

**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

(Motion for Stay Extension and Approval of Distribution)

February 16, 2016

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC#: 44066M)
Tel: 416.862.4908

Sonja Pavic (LSUC #: 64558U)
Tel: 416.862.5661
Fax: 416.862.6666

Lawyers for the Applicant

TO: THE SERVICE LIST

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

Service List
(as at January 20, 2016)

<u>PARTY</u>	<u>CONTACT</u>
<p>OSLER, HOSKIN & HARCOURT LLP Box 50, 1 First Canadian Place Toronto, ON M5X 1B8</p> <p>Counsel to the Applicant</p>	<p>Marc Wasserman Tel: 416.862.4908 Fax: 416.862.6666 Email: mwasserman@osler.com</p> <p>Michael De Lellis Tel: 416.862.5997 Email: mdelellis@osler.com</p> <p>Sonja Pavic Tel: 416.862.5661 Email: spavic@osler.com</p>
<p>GOODMANS LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p>Counsel to the Monitor</p>	<p>Robert Chadwick Tel: 416.597.4285 Fax: 416.979.1234 Email: rchadwick@goodmans.ca</p> <p>Brian Empey Tel: 416.597.4194 Email: bempey@goodmans.ca</p> <p>Ryan Baulke Tel: 416.849.6954 Email: rbaulke@goodmans.ca</p>
<p>AIRD & BERLIS LLP Brookfield Place 181 Bay Street Suite 1800, Box 754 Toronto, ON M5J 2T9</p> <p>Counsel to Salus Capital Partners, LLC</p>	<p>Kenneth R. Rosenstein Tel: 416.865.3427 Fax: 416.863.1515 Email: krosenstein@airdberlis.com</p> <p>Sam Babe Tel: 416.865.7718 Email: sbabe@airdberlis.com</p>
<p>HAHN & HESSEN LLP 488 Madison Avenue New York, NY 10022</p> <p>Counsel to Capital Business Credit LLC</p>	<p>Joseph Orbach Tel: 212.478.7396 Fax: 212.478.7400 Email: jorbach@hahnhausen.com</p> <p>Edward Schnitzer Tel: 212.478.7215 Email: eschnitzer@hahnhausen.com</p>

<p>FASKEN MARTINEAU DUMOULIN LLP 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Counsel to Western Glove Works</p>	<p>John F. Grieve Tel: 604.631.4772 Fax: 604.632.4772 Email: jgrieve@fasken.com</p> <p>Dylan Chochla Tel: 416.868.3425 Fax: 416.364.7813 Email: dchochla@fasken.com</p>
<p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p>Counsel to Toronto Dominion Bank</p>	<p>Jeffrey Carhart Tel: 416.595.8615 Email: jcarhart@millერთhompson.com</p>
<p>FASKEN MARTINEAU DUMOULIN LLP Bay Adelaide Centre 333 Bay Street, #2400 Toronto, ON M5H 2T6</p> <p>Counsel to Ivanhoe Cambridge</p>	<p>Aubrey Kauffman Tel: 416.868.3538 Email: akauffman@fasken.com</p> <p>Luc Morin Tel: 514.397.5121 Email: lmorin@fasken.com</p> <p>Stuart Brotman Tel: 416.865.5419 Email: sbrotman@fasken.com</p>
<p>TORYS LLP 79 Wellington Street West, 30th Floor Box 270, TD South Tower Toronto, ON M5K 1N2</p> <p>Counsel to Cadillac Fairview</p>	<p>David Bish Tel: 416.865.7353 Email: dbish@torys.com</p> <p>Lily Coodin Tel: 416.865.7541 Email: lcoodin@torys.com</p>
<p>MCLEAN & KERR LLP 130 Adelaide Street West, Suite 2800 Toronto, ON M5H 3P5</p> <p>Counsel to 20 VIC Management Inc. (on behalf of various landlords), Morguard Investments Limited (on behalf of various landlords), Calloway Real Estate Investment Trust (on behalf of various landlords), Crombie Real Estate Investment Trust (on behalf of various landlords), Triovest Realty Advisors Inc. (on behalf of various landlords), and RioCan Real Estate Investment Trust (on behalf of various landlords)</p>	<p>Walter R. Stevenson Tel: 416.369.6602 Email: wstevenson@mcleankerr.com</p> <p>Linda Galessiere Tel: 416.369.6609 Email: lgalessiere@mcleankerr.com</p>

<p>DAOUST VUKOVICH LLP 3000 - 20 Queen Street West Toronto, ON M5H 3R3</p> <p>Counsel to 1445006 Alberta Ltd.</p>	<p>Gasper Galati Tel: 416.598.7050 Fax: 416. 597.8897 Email: ggalati@dv-law.com</p> <p>Kenneth Pimentel Tel: 416.597.9306 Fax: 416.597.8897 Email: kpimentel@dv-law.com</p>
<p>DAOUST VUKOVICH LLP 3000 - 20 Queen Street West Toronto, ON M5H 3R3</p> <p>Counsel to Morguard Investment Ltd.</p>	<p>Jamie Paquin Tel: 416.598.7059 Fax: 416. 597.8897 Email: jpaquin@dv-law.com</p>
<p>BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Hillside Centre I LP and Hillside Centre II LP, Optrust Retail Inc., Driftwood Mall Ltd, 5275 Investments Ltd., 2725312 Canada Inc., 2973758 Canada Inc., bcIMC Realty Corporation, PCM Sheridan Inc., Artis Tamarack Ltd., White Oaks Mall Holdings Inc., Narland Properties (Victoria Square) Ltd.</p>	<p>John C. Wolf Tel: 416.593.2994 Email: jwolf@blaney.com</p>
<p>WEIRFOULDS LLP 4100 - 66 Wellington Street West P.O. Box 35, Toronto-Dominion Centre Toronto, ON M5K 1B7</p> <p>Counsel to RioCan Real Estate Investment Trust</p>	<p>Lisa Borsook Tel: 416.947.5003 Email: lborsook@weirfoulds.com</p>
<p>LAWSON LUNDELL LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Counsel to Shape Property Management Corp.</p>	<p>Peter Tolensky Tel: 604.631.9125 Fax: 604.669.1620 Email: ptolensky@lawsonlundell.com</p>
<p>WELLS FARGO FOOTHILL CANADA ULC 40 King Street West, Suite 2500 Toronto, ON M5H 3Y2</p>	
<p>XEROX CANADA LTD. 33 Bloor Street East, 3rd Floor Toronto, ON M4W 3H1</p>	<p>Stephanie Grace Tel: 416.413.2805 Email: stephanie.Grace@xerox.com</p>

LEGGAT NATIONAL LEASING 2207 Fairview Street, P.O. Box 369 Burlington, ON L7R 3Y3	
FLEET MANAGEMENT Element Financial Corporation 900-4 Robert Speck Parkway Mississauga, ON L4Z 1S1	Laurie Sehl, Manager Tel: 905.366.1629 Cell: 416.573.2350
VW CREDIT CANADA INC. 4865 Marc-Blain Street, Suite 300 St. Laurent, QC H4R 3B2	
PLAZA RETAIL REIT 98 Main Street Fredricton, NB E3A 9N6	Jamie Petrie Tel: 506.460.8295 Fax: 506.451.1802 Email: jamie.petrie@plaza.ca Kevin Salsberg Email: kevin.salsberg@plaza.ca
DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 Counsel to Amex Bank of Canada	Kenneth Kraft Tel: 416.863.4374 Email: kenneth.kraft@dentons.com Sara-Ann Van Allen Tel: 416.863.4402 Email: sara.vanallen@dentons.com
DEPARTMENT OF JUSTICE Ontario Regional Office 130 King Street West, Suite 3400 Toronto, ON M5X 1K6 Counsel to the Attorney General of Canada in Right of Canada	Diane Winters Tel: 416.973.3172 Email: diane.winters@justice.gc.ca Andrew Kinoshita Tel: 416.973.9337 Fax: 416.973.0810 Email: andrew.kinoshita@justice.gc.ca
BOYNECLARKE 99 Wyse Road, Suite 600 P.O. Box 876, Dartmouth Main Halifax Regional Municipality, NS B2Y 3Z5 Counsel to Google Inc.	Tim Hill Tel: 902.460.3442 Fax: 902.463.7500 Email: thill@boyneclarke.ca
DAVIES WARD PHILLIPS & VINEBERG LLP 1501 Ave McGill College, Suite 2600 Montreal, Quebec H3A 3N9 Counsel to SACE SRV s.r.l. and Assicurazioni Generali S.p.A (credit insurers of Simple Approach Ltd.)	George J. Pollack Tel: 514.841.6420 Fax: 514.841.6499 Email: gpollack@dwpy.com

<p>LAW OFFICE OF JOHN ROWINSKI 114 Winchester Road East Brooklin, Ontario L1M 1C6</p> <p>Counsel to The Mackenzie Construction Group Inc.</p>	<p>John Rowinski Tel: 905.655.6375 Cell: 905.441.0319 Email: jr@brooklinlawyer.com</p>
<p>COX & PALMER Suite 1000, Scotia Centre 235 Water Street St. John's, NL A1C 1B6</p> <p>Counsel to S.E.A. Contracting Limited.</p>	<p>Mark A. Russel Tel: 709.570.5575 Fax: 709.738.0463 Email: mrussell@coxandpalmer.com</p>
<p>MCCARTHY TETRAULT TD Bank Tower Box 48, 66 Wellington Street West Toronto, ON M5K 1E6</p> <p>Counsel to Contempo Limited</p>	<p>Stephen Fulton Tel: 416.601.7958 Fax: 416.868.0673 Email: sfulton@mccarthy.ca</p>

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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 Distribution
Returnable February 23, 2016)**

The Applicant, 4240405 Canada Inc., formerly known as "Comark Inc." ("Comark"), will make a motion before the Honourable Regional Senior Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on February 23, 2016 at 8:30 a.m. 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 February 23, 2016 and dispensing with further service thereof;
 - (b) terminating the Directors' Charge, as defined in the Initial Order, subject to the reservation of an amount to be recommended by the Monitor at the hearing of this

motion to cover the maximum potential liability of the directors and officers of Comark in connection with the D&O Claims Process (defined below);

- (c) reducing the quantum of the Administration Charge from \$1.2 million to \$375,000;
- (d) approving distributions to Salus Capital Partners, LLC. (“**Salus**”) from time to time in amounts to be determined by the Monitor and in the maximum aggregate amount of Salus’ remaining secured claim;
- (e) approving the payment of \$17,773 into Court for the benefit of nine unlocated members (the “**Unlocated Members**”) of the Employees’ Pension Plan of Robinson’s (the “**Pension Plan**”) for their share of the surplus assets of the Pension Plan;
- (f) ordering that the Confidential Exhibit to the Affidavit of Gerald Bachynski sworn February 16, 2016 (the “**Confidential Exhibit**”) be sealed from the public record and kept confidential;
- (g) extending the Stay Period, as defined in paragraph 14 of the order granted by this Court on March 26, 2015, as amended and restated (the “**Initial Order**”), until and including May 31, 2016; and
- (h) approving the Eighth Report of the Monitor and the Monitor’s activities described therein.

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

THE GROUNDS FOR THE MOTION ARE:

3. 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;

4. Capitalized terms not otherwise defined herein have the same meanings given to them in the Initial Order;

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

6. The Applicant was authorized to obtain and borrow up to CAD\$28 million under the DIP Facility from its secured lender, Salus;

7. Pursuant to the Initial Order, the Court ordered that the Applicant shall indemnify its directors and officers against liabilities and obligations incurred in their positions as directors and officers after the commencement of these CCAA proceedings, and as security for the indemnity, the Court granted the Directors' Charge in the maximum amount of \$3 million;

8. The Initial Order granted a stay of proceedings until and including April 24, 2015, as later extended by subsequent orders of the Court and presently expiring on February 29, 2016;

9. On July 29, 2015, the Court approved a sale (the "**Transaction**") of substantially all of the assets and business of Comark to the Pacific West Commercial Corporation and its permitted assignees (the "**Purchaser**");

10. Since the completion of the Transaction on August 20, 2015, Comark and the Monitor have been attending to various post-closing matters and the orderly wind-down of the remaining affairs of the estate;

11. On November 30, 2015, the Court approved the establishment of a process for the solicitation, determination and resolution of certain claims against the directors and officers of Comark (the “**D&O Claims Process**”);

12. As a result of the D&O Claims Process, all of the potential claims that could be secured by the Directors’ Charge are known and the maximum potential liability for those claims is approximately \$72,300;

13. The Monitor has expressed the view that the Directors’ Charge is no longer necessary and should be discharged, subject to the reservation of an amount to be recommended by the Monitor at the hearing of this motion to cover this maximum potential liability and related costs;

14. Since the Company and the Monitor are nearing the end of the process of winding down the Comark estate, it is no longer necessary to reserve \$1.2 million for the Administration Charge;

15. The reduction in the quantum reserved for the Administration Charge and the termination of the Directors’ Charge will allow for distributions to be made to Salus from time to time in amounts to be determined by the Monitor and in a maximum aggregate amount of Salus’ remaining secured claim;

16. The bank account of the estate includes certain funds totalling \$17,773, which were transferred from a trust account created by the Company for the benefit of the nine Unlocated Members that were entitled to a share of the surplus assets of the Pension Plan;

17. Since Comark has no employees and will ultimately cease to exist, it will soon not be able to continue to act as a trustee in respect of the funds held on behalf of the Unlocated Members, and seeks to pay \$17,773 into Court for the benefit of the Unlocated Members;

18. The Confidential Exhibit contains personal information, the disclosure of which would be harmful to the privacy interests of the Unlocated Members;

19. The Applicant has been acting and continues to act in good faith and with due diligence in respect of all matters relating to the CCAA proceedings;

20. An extension of the Stay Period until May 31, 2016 is appropriate in the circumstances to allow time to complete the D&O Claims Process and wind-down the estate;

21. The Applicant has sufficient liquidity to administer these proceedings during the requested Stay Period;

22. It is in the best interests of the Applicant's stakeholders that the requested Order be granted and the Stay Period be extended;

23. The relief requested herein is supported by the Monitor;

24. The provisions of the CCAA and, in particular, Sections 11.02(2) and (3) thereof;

25. The inherent and equitable jurisdiction of this Honourable Court;

26. 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

27. 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:

28. The Affidavit of Gerald Bachynski sworn February 16, 2016; and

29. The Eighth Report of the Monitor, to be filed;

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

February 16, 2016

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Sonja Pavic (LSUC #: 64558U)
Tel: 416.862.5661
Fax: 416.862.6666

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 Distribution
Returnable February 23, 2016)**

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Sonja Pavic (LSUC #: 64558U)
Tel: 416.862.5661
Fax: 416.862.6666

Lawyers for the Applicant

Matter No: 1163824

Schedule “A”

Court File No. CV15-10920-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL)	FRIDAY, THE 23TH DAY
)	
SENIOR JUSTICE MORAWETZ)	OF FEBRUARY, 2016

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 AND DISTRIBUTION ORDER

THIS MOTION, made by 4240405 Canada Inc., formerly Comark Inc. (the "**Applicant**" or "**Comark**"), 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, as amended and restated on April 21, 2015 and further amended on June 1, 2015, the "**Initial Order**") and authorizing the Monitor, on behalf of the Applicant, to make a distribution to Salus Capital Partners, LLC ("**Salus**") in accordance with the terms herein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Gerald Bachynski sworn February 16, 2016, the Eighth Report of Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of the Applicant (the "**Monitor**") dated February ●, 2016, and on hearing the submissions of counsel

for the Applicant and 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.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 14 of the Initial Order) is hereby extended until and including May 31, 2016.

DISTRIBUTION

3. **THIS COURT ORDERS** that the Monitor, on behalf of the Applicant, shall be authorized and directed, without further Order of the Court, to distribute to Salus from time to time such amounts to be determined by the Monitor in the maximum aggregate amount of Salus' remaining secured claim, and such distributions shall be free and clear of all encumbrances other than those in favour of Salus, and shall be applied against the indebtedness, liabilities and obligations owing by the Applicant to Salus under the Amended and Restated Credit Agreement dated March 26, 2015.

TERMINATION OF DIRECTORS' AND OFFICERS' CHARGE

4. **THIS COURT ORDERS** that the Directors' Charge (as defined in paragraph 21 of the Initial Order) shall be terminated, released and discharged, subject to the reservation of CAD \$●

(the “**D&O Reserve**”) for the maximum potential liability of the directors and officers of the Applicant that could be secured by the Directors’ Charge in connection with the Claims Procedure (as defined in the Order of this Court dated November 30, 2015), such amount to be held by the Monitor until the final resolution of the claims received pursuant to the Claims Procedure or further order of this Court. Paragraph 22 of the Initial Order shall apply to the D&O Reserve *mutatis mutandis* and nothing herein shall affect the obligations of the Applicant’s existing directors and officers liability insurer.

ADMINISTRATION CHARGE

5. **THIS COURT ORDERS** that the amount of the Administration Charge (as defined in paragraph 42 of the Initial Order) shall be reduced from CAD \$1.2 million to \$375,000.

PAYMENT OF TRUST MONEY INTO COURT

6. **THIS COURT ORDERS** that a total amount of CAD \$17,773 be paid into court to the credit of the unlocated members of the Employees’ Pension Plan of Robinson’s, a former division of Comark Inc., as set out in the Confidential Schedule (as defined in the Affidavit of Gerald Bachynski sworn February 16, 2016).

REPORT OF THE MONITOR

7. **THIS COURT ORDERS** that the Eighth Report is approved and the activities of the Monitor as described therein are hereby approved.

SEALING

8. **THIS COURT ORDERS** that the Confidential Schedule (as defined in the Affidavit of Gerald Bachynski sworn February 16, 2016) 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 the Court.

GENERAL PROVISIONS

9. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature or any province and any court or any judicial, regulatory or administrative body of the United States and of any other nation or state, to act in aid of and be complementary to this Court in carrying out the terms of this Order.

**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

STAY EXTENSION AND DISTRIBUTION ORDER

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC#: 44066M)
Tel: 416.862.4908

Sonja Pavic (LSUC #: 64558U)
Tel: 416.862.5661
Fax: 416.862.6666

Lawyers for the Applicant

Tab 2

Court File No. CV15-10920-00CL

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

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ARRANGEMENT OF COMARK INC.

APPLICANT

**AFFIDAVIT OF GERALD BACHYNSKI
(Sworn February 16, 2016)**

**(Motion for Stay Extension and
Approval of Distribution)**

I, Gerald Bachynski, of the Town of Oakville, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a Director and the former Chief Executive Officer of the Applicant, 4240405 Canada Inc., formerly known as "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 an extension of the stay of proceedings until May 31, 2016, approval of a distribution to Salus Capital Partners, LLC ("**Salus**") and other related relief.

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 Justice (Commercial List) (the "**Court**"), as amended and restated on April 21, 2015 and further amended on June 1, 2015 (the "**Initial Order**").

3. The Initial Order, among other things: (i) appointed Alvarez & Marsal Canada Inc. to act as the monitor in these CCAA proceedings (the “**Monitor**”); (ii) authorized Comark to obtain and borrow up to CAD\$28 million under the DIP Facility from Salus; (iii) approved the engagement of Houlihan Lokey Capital, Inc. as financial advisor (the “**Financial Advisor**”) to Comark; and (iv) directed Comark to immediately commence a sale and investor solicitation process (the “**SISP**”) to solicit potential purchasers or investors for the business or property of Comark.

4. In the Initial Order, the Court also ordered that Comark shall indemnify its directors and officers against liabilities and obligations incurred in their positions as directors and officers after the commencement of these CCAA proceedings, except in respect of any obligation or liabilities incurred as a result of a director’s or officer’s gross negligence or wilful misconduct. As security for the indemnity, the Court granted a charge in favour of the directors and officers over all of the property of Comark in the maximum amount of \$3 million (the “**D&O Charge**”).

5. On July 29, 2015, the Court granted an Order which approved a sale (the “**Transaction**”) of substantially all of the assets and business of Comark to Pacific West Commercial Corporation and its permitted assignees (the “**Purchaser**”) pursuant to an asset purchase agreement made between Comark and the Purchaser dated July 16, 2015 (the “**Asset Purchase Agreement**”). As noted in the Affidavit of Neville Lewis sworn July 20, 2015 (the “**Sale Affidavit**”), the Transaction represented both the highest and the best offer identified in the extensive Court-supervised SISP that was conducted by the Financial Advisor and Comark, with the assistance and under the supervision of the Monitor. The details regarding the terms of the Transaction are set out in the Sale Affidavit and the Fourth Report of the Monitor.

6. On August 20, 2015, the Transaction was completed, resulting in numerous benefits to Comark’s stakeholders, including the continuation of Comark’s business as a going concern and the continued employment of over 90% of Comark’s employees.

7. On November 30, 2015, the Court granted an order (the “**D&O Claims Procedure Order**”) approving a procedure for the solicitation, determination and resolution of

certain claims against the directors and officers of Comark (the “**D&O Claims Process**”). The Court also extended the stay of proceedings to and including February 29, 2016.

8. Further details regarding the background to this proceeding are set out in my Affidavits sworn on March 25, 2015, March 26, 2015, July 31, 2015, October 27, 2015 and November 23, 2015, and in the Affidavits of Neville Lewis sworn April 15, 2015, May 26, 2015 and July 20, 2015. Capitalized terms contained herein that are not otherwise defined have the same meaning ascribed to them in the Sale Affidavit and the Asset Purchase Agreement.

Agreement on the Working Capital Statement

9. Under the terms of the Asset Purchase Agreement, the final determination of the total proceeds of the Transaction was subject to a post-closing adjustment in respect of the Working Capital (the “**Working Capital Adjustment**”). Pending this determination, the Asset Purchase Agreement required that the Monitor hold in trust \$5 million (the “**Holdback Amount**”) from the sale proceeds.

10. The Purchaser prepared and delivered to the Company and the Monitor the Working Capital Statement on November 4, 2015. As permitted under the Asset Purchase Agreement, the Monitor reviewed the documentation which formed the basis of the Working Capital Statement. On November 18, 2015, the Company delivered a Notice of Dispute to the Purchaser, so as to extend the time for consensual resolution of this issue to December 16, 2015 in accordance with the Asset Purchase Agreement.

11. On December 17, 2015, the Company, the Monitor and the Purchaser came to an agreement on the Working Capital Adjustment in favour of the Purchaser in the amount of \$4,378,000. I understand that, on December 18, 2015, the Monitor paid \$4,378,000 to the Purchaser from the Holdback Amount, with the balance of the Holdback Amount being released to the Comark estate. A copy of the Acknowledgement and Agreement between the Purchaser and Comark is attached as Exhibit “A”.

The D&O Claims Process

12. All capitalized terms in this section not defined elsewhere have the meaning ascribed to them in the D&O Claims Procedure Order.

13. The Monitor, with the assistance of the Company, has been carrying out the D&O Claims Process in accordance with the D&O Claims Procedure Order. The Company and the Monitor have diligently pursued all steps and requirements to date in connection with the D&O Claims Process.

14. Under the D&O Claims Procedure Order, any creditor wishing to assert a D&O Claim was required to file the applicable Proof of Claim form with the Monitor by 5:00 p.m. (Toronto time) on January 21, 2016 (the “**Claims Bar Date**”).

15. The D&O Claims Process resulted in six Proofs of Claim totalling approximately \$98,600 being filed on or before the Claims Bar Date. The Monitor, in consultation with the Company, determined that none of the Proofs of Claim met the requirements for Accepted Claims. On January 15 and 20, 2016 and February 5 and 9, 2016, the Monitor sent Notices of Revision or Disallowance to the Claimants disallowing their claims entirely.

16. Under the D&O Claims Process, a Claimant intending to dispute the disallowance or revision of its D&O must deliver a Notice of Dispute to the Monitor within fifteen days after the date the Notice of Revision or Disallowance is deemed to be received by the Claimant, or such later date as the Monitor, in consultation with the Applicant, may agree in writing or the Court may order (the “**Dispute Period**”).

17. I am advised by my counsel and the Monitor that, as will be set out in further detail in the Eighth Report of the Monitor, the Dispute Period in respect of the Notices of Revision or Disallowance sent on January 15 and 20, 2016, for claims totalling approximately \$26,200, has expired and these claims have been extinguished and released and that the Dispute Period in respect of the remaining Proofs of Claim totalling approximately \$72,300 has not yet expired.

18. A Claimant who has delivered a Notice of Dispute and wishes to continue to dispute a D&O Claim, must, within ten Business Days of delivery of the Notice of Dispute, file an application with the Court seeking determination of the claim. The Application shall be returnable within seven Business Days of the filing of the application.

19. The Monitor, in consultation with the Company, is authorized to enter into settlement negotiations with a Claimant at any stage of the D&O Claims Process and to enter into agreements with Claimants resolving the value of their D&O Claims.

D&O Charge

20. In the Initial Order, the Court granted the D&O Charge in favour of the directors and officers in the maximum amount of \$3 million as security for the Company's indemnity.

21. As a result of the D&O Claims Process, all of the potential claims against the D&O Charge are known. The maximum liability of the Directors and Officers that is potentially secured by the D&O Charge is approximately \$72,300, being the total amount of Proofs of Claim that, although they have been disallowed, have not yet been deemed to be finally extinguished and released.

22. I am advised that the Monitor is of the view that the \$3 million D&O Charge is no longer necessary and should be discharged, subject to the reservation of an amount to be recommended by the Monitor at the hearing of this motion (the "**D&O Reserve Amount**") to cover the maximum potential liability of the Directors and Officers that could be secured by the D&O Charge and any related costs, until final resolution of the remaining Proofs of Claim or further order of the Court. The creation of this reserve is not intended to affect the obligations of the Company's existing directors' and officers' liability insurer. The Company agrees that this approach is appropriate.

Administration Charge

23. As discussed in my Affidavit sworn November 23, 2016, the Company is no longer in operation and is in the process of winding down the Comark estate.

24. Accordingly, I am advised by my counsel that it and the Monitor and its counsel are of the view that it is no longer necessary to reserve \$1.2 million for the Administration Charge. I am advised that the Monitor is of the view, and the Company agrees, that it is appropriate to reduce the quantum of the Administration Charge to \$375,000.

Interim Distribution

25. As at February 12, 2016, there is approximately USD\$6.7 million including interest and fees and the conversion of U.S. dollar denominated amounts into Canadian dollars as at February 12, 2016 (the “**Remaining Salus Secured Claim**”) outstanding under the term loan facility provided for in the Salus Credit Agreement. All of the obligations of Comark under the Salus Credit Agreement are secured by all of Comark’s assets.

26. The discharge of the D&O Charge and the reduction in the quantum of the Administration Charge will allow for distributions to be made to Salus from time to time in amounts to be determined by the Monitor after reserving for the D&O Reserve Amount and sufficient funds to complete the wind-down of Comark’s estate, and in the maximum aggregate amount of the Remaining Salus Secured Claim.

Payment of Trust Money into Court

27. The Company terminated and wound-up a defined benefit pension plan of one of its former divisions, Robinson’s (the “**Pension Plan**”), effective September 30, 1991. After all liabilities under the Pension Plan were satisfied, there were surplus assets remaining. Those surplus assets were ultimately shared between, on the one hand, certain members and former members of the Pension Plan and, on the other hand, the Company.

28. As at July 12, 2012, there remained nine individual members of the Pension Plan who Comark had not been able to locate (the “**Unlocated Members**”) in order to provide to them their share of the surplus assets in the Pension Plan. In total, as at July 12, 2012, the Unlocated Members were entitled to CAD\$17,773 from the surplus assets in the Pension Plan. At that time, the funding agent for the Pension Plan, Standard Life Assurance Company of Canada, held the surplus assets relating to the Unlocated Members, as well as the Company’s share of the surplus assets under the Plan.

29. The Company exchanged correspondence with the Financial Services Commission of Ontario (“FSCO”) relating to the requirements that had to be met before the Company’s share of the surplus assets under the Pension Plan could be distributed to the Company. Pursuant to these discussions, in July 2015, Comark created a trust account at TD Bank to hold the nine Unlocated Members’ surplus entitlement amount. A copy of the board resolution authorizing the establishment of the account (the “**Board Resolution**”), along with a schedule containing certain bank account details, is attached as Exhibit “B”.

30. A list of the Unlocated Members and certain identifying personal information is set out in a confidential schedule to the Board Resolution (the “**Confidential Schedule**”). The disclosure of the Confidential Schedule would be harmful to the privacy interests of the Unlocated Members. Therefore, Comark is requesting that the Confidential Schedule be sealed on the Court file. A copy of the Confidential Schedule is attached as Confidential Exhibit “C”.

31. On July 27, 2015, FSCO advised that, given the Company’s representations about the creation of a trust account, its file for the Pension Plan was closed. A copy of the letter from FSCO dated July 27, 2015 is attached as Exhibit “D”.

32. As part of these CCAA proceedings and the wind-down of the estate, Comark’s bank accounts at TD Bank were closed, and funds from the accounts were transferred to the bank account of the estate, which is operated by the Monitor. The Monitor has advised that neither the Monitor nor the Purchaser are prepared to become a replacement trustee in relation to the funds relating to the nine Unlocated Members. Since Comark has no employees and will ultimately cease to exist, it will soon not be able to continue to act as a trustee in respect of the funds held on behalf of the Unlocated Members. The Company seeks to pay \$17,773 into Court for the benefit of the Unlocated Members. I am advised by Comark’s counsel that payment of this money into Court is consistent with the Company’s obligations under the *Trustee Act*.

Stay Extension

33. I believe that Comark has acted and continues to act in good faith and with due diligence in these CCAA proceedings. Comark has been working diligently with the Monitor to

attend to post-Closing tasks, conduct the D&O Claims Process and efficiently wind-down the estate.

34. The current Stay Period, as defined in the Initial Order, expires on February 29, 2016. Comark seeks a further extension of the Stay Period up to and including May 31, 2016.

35. I believe that an extension of the Stay Period until the end of May 2016 is appropriate in the circumstances to allow for the completion of the D&O Claims Process and all other matters relating to the winding down of the estate.

36. The Company has sufficient liquidity to administer these proceedings during the requested extension of the Stay Period, as I understand will be further detailed in the Eighth Report of the Monitor.

37. The Monitor has expressed its support for the requested stay extension.


Relief Requested

38. Accordingly, I request that this Honourable Court grant the relief requested herein.

SWORN BEFORE ME at the City of }
Mississauga, in the Province of Ontario, }
this 16th day of February 2016. }
}



Commissioner for Taking Affidavits



Gerald Bachynski

Thomas Francis Robertson,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 4, 2017.

**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 GERALD BACHYNSKI
(Stay Extension and Approval of Distribution)**

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Sonja Pavic (LSUC #: 64558U)
Tel: 416.862.5661
Fax: 416.862.6666

Lawyers for the Applicant

Matter No: 1163824

Tab A

This is Exhibit "A"

Referred to in the Affidavit of GERALD BACHYNSKI

Sworn before me this 16th day of February, 2016



A Commissioner for taking Affidavits

Thomas Francis Robertson,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 4, 2017.

ACKNOWLEDGEMENT AND AGREEMENT

Via E-mail

To: Alvarez & Marsal Canada Inc. in its capacity as Monitor of 4240405 Canada Inc.
Attention: John Walker and Adam Zalev

CC: Goodmans LLP
Attention: Brian Empey

CC: Osler, Hoskin & Harcourt LLP
Attention: Marc Wasserman

CC: Fasken Martineau DuMoulin LLP
Attention: John Grieve


RE: Working Capital Statement as defined in Section 3.5(b) of the Asset Purchase Agreement (the "APA") made as of July 16, 2015, as amended, between Pacific West Commercial Corporation and its permitted assigns (collectively, the "Purchaser") and Comark Inc. (the "Vendor")

The Purchaser and the Vendor acknowledge and agree that Schedule A attached hereto is the final and agreed upon Working Capital Statement for the purposes of Section 3.5(g) of the APA and, pursuant to Section 3.5(i) of the APA, hereby instruct and direct the Monitor to transfer to the Purchaser the sum of \$4,378,000 within two (2) business days of the date hereof by wire transfer according to the wire instructions attached hereto as Schedule B.

[Remainder of page left intentionally blank]

DATED as of the 17th day of December, 2015.

For the Vendor, 4240405 CANADA INC., formerly known as "Comark Inc."




Name: Gerald Bachynski

Title: Chief Executive Officer

I have authority to bind the Vendor.

For the Purchaser, PACIFIC WEST COMMERCIAL CORPORATION by its assignee, 9371427 CANADA INC.



Name: Shamsh Kassam

Title:

I have authority to bind the Purchaser.

SCHEDULE A

[Attached]

Schedule A

NET WORKING CAPITAL CALCULATION

Actual vs. forecast

Net working capital - Consolidated		
	Actual	Forecast
\$'000	19-Aug-15	29-Aug-15
Current assets		
AR	423	743
INV	50,784	48,892
PPD	3,738	2,893
	54,946	52,528
Current liabilities		
TP	(39,836)	(32,250)
SP	(12,200)	(15,806)
PL	(2,828)	(2,268)
OCL	(6,929)	(9,523)
	(61,793)	(59,846)
	(6,847)	(7,318)
Net working capital, unadjusted		
Adjustments		
TP	1	1,854
OCL	2	422
OCL	3	3,640
AR	4	(397)
	5	814
PPD	6	150
SP	7	-
SP	8	-
PL	9	-
OCL	10	-
SP	11	-
	12	24,966
	13	4,289
	Total Adjustment	35,739
	24,038	28,420
Net working capital, adjusted		
NET ADJUSTMENT TO PURCHASE PRICE		
	(4,383)	
Subsequent Cash Adjustments:		
	14	634
	15	239
	16	5
	17	(873)
		5
Final Net settlement proceeds due to Purchaser		
	(4,378)	

SCHEDULE B**WIRE INSTRUCTIONS**

Beneficiary Name: 9371427 Canada Inc.

Beneficiary Address: 6789 Millcreek Drive
Mississauga, ON L5N 5M4

Bank: Canadian Imperial Bank of Commerce
400 Burrard Street,
Vancouver, BC
V6C 3A6


Account No.: 7744218

**Processing Branch Transit
Number:** 00010

Swift Code: CIBCCATT

Tab B

This is Exhibit "B"
Referred to in the Affidavit of GERALD BACHYNSKI
Sworn before me this 16th day of February, 2016



A Commissioner for taking Affidavits

Thomas Francis Robertson,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 4, 2017.

COMARK INC.
(the "Corporation")

RESOLUTION OF THE BOARD OF DIRECTORS

RECITALS:

- A. Robinson's, a former division of the Corporation participated in the Employees' Pension Plan of Robinson's (the "Plan") on behalf of its employees and former employees.
- B. Pursuant to a resolution of the board of directors dated September 17, 1991, the Plan was terminated effective September 30, 1991 (the "Termination Date") and was wound up under the provisions of the *Pension Benefits Act* (Ontario).
- C. As at the Termination Date, there existed an actuarial surplus in the Plan, after satisfaction of all rights and obligations under the Plan (the "Surplus").
- D. There are nine (9) individual members of the Plan who have not been located by the Corporation and are entitled to a portion of the Surplus, as set out in the attached Schedule A (the "Lost Members").
- E. It is desirous for the Corporation to open a bank account to hold the portion of the Surplus payable to the Lost Members, or their personal representative thereof, and to name such account "In Trust for Lost Members from Robinson's/Comark PPlan Windup" (the "Surplus Account"). Reference attached Schedule B ("Bank Account Details")

RESOLVED THAT:

1. The opening of the Surplus Account by the Corporation and the entering into, execution and delivery by any director or officer of the Corporation (each, an "Authorized Signatory") of the necessary documents in the forms required by TD Commercial Banking (the "Bank") to open the Surplus account are authorized and approved.
2. Immediately following the opening of the Surplus Account, any Authorized Signatory of the Corporation is authorized and directed to provide information to the Financial Services Commission of Ontario, Pension Plans Branch, that the Surplus Account has been established for the Lost Members in order for the Corporation to receive the remaining Surplus.
3. Any Authorized Signatory of the Corporation is authorized and directed, for and on behalf of the Corporation, to negotiate, finalize, execute and deliver any and all such further documents, agreements, authorizations, elections or other instruments, with or without the corporate seal affixed, and to take any and all such further action as such Authorized Signatory, in such Authorized Signatory's sole discretion may deem necessary or desirable in order to complete the transaction contemplated in this resolution, the execution and delivery of any such documents, agreements, authorizations, elections or other instruments or the doing of any such other act or thing by such Authorized Signatory to be conclusive evidence of such determination.

- 2 -

The foregoing resolution is passed as evidenced by the signatures of the directors of the Corporation pursuant to the provisions of the *Canada Business Corporations Act*.

DATED *July 10th*, 2015.


Chris Reilly


Gerry Bachynski

SCHEDULE A

LIST OF UNLOCATED MEMBERS OF THE
ROBINSON'S INC., A DIVISION OF COMARK INC., EMPLOYEES' PENSION PLAN

Page Removed

See Confidential Exhibit "C"

SCHEDULE B

**DETAILS OF THE TD COMMERCIAL BANK SURPLUS ACCOUNT OPENED IN
TRUST FOR THE "LOST MEMBERS" OF
ROBINSON'S INC., A DIVISION OF COMARK INC., EMPLOYEES' PENSION PLAN**

Chryssoulakis, Connie

From: Sturino, Karen
Sent: Tuesday, May 19, 2015 11:48 AM
To: Chryssoulakis, Connie
Subject: FW: Comark Inc.

Hers one of the emails

From: Martins, Marina [mailto:Marina.Martins@td.com]
Sent: December-02-14 1:56 PM
To: Sturino, Karen
Cc: Irani, Zarin
Subject: RE: Comark Inc.

Hi Karen,

The account does not have any transactions as of yet and a statement will not be produced if the account has no activity.

BR #: 1275 ACCOUNT: 5312673 CA SHORTNAME: PENSION PLAN
 FROM: 01 / 01 / 2014 TO: 12 / 02 / 2014 ACCESS TO FUNDS AMT: N/A

FN DATE	TRANS DESCRIPTION	TRANS AMOUNT	BALANCE
_ 07/04/2014	OPEN ACCOUNT	0.00 CR	0.00

Thank you
 Marina

Marina Martins | Customer Service Officer |
 TD Commercial Banking
 20 Milverton Drive, Mississauga, ON, L5R 3G2
 T: 905.890.4123 | F: 905.890.4136
marina.martins@td.com

Customer Service Center
 Toll Free # 1-855-499-6252
 Email: TDCAQGTA@td.com

Creating an Exceptional Customer Experience is our Priority at TD.

We appreciate your business and want all of our customers to feel "Extremely Likely" to recommend TD to others.

Do you have comments or questions about our service?

Please don't hesitate to contact Dero Sabatini, District VP at dero.sabatini@td.com or 905-890-4111.

From: Sturino, Karen [mailto:KSturino@comark.ca]
Sent: Tuesday, December 02, 2014 1:51 PM
To: Martins, Marina

Cc: Irani, Zarin
Subject: RE: Comark Inc.

Hello,

Could I get a statement for this new account so that it can be attached to the information we have to provide to Pension Plans FSCO?

Thank you,

From: Martins, Marina [<mailto:Marina.Martins@td.com>]
Sent: October-15-14 11:16 AM
To: Sturino, Karen
Cc: Irani, Zarin
Subject: RE: Comark Inc.

Hi Karen,

Sorry yes the account is operational and you can begin using it at your convenience

I have included Zarin in this email who can ensure that the new account is available on line for viewing

Will there be monthly fees associated with it?

From my understanding no this would fall under the Comark umbrella but please let me know if you do have fees on the account and I will have our Cash management look into it

what is the account name?

The legal name on the account is Comark Inc but I believe that we tittle it Pension Plan for statement purposes

Marina Martins | Customer Service Officer |
TD Commercial Banking
 20 Milverton Drive, Mississauga, ON, L5R 3G2
 T: 905.890.4123 | F: 905.890.4136
marina.martins@td.com

Customer Service Center
 Toll Free # 1-855-499-6252
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Do you have comments or questions about our service?

Please don't hesitate to contact Dero Sabatini, District VP at dero.sabatini@td.com or 905-890-4111.

From: Sturino, Karen [<mailto:KSturino@comark.ca>]
Sent: Wednesday, October 15, 2014 10:30 AM
To: Martins, Marina
Subject: RE: Comark Inc.

Also, will this account show up when we log in to see our accounts? Will there be monthly fees associated with it? and what is the account name?

From: Martins, Marina [<mailto:Marina.Martins@td.com>]
Sent: October-07-14 4:24 PM
To: King, Bill; Sturino, Karen
Cc: Kabani, Abid; Martins, Marina; Coelho, Daryl
Subject: Comark Inc.

Good afternoon Karen,

The freeze has been removed on 5312673-1275 and the account is now available for use.

Please let me know if you have any other questions

Marina

Marina Martins | Customer Service Officer |
TD Commercial Banking
 20 Milverton Drive, Mississauga, ON, L5R 3G2
 T: 905.890.4123 | F: 905.890.4136
marina.martins@td.com

Customer Service Center
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Tab C

This is Confidential Exhibit "C"
Referred to in the Affidavit of GERALD BACHYNSKI
Sworn before me this 16th day of February, 2016



A Commissioner for taking Affidavits

Thomas Francis Robertson,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 4, 2017.

**Confidential Schedule to the Resolution of the
Board of Directors of Comark Inc. dated July 10, 2015**

Tab D

This is Exhibit "D"

Referred to in the Affidavit of GERALD BACHYNSKI

Sworn before me this 16th day of February, 2016



A Commissioner for taking Affidavits

Thomas Francis Robertson,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 4, 2017.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



July 27, 2015

Registration Number: 000610

Connie Chryssouiakis
Director of Human Resources
Comark Inc.
6789 Millcreek Drive
Mississauga On L5N 5M4

Dear Ms. Chryssouiakis:

Re: Pension Plan For Employees

Thank you for your letter of July 10, 2015, advising that the assets of the above plan have all been distributed, given that a trust account was created for nine unlocated members' surplus entitlement amount. Our file for the plan is now closed.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 590-7533. Please quote the registration number shown at the top of this letter.

Yours truly,

A handwritten signature in cursive script that reads 'Lisa He'.

Lisa He
Pension Officer

Copy: Cheridah Smith, Eckler Ltd.

**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
(Motion for Stay Extension and
Approval of Distribution)**

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC#: 44066M)

Tel: 416.862.4908

Sonja Pavic (LSUC #: 64558U)

Tel: 416.862.5661

Fax: 416.862.6666

Lawyers for the Applicant