 10% of the purchase price, to be held and dealt with in accordance with the terms of this SISP;

(m) it contains other information reasonably requested by the Financial Advisor, in consultation with the Monitor and Comark;

(n) it is received by the Phase 2 Bid Deadline;

(o) the purchase price or funds to be invested will be in an amount sufficient to pay the Lender Claims in full on closing thereof unless other arrangements are made that are acceptable to the Lenders;

(p) in the case of a Sale Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase and sale agreement; and

(q) in the case of an Investment Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business of the Applicant or the completeness of any information provided in connection therewith, except as expressly stated in the Investment Agreement.

30. The Monitor, in consultation with the Financial Advisor and Comark, may waive compliance with any one or more of the requirements specified herein, except the

requirements contained in paragraph 29(o) of this SISP, which may not be waived, and deem such non-compliant bids to be Qualified Bids.

Evaluation of Qualified Bids

31. The Monitor, in consultation with the Financial Advisor, Comark and the Lenders, will review each Qualified Bid as set forth herein. For the purpose of such consultations and evaluations, the Financial Advisor and/or the Monitor may request clarification of the terms of any Final Bid.

32. Evaluation criteria with respect to a Sale Proposal may include, but are not limited to items such as: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the bidder); (b) the firm, irrevocable commitment for financing the transaction; (c) the claims likely to be created by such bid in relation to other bids; (d) the counterparties to the transaction; (e) the terms of the proposed transaction documents; (f) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction; (g) planned treatment of stakeholders; (h) the assets included or excluded from the bid; (i) proposed treatment of the employees; (j) any transition services required from the Applicant post-closing and any related restructuring costs; and (k) the likelihood and timing of consummating the transaction.

33. Evaluation criteria with respect to an Investment Proposal may include, but are not limited to items such as: (a) the amount of equity and debt investment and the proposed sources and uses of such capital; (b) the firm, irrevocable commitment for financing the transaction; (c) the debt to equity structure post-closing; (d) the counterparties to the transaction; (e) the terms of the proposed transaction documents; (f) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (g) planned treatment of stakeholders; and (h) the likelihood and timing of consummating the transaction.

34. If one or more Qualified Bids is received, the Monitor, exercising its reasonable business judgment and following consultation with the Financial Advisor and Comark, may recommend to the Board of Directors that the most favourable Qualified Bid(s) be selected and that the Financial Advisor, the Monitor, Comark and their advisors negotiate and settle the terms of a definitive agreement (the "**Successful Bid**").

35. The Board of Directors shall have no obligation to enter into a Successful Bid, and reserves the right, after consultation with the Monitor and the Financial Advisor, to reject any or all Qualified Bids.

Phase 2 Guidelines

36. If the Monitor, after consultation with the Financial Advisor and Comark, determines that no Qualified Bid has been received at the end of Phase 2, the Lenders may, in their sole and absolute discretion designate one or more Final Bids as Qualified Bids. If no Qualified Bid is received or designated by the Lenders, any of the Lenders, the Monitor or Comark may apply to the Court for further advice and directions, including with respect to the termination of the SISP.

Approval Motion for Successful Bid

37. The Applicant will apply to the Court (the "**Approval Motion**") for an order approving the Successful Bid(s) or the Stalking Horse Bid, as applicable and authorizing Comark to enter into any and all necessary agreements with respect to the Successful Bid or the Stalking Horse Bid, as applicable and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid or the Stalking Horse Bid.

38. The Approval Motion will be held on a date to be scheduled by the Court upon application by the Applicant. The Approval Motion may be adjourned or rescheduled by the Applicant or the Monitor, on notice to the Lenders, by an announcement of the adjourned date at the Approval Motion and without the need for any further notice thereof, provided that in no circumstance shall the Approval Motion be adjourned or rescheduled beyond the Outside Date.

39. All Qualified Bids (other than the Successful Bid) will be deemed rejected on the date of approval of the Successful Bid by the Court.

OTHER TERMS

No Derogation

40. Nothing in this SISP shall affect the Lenders' rights to exercise contractual or legal remedies, or to enter into, and seek court approval for, any transaction with or relating to Comark or its property, subject to the applicable stay provisions of the Initial Order.

Deposits

41. All Deposits will be retained by the Monitor and invested in an interest bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder will be returned to such bidders within 5 Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the bidders within 5 Business Days of the date upon which the SISP is terminated in accordance with these procedures.

42. If a Successful Bidder breaches its obligations under the terms of the SISP, its Deposit plus interest shall be forfeited as liquidated damages and not as a penalty.

Approvals

43. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid or the Stalking Horse Bid.

No Amendment

44. There will be no amendments to this SISP without the consent of the Monitor, the Financial Advisor, Comark and the Lenders or, in the absence of consent, the approval of the Court.

45. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between Comark and any Qualified Bidder, other than as specifically set forth in a definitive agreement that may be signed with Comark. At any time during the SISP, the Monitor may, following consultation with the Financial Advisor, and the Applicant, upon reasonable prior notice to the Lenders, apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

Schedule "A"

Address for Notices and Deliveries

To the Monitor:

Alvarez & Marsal Canada Inc.
Attn: Adam Zalev and Jamie Belcher
Direct Dial: 416-847-5154
Email: azalev@alvarezandmarsal.com/ jbelcher@alvarezandmarsal.com

To the Financial Advisor:

Houlihan Lokey
245 Park Avenue, 20th Fl
New York, NY

Attn: Derek Pitts and Surbhi Gupta
Direct Dial: 212-497-4161
Facsimile: 212-661-3070
E-mail: dpitts@hl.com / sgupta@hl.com

To the Applicant:

Comark Inc.
6789 Millcreek Dr.
Mississauga, ON L5N 5M4

Attn: Gerry Bachynski
E-mail: GBachynski@comark.ca

IN THE MATTER OF *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

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

INITIAL ORDER

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
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Lawyers for the Applicant

Matter No: 1163824

Tab B

THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF NEVILLE LEWIS SWORN BEFORE ME THIS 15TH DAY OF APRIL, 2015

A Commissioner for taking Affidavits

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 "Q".

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.

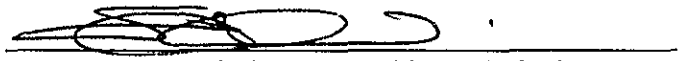
SWORN BEFORE ME at the Town of Oakville, in the Province of Ontario, this 25th day of March, 2015.

Commissioner for Taking Affidavits

Gerald Bachynski

Tab C

THIS IS EXHIBIT "C" TO THE AFFIDAVIT OF NEVILLE LEWIS SWORN BEFORE ME THIS 15TH DAY OF APRIL, 2015



A Commissioner for taking Affidavits

Court File No. CV15-10920-00CL

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

SUPPLEMENTARY AFFIDAVIT OF GERALD BACHYNSKI
(Sworn March 26, 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 swore an affidavit on March 25, 2015 (the "**Initial Affidavit**"), in support of a filing by the Applicant under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 as amended (the "**CCAA**").

2. As noted in the Initial Affidavit, 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.

3. This Affidavit provides additional information in respect of certain matters contained in the Initial Affidavit. Capitalized terms in this Affidavit that are not otherwise defined have the same meanings as in the Initial Affidavit.

4. As described in the Initial Affidavit, the purpose of this CCAA Application is to find a going concern solution for Comark's business through the implementation of the SISP. I

have been advised by Houlihan Lokey Capital, Inc. ("**Houlihan Lokey**"), the Financial Advisor to the Applicant, that in order to maximize recoveries for stakeholders, it is necessary to run a comprehensive marketing process within the time periods set out in the SISP. I have also been advised by Houlihan Lokey that stability and certainty for the Company is crucial to having a successful SISP.

5. As described in the Initial Affidavit, Comark needs access to credit to enable it to have sufficient liquidity to operate as a going concern as it attempts to restructure. Access to credit is necessary to provide comfort to suppliers, landlords, utility providers and employees that Comark will be able to continue going concern operations during the pendency of the SISP. Further, I have been advised by Houlihan Lokey that potential purchasers or investors may not be willing to invest the time and resources to pursue this opportunity without the Applicant being adequately funded.

6. In the Initial Affidavit, I described that Comark commenced working with Houlihan Lokey in mid-2014 to canvas the market and identify interested parties who would be prepared to refinance Comark and who would be prepared to refinance Comark's indebtedness with respect to the Cerberus Credit Facility. I am advised by Houlihan Lokey that they contacted 56 parties regarding the refinancing. The Company met with nine prospective financiers as part of this process. Salus was one of the parties that the Company met with during this process. Salus was the only financier that was prepared to individually provide the Company with funds on commercially reasonable terms that would take out the entire Cerberus debt.

7. As described in the Initial Affidavit, all receipts from operations were deposited into an account at TD prior to the Event of Default under the Salus Credit Agreement. That TD account is the same account that is the Blocked Account referenced in my Initial Affidavit. As a result of the Event of Default set out in the Initial Affidavit, Salus exercised its right under the Salus Credit Agreement and related Blocked Account Agreement to require that the funds that are deposited into the Blocked Account are paid to it, rather than the Company. Accordingly, the only change that has happened since the Event of Default is that the funds in the Blocked Account can no longer be accessed by the Company of its own volition. The Company must now receive advances from Salus to fund its operations based on a calculation of its then existing collateral forming part of its borrowing base under its lending arrangements. Salus has advised

that it is only willing to continue funding Comark in these CCAA proceedings through the DIP Facility, which incorporates the current arrangements with respect to the Blocked Account as described above.

8. As set out in the cash flow attached as Appendix "A" to the Pre-Filing Report of the Proposed Monitor, the peak funding requirement during the 13-week period is approximately CAD$28 million dollars during the week ending May 2, 2015. Comark requires $15 million during the week ending April 11, 2015. As such, Comark is proposing a maximum DIP Charge of CAD$28 million in the draft Initial Order with a restriction on borrowing of CAD$15 million prior to the comeback hearing scheduled on April 7, 2015.

9. In the circumstances, and as I noted in paragraph 11 of the Initial Affidavit, I believe that the DIP Facility is the only available option which provides Comark with adequate liquidity to continue operations as a going concern and maximize its enterprise value for the benefit of all of its stakeholders.

SWORN BEFORE ME at the Town of }
Oakville, in the Province of Ontario, this }
26th day of March, 2015. }

Commissioner for Taking Affidavits

Gerald Bachynski

IN THE MATTER OF *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

Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

SUPPLEMENTARY AFFIDAVIT OF
GERALD BACHYNSKI
(SWORN MARCH 26, 2015)

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Matter No: 1163824

IN THE MATTER OF *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

Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

(Stay Extension and Approval of Amended and Restated Order)

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