

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

**PRE-FILING REPORT OF THE PROPOSED MONITOR  
ALVAREZ & MARSAL CANADA INC.  
MARCH 25, 2015**

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## 1.0 INTRODUCTION

1.1 Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**”) understands that Comark Inc. (“**Comark**”, the “**Company**” or the “**Applicant**”) intends to bring an application before this Honourable Court seeking certain relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) granting, among other things, a stay of proceedings until April 24, 2015 and appointing A&M as Monitor (the “**Monitor**”). The proceedings to be commenced by the Applicant under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

1.2 The purpose of this pre-filing report (“**Report**”) is to provide the Court with:

(1) Information regarding the following:

- a) A&M's qualifications to act as Monitor;
- b) Background information in respect of Comark and the proposed CCAA Proceedings;
- c) The Applicant’s planned operational restructuring;
- d) The proposed process to market and sell, recapitalize and/or restructure the business of the Applicant pursuant to a Sale and Investment Solicitation Process (“**SISP**”);
- e) The cash management system of Comark;
- f) Comark’s 13-week cash flow forecast;
- g) The proposed debtor-in-possession (“**DIP**”) financing facility;
- h) Proposed payments during the CCAA Proceedings;
- i) A key employee retention plan (the “**KERP**”);
- j) Court ordered charges sought in the proposed Initial Order; and

(2) The Proposed Monitor's conclusions and recommendations.

## **2.0 TERMS OF REFERENCE**

2.1 In preparing the Report, the Proposed Monitor has been provided with and has relied upon, unaudited financial information; books, records and financial information prepared by certain senior management of Comark ("**Senior Management**"); and discussions with Senior Management (collectively, the "**Information**").

2.2 With respect to any of Comark's cash flow forecasts and projections:

a) The Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has neither audited nor otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* and accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

b) Any examination or review of such financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

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

2.4 Capitalized terms not defined in this Report shall have the meanings ascribed to them in the affidavit of Gerald Bachynski sworn March 25, 2015 (the “**Bachynski Affidavit**”) filed in support of the Applicant’s application for relief under the CCAA.

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

### **3.0 A&M'S QUALIFICATION TO ACT AS MONITOR**

3.1 A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act (Canada)* and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. The senior A&M professional personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Accountants, Chartered Insolvency and Restructuring Professionals, designated Corporate Finance Specialists and/or licensed Trustees in Bankruptcy (Canada), all of whom have acted in CCAA matters of a similar nature and scale in Canada.

3.2 Alvarez & Marsal Canada Securities ULC (“**A&M Securities**”), an affiliate of A&M, was engaged by legal counsel (the “**Lender’s Counsel**”) to Salus Capital Partners, LLC (“**Salus**” or the “**Lender**”), the Applicant’s lender, on February 26, 2015 to provide: (i) advisory services in respect of the Applicant’s business plan and performance; and (ii) assistance to the Lender’s Counsel, Salus and the Applicant in the Applicant’s evaluation of its various strategic alternatives.

- 3.3 The Lender's Counsel and the Lender provided A&M Securities with a letter dated March 19, 2015 consenting to the engagement of A&M by the Applicant, waiving any associated conflict of interest and terminating its engagement with A&M Securities.
- 3.4 On March 19, 2015, A&M was engaged by the Applicant to provide consulting services in connection with its restructuring efforts, including providing assistance to the Applicant in preparing for formal restructuring proceedings, should such a filing become necessary.
- 3.5 The Proposed Monitor has retained Goodmans LLP ("**Goodmans**") to act as its independent legal counsel. Goodmans acts for commercial landlords from time to time and distinct teams segregated from Goodmans' engagement as counsel to the proposed Monitor may have represented landlords in respect of some prior leases involving Comark.
- 3.6 A&M has consented to act as Monitor of the Applicant should this Court grant the Applicant's request to commence the CCAA Proceedings.

#### **4.0 BACKGROUND INFORMATION**

##### General

- 4.1 This Report should be read in conjunction with the Bachynski Affidavit to provide for additional background and other information regarding the Applicant and the CCAA Proceedings.
- 4.2 Comark is a portfolio company of KarpReilly LLC ("**KarpReilly**"), a private investment firm based in Greenwich, Connecticut. KarpReilly indirectly holds the majority of the

shares of Comark. The remaining shares are held by current and former employees of Comark and by one additional investment firm with industry expertise.

- 4.3 The Applicant is a leading Canadian retailer of branded and private label specialty apparel operating under three separate and distinct divisions: Ricki’s, Bootlegger and cleo (each a “**Division**” and collectively, the “**Business**”).

Business Operations

- 4.4 The Business is centrally managed with key functions, systems and decision-making all conducted from Comark’s corporate headquarters in Mississauga, Ontario (the “**Head Office**”). The Applicant operates 343 retail stores across Canada, in the Northwest Territories and in all provinces except Quebec, under its three Divisions. The following table sets out the number of retail stores in each of the three Divisions

<b>Division</b>	<b>Number of Stores</b>
Ricki’s	155
Bootlegger	101
cleo	87
Total	343

- 4.5 Ricki’s, Bootlegger and cleo each operate from a divisional head office in Winnipeg, Manitoba, Richmond, British Columbia and Mississauga, Ontario, respectively. Comark also maintains a 93,553 square foot, leased distribution centre in Laval, Quebec (the “**Distribution Centre**”), which is used primarily to fulfil orders derived from the Divisions’ electronic commerce businesses (the “**Electronic Commerce Business**”).

- 4.6 Comark presently employs approximately 1,100 full-time employees and approximately 2,300 part-time employees. Approximately 83 employees work at the Head Office and

approximately 95, 85 and 68 employees work at the divisional head offices of Ricki's, Bootlegger and cleo, respectively.

- 4.7 Typically, Comark's stores are strategically located in malls, well-positioned power centres or shopping centres in suburbs, with an average store size of approximately 3,300 square feet. In certain instances, the retail space is shared by more than one Division. The average store size for these locations is 5,000 square feet and there are 26 of these locations.
- 4.8 Each Division provides a loyalty program to customers (the "**Loyalty Programs**") through which, by signing up for a loyalty card, a customer receives discounts and coupons for frequent purchases. As at February 28, 2015, there were approximately 1.5 million active Loyalty Program members.
- 4.9 Each Division also sells gift cards that can be redeemed for merchandise ("**Gift Cards**"), and in certain cases when merchandise is returned, provides an in-store credit ("**Store Credit**") that can be redeemed for merchandise in store.

#### Logistics and Distribution

- 4.10 Comark has over 300 product suppliers, primarily located in Asia and North America, that supply Comark with its products, as well as hundreds of other suppliers of goods and services. To support efficient operations, Comark primarily outsources its domestic logistics activities to Purolator Inc. ("**Purolator**"). Purolator is a leading Canadian integrated freight, parcel and logistics provider which is 91% owned by Canada Post Corporation ("**Canada Post**"), a Crown Corporation controlled by the Government of Canada pursuant to the *Canada Post Act*.

- 4.11 The Company's foreign vendors account for approximately 80% of total purchases, which purchases are paid for with U.S. dollars (making Comark highly sensitive to fluctuations in the exchange rate between the Canadian and U.S. dollar). For the majority of these purchases, the Company works with an Asian domiciled purchasing agent. This agent works with Comark to identify and source appropriate vendors, negotiate terms, facilitate ordering and inspect and ensure quality. Items purchased in Asia are consolidated at appropriate shipping ports and are sent, via cargo container, overseas to Vancouver. In general, title of ownership of goods purchased in Asia, in accordance with Comark's purchasing terms, transfer to Comark at the time such goods are delivered to the port in Asia.
- 4.12 A cooperative of Canadian retailers, arranges for and manages ocean freight on behalf of Comark. Upon arrival in Vancouver, those goods are received at Purolator's "direct-to-store" distribution centre (the "**DTS Centre**"). By way of the DTS Centre, Purolator manages inventory, transportation and logistics on behalf of Comark to all of Comark's stores and to the Distribution Centre. With respect to orders placed by customers by way of the Electronic Commerce Business, such purchases are delivered to an address of the customers' choosing (or in some cases a retail store of the customers' choice) by way of Canada Post.

#### Real Estate, Landlords and Leases

- 4.13 Comark leases all of its facilities, including the Head Office, the divisional head offices (the Head Office and the cleo divisional head office share a common facility) and the Distribution Centre, from approximately 60 different, third party landlords. Store leases are generally for terms of 7 to 10 years and typically contain options to renew the lease

beyond the existing term. Many of Comark's store leases are with large retail landlords. Comark leases three buildings which serve as the corporate and Division headquarters. It leases an approximately 43,000 square foot building in Mississauga, Ontario, which contains the offices of the corporate headquarters and cleo's headquarters. It also leases a 32,000 square foot building in Winnipeg, Manitoba that serves as Ricki's headquarters and a 24,000 square foot building in Richmond, British Columbia that serves as Bootleggers's headquarters.

#### Causes of the Applicant's Financial Difficulties and Insolvency

- 4.14 Comark has experienced a severe decline in its financial results over the past two years. The Company's negative financial results have been caused by both a dramatic decline in the exchange rate between the Canadian and U.S. dollar as well as declining revenue and profitability across the Divisions, especially the Ricki's Division. 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. As at February 28, 2015, the Company's unaudited draft financial statements indicated a retained deficit of negative approximately \$305 million.
- 4.15 As described in Paragraph 7.7, while the Company maintained a program to hedge a portion of its foreign exchange risk to mitigate the impact changes in the exchange rate between the Canadian and U.S. dollar would have on Comark's business, this program (nor any typical hedging program, generally) did not fully protect it against the dramatic change in the value of the Canadian dollar that has taken place over the last year. Both

economic constraints (i.e. the cost of maintaining hedges), and the extent of the decline in the exchange rate, were beyond Comark's hedging program protections.

- 4.16 As a result of the above-noted factors, as well as certain other operational challenges described extensively in the Bachynski Affidavit, the Applicant has substantially depleted its remaining cash resources, defaulted under the terms of the Salus Credit Agreement (as defined and discussed below) and faces an imminent liquidity crisis.

Applicant's Secured Debt Obligations

- 4.17 Comark is financed by Salus pursuant to a Credit Agreement dated October 31, 2014 (the "**Salus Credit Agreement**"). Pursuant to the Credit Agreement, Salus advanced/made available to the Applicant both a term loan facility (the "**Term Loan Facility**") and a revolving credit facility (the "**Revolving Credit Facility**"). As at March 25, 2015, the total indebtedness outstanding pursuant to the Salus Credit Agreement (the "**Secured Indebtedness**") is comprised as follows:

- a) Term Loan Facility - approximately US \$43.1 million; and
  - b) Revolving Credit Facility - approximately CAD \$25.5 million.
- 4.18 All of the obligations of Comark under the Salus Credit Agreement are secured by all of Comark's assets, with the usual exceptions.
- 4.19 Goodmans has provided an opinion on the validity and enforceability of the security in connection with the Salus Credit Agreement. In provinces where Goodmans does not have an office, local independent counsel has been retained to provide opinions with respect to those jurisdictions. No opinion was sought for the Northwest Territories.

- 4.20 These opinions have been provided to the Proposed Monitor and confirm the validity and enforceability of the security in connection with the Salus Credit Agreement, subject to usual qualifications and assumptions.
- 4.21 Comark has failed to comply with certain financial and other covenants under the Salus Credit Agreement, including the minimum Consolidated EBITDA and consolidated leverage ratio covenants (as defined under the Salus Credit Agreement). These breaches constitute events of default under the Salus Credit Agreement and as a result, on March 5, 2015, the Lender’s Counsel delivered a letter to Comark wherein the Lender’s Counsel, on behalf of Salus, gave formal notice to Comark that an Event of Default (as defined under the Salus Credit Agreement) had occurred and reserved all of Salus’ rights and remedies (the “**Reservation of Rights Letter**”). On March 25, 2015, Salus made a demand for repayment for all amounts owing pursuant to the Salus Credit Agreement. Comark is not able to honour its debt obligations to Salus, which have become immediately due and payable. Accordingly, Comark is insolvent and is seeking the commencement of these CCAA proceedings.

## **5.0 PROPOSED OPERATIONAL RESTRUCTURING**

- 5.1 As part of its planned restructuring under these CCAA Proceedings, Comark intends to close certain of its unprofitable stores that are poorly positioned within their respective markets. The Company is working with a third party inventory services firm to assist with the management of inventory and supply chain throughout the operational restructuring process.
- 5.2 In consultation with the Proposed Monitor, Comark has conducted a review of all of its leases and is intending to disclaim those leases associated with the planned store closures.

- 5.3 Certain real estate leases will be disclaimed as soon as possible following the commencement of these CCAA Proceedings (in accordance with s. 32 of the CCAA) and in-store employees will be terminated in association with the planned store closures. Further review of Comark's real estate leases and store profitability may result in additional lease disclaimers and/or employee terminations throughout these proceedings. In discussions with the Company, its Financial Advisor (as defined below) and legal counsel, the Proposed Monitor concurred with the Company's recommendation that it not seek to determine whether there could be any recoveries associated with any potential equity value in the real estate leases that may be disclaimed by the Company. Given the relatively small nature of the real estate footprints, along with the relatively short term nature of the remaining life of the leases, it is unlikely that there would be any such recoveries in excess of the costs associated with attempting to realize value. In addition, the Proposed Monitor considered the terms and attributes of the Company's real estate leases of stores that the Company expects to close and is of the view that the terms and attributes are at, near or in excess of current market rates.
- 5.4 In addition, it is anticipated that certain non-store employees will be terminated at the commencement of these CCAA Proceedings or shortly thereafter.

## **6.0 THE PROPOSED MARKETING PROCESS**

### Overview

- 6.1 Pursuant to the SISP, with the assistance of its financial advisor, Houlihan Lokey, Inc. (the "**Financial Advisor**"), and the Monitor, the Applicant proposes to market the Business to potential investors so that interested parties may consider either purchasing

the Business or sponsoring a recapitalization or restructuring of Comark by way of a plan of compromise or arrangement (the “**Plan**”).

6.2 In connection with these proposed CCAA Proceedings, the Applicant has engaged the Financial Advisor to assist it in completing a (i) sale; (ii) recapitalization; and/or (iii) successful restructuring of the Business. The Proposed Monitor supports the retention of the Financial Advisor to assist with and advise the Company on the marketing process.

6.3 The proposed SISP is a result of extensive negotiations among the Applicant and the Lender, with assistance and input from the Financial Advisor and the Proposed Monitor.

6.4 The purpose of the SISP is to seek proposals (“**Sale Proposals**”) to acquire all, substantially all, or a portion of the Business (on either a going concern or liquidation basis), and/or proposals to make an investment in, or refinance the Business (“**Investment Proposals**”). The SISP describes:

- a) The Business of the Applicant which is available for sale and the opportunity for an investment therein;
- b) The manner in which prospective bidders may gain access to due diligence materials concerning the Business;
- c) The manner in which bidders and bids are eligible to become Qualified Bidders and Qualified Bids, respectively (both as defined and described in the SISP);
- d) The manner by which a Qualified Bidder submitting a Qualified Bid may be determined to be a Stalking Horse Bidder and Stalking Horse Bid (both as defined and described in the SISP), respectively;
- e) The evaluation of bids received;

- f) The ultimate selection of a Successful Bidder (as defined in the SISP); and
  - g) The process for obtaining such approvals (including the required approval of the Court) as may be necessary or appropriate in respect of a Successful Bid.
- 6.5 The Financial Advisor, in consultation with the Applicant, Salus and the Proposed Monitor, has developed a list of those parties who are likely to have an interest in acquiring all or a portion of the Business (the “**Prospective Purchaser List**”). Upon commencement of the SISP, the Financial Advisor, under the supervision of the Proposed Monitor, will contact these parties to discuss the opportunity and provide such parties with (a) a high-level investment overview document (“**Teaser**”); (b) a copy of the form of non-disclosure agreement to be entered into between the interested party and the Applicant; and (c) a copy of the SISP document.
- 6.6 Upon execution of the non-disclosure agreement in form and substance satisfactory to the Monitor, the Financial Advisor and the Applicant (the “**NDA**”), it is proposed that a Confidential Information Memorandum (the “**CIM**”), describing in detail the opportunity to acquire all or a portion of the Business will be made available to prospective purchasers and investors. In addition, prospective purchasers and investors who have executed the NDA will also be granted access to an electronic data room containing additional limited information regarding the Company and its Business.
- 6.7 The SISP is appended to the Bachynski Affidavit and is described in detail therein. A summary of the stages, timeline and provisions of the SISP are as follows:

<b>Comark Summary of the SISP (Certain capitalized terms below have the meanings ascribed in the SISP)</b>		
<b>Phase/Event</b>	<b>Timeline</b>	<b>Description of Activities</b>
Publication Notice	Within 5 Business Days after the granting of the Initial Order	<ul style="list-style-type: none"> <li>• The Monitor will cause a notice of the SISP to be published in certain newspapers listed in the SISP.</li> </ul>
Phase 1	For a period 40 days after the granting of the Initial Order	<ul style="list-style-type: none"> <li>• The Financial Advisor, with the assistance of the Applicant, under the supervision of the Monitor, will solicit non-binding letters of intent (“<b>LOI</b>”s).</li> <li>• Qualified Bidders will receive the CIM and access to a preliminary data room upon execution of an NDA.</li> </ul>
Phase 1 Bid Deadline	5:00pm ET on or before the 40 <sup>th</sup> day following the granting of the Initial Order	<ul style="list-style-type: none"> <li>• LOIs must be delivered to the Financial Advisor for consideration as “Qualified LOIs”. Qualified LOIs must meet certain criteria as set out in the SISP, including that the purchase price or funds to be invested must be in an amount sufficient to pay the Lender Claims in full (i.e. all the indebtedness of the Lender, including the Credit Facility and the DIP Facility (as defined below) indebtedness). on closing of the transaction unless other arrangements are made that are acceptable to the Lender.</li> </ul>
Assessment of Qualified LOIs and Continuation or Termination of the SISP	Within 3 Business Days following the Phase 1 Bid Deadline (or such later date as may be determined by the Monitor)	<ul style="list-style-type: none"> <li>• Qualified LOIs received during Phase 1 are assessed by the Monitor, in consultation with the Financial Advisor, the Applicant and the Lender, to determine whether there is a reasonable prospect of obtaining a “Qualified Bid”.<sup>1</sup></li> <li>• If one or more Qualified LOIs is received, the Monitor, in its reasonable business judgment, in consultation with the Financial Advisor and the Applicant and with the consent of the Lender, the Applicant and the Lender, may (a) recommend to the Board of Directors (the “<b>Board</b>”) that the most favourable Qualified LOI be selected as a 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 Lender; or (b) recommend to the Board that the SISP continue into Phase 2. If the Board recommends that a Qualified LOI be selected as a Stalking Horse Bidder: (i) the Applicant shall apply to the Court to approve the Stalking Horse Bid and (ii) the terms of</li> </ul>

<sup>1</sup> A Qualified Bid is defined in the SISP as a third party offer or combination of third party offers, in the form of a Sale Proposal(s) or an Investment Proposal(s) (both in prescribed form) 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 on closing of the transaction unless other arrangements are made that are acceptable to the Lender.

<b>Comark Summary of the SISP (Certain capitalized terms below have the meanings ascribed in the SISP)</b>		
<b>Phase/Event</b>	<b>Timeline</b>	<b>Description of Activities</b>
		<p>the SISP shall automatically terminate.</p> <ul style="list-style-type: none"> <li>• If the Board determines that the SISP should continue into Phase 2 and continue for a further 40 days, and the Monitor, in consultation with the Financial Advisor and the Applicant, determines there is a reasonable prospect of obtaining a Qualified Bid, the Monitor shall continue the SISP for a further 40 days. If the Board does not accept the Monitor's recommendation, the Monitor will seek the advice and directions of the Court.</li> <li>• If the Monitor, after consultation with the Financial Advisor, and the Applicant, determines that (a) no Qualified LOI has been received, and (b) there is no reasonable prospect for a Qualified LOI resulting in a Qualified Bid and the SISP moving to Phase 2, the Lender may, in their sole and absolute discretion designate one or more LOIs as a Qualified LOI. If the Lender do not designate an LOI as a Qualified LOI, any of the Lender, the Monitor, or the Applicant may apply to the Court for advice and directions.</li> </ul>
Phase 2	Period of 40 days after identification of Qualified LOIs (or such other period determined by the Monitor, in consultation with the Financial Advisor, the Applicant and the Lender, to a maximum of 55 days).	<ul style="list-style-type: none"> <li>• Qualified Bidders conduct due diligence and prepare irrevocable Final Bids.</li> <li>• During Phase 2, Qualified Bidders will be given access to a robust data room and granted an opportunity to meet with management and tour Comark's facilities.</li> <li>• At any time during Phase 2, the Monitor, in consultation with the Financial Advisor, and the Applicant, may extend Phase 2 by an additional 15 days (provided that in no event shall Phase 2 be longer than 55 days in total).</li> </ul>
Phase 2 Bid Deadline	5:00 pm ET on 40 <sup>th</sup> day after commencement of Phase 2 (to a maximum 55 days)	<ul style="list-style-type: none"> <li>• Qualified Bids must be received in accordance with these SISP Procedures prior to the Phase 2 Bid Deadline.</li> </ul>
Evaluation and Selection of the Successful Bid	As soon as possible after the selection of the most favourable Qualified Bid, if any	<ul style="list-style-type: none"> <li>• If one or more Qualified Bids are received, the Monitor, in consultation with the Financial Advisor, and the Applicant will seek to clarify the terms and evaluate any Qualified Bid received, and in consultation with the above parties, the Monitor may recommend to the Board that the most favourable Qualified Bid, if any, be selected and that the Financial Advisor, the Monitor, the Applicant and their advisors, negotiate and settle the terms of a</li> </ul>

<b>Comark</b>		
<b>Summary of the SISP</b>		
<b>(Certain capitalized terms below have the meanings ascribed in the SISP)</b>		
<b>Phase/Event</b>	<b>Timeline</b>	<b>Description of Activities</b>
		<p>definitive agreement. The Board 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.</p> <ul style="list-style-type: none"> <li>• If no Qualified Bids are received, the Lender may, in their sole and absolute discretion, designate one or more of those Final Bids as a Qualified Bid.</li> <li>• Once a definitive agreement has been negotiated and settled in respect of the Qualified Bid as selected by the Board in accordance with the provisions of the SISP, such bid will become the “Successful Bid”.</li> <li>• If a Qualified Bid is not received or a bid is not designated as a Qualified Bid by the Lender, and there is no Successful Bid, any of the Lender, the Monitor or the Applicant may apply to the Court for further advice and direction regarding the continuation or termination of the SISP.</li> </ul>

Proposed Monitor’s Comments and Observations Regarding the SISP

*Timeline*

6.8 The SISP timeline is summarized, below:

	<b>Days</b>
Phase 1	40
Evaluation of LOIs	3 <sup>2</sup>
Phase 2	40 <sup>3</sup>
Period to Closing	40
Total SISP timeline, as designed	123

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<sup>2</sup> Business Days.

<sup>3</sup> This can be extended by the Monitor in consultation with the Financial Advisor, and the Applicant to a maximum of 55 days.

The Proposed Monitor has the following comments regarding the proposed SISP timeline:

a) Phase 1 Period (40 days)

In conjunction with the development of the timelines in the SISP, A&M considered comparable sale and investment processes conducted pursuant to Canadian restructuring proceedings over the last three years. The majority of the companies and businesses included in the comparisons were of similar size and complexity to the Applicant. The average “Phase 1” period in comparable processes was (subject to certain outliers) approximately 42 days. While the Proposed Monitor notes that one of the delays that can occur in the initial phase of a sale or investment solicitation process is the process of negotiating and settling NDAs with prospective bidders, the Proposed Monitor is satisfied that the length of time allocated for Phase 1 is sufficient to enter into NDAs and provide enough time for bidders to formulate their bids and submit LOIs.

b) Phase 2 timeline (40 days)

Of the comparable processes reviewed by the Proposed Monitor, the average length of the second phase (generally comparable to Phase 2 of the SISP), was approximately 30 days (excluding outliers). Given the complexity of the potential transaction/transactions in connection with the Business, its Divisions and the on-going restructuring and the amount of anticipated due diligence required, the Proposed Monitor is of the view that the 40 day timeline to complete Phase 2 is necessary and could still be somewhat short. However, the Proposed Monitor notes that the SISP permits the flexibility of extending the SISP, with the approval of the Monitor, an additional 15 days, should such additional time be required. The

Financial Advisor has advised the Proposed Monitor that it believes that the length of time of Phase 2, along with the extensions thereto (if required) should be sufficient in the circumstances.

c) *Period to Close/Court Approval (up to 40 days)*

Qualified Bids received in Phase 2 are, among other things, required to be irrevocable until the earlier of: (a) Court approval of a transaction; and (b) 10 days following the Phase 2 Bid Deadline. The Proposed Monitor notes that the average timeframe, from completion of Phase 2 to close is in the range of approximately 30 days. The time period to closing contemplated in the SISP has taken into account the following:

- (i) Time required to select a Successful Bidder or Successful Bidders – given the complicated nature of the Business and its Divisions, the Applicant with the assistance of the Monitor, the Financial Advisor and legal advisors may be negotiating and settling multiple transactions;
- (ii) Time required to complete and settle documentation and prepare materials for this Honourable Court in connection with seeking approval of a transaction or transactions; and
- (iii) Time to permit for the expiration of the 21-day appeal period in connection with the approval of any transaction or transactions.

d) The total length of the SISP before considering any possible extensions in the timeline is contemplated to be 123 days. The Proposed Monitor notes that the period from the expected CCAA filing date to August 15, 2015, the outside date under the

SISP (the “**Outside Date**”), is 150 days. The Proposed Monitor also notes that one of the criteria to be used in evaluating Qualified Bids is whether it has a reasonable prospect of being completed by the Outside Date.

*Additional Stalking Horse Bid Flexibility/Procedures*

- 6.9 If there is more than one Qualified LOI received in Phase 1, one of them may be selected as a Stalking Horse Bid. The procedures for designating a Qualified LOI as a Stalking Horse Bid require that the Monitor, exercising its reasonable business judgment, following consultation with the Financial Advisor, Comark and the Lender, recommend to Comark’s Board of Directors that such a Qualified LOI be designated a Stalking Horse Bid.
- 6.10 If the Board of Directors accepts the Monitor’s recommendation with the consent of the Lender then, (i) the Financial Advisor, Monitor, Comark and their respective advisors would negotiate and settle the terms of a definitive agreement with the Stalking Horse Bidder on terms acceptable to the Lender; (ii) the Applicant would seek Court approval of the Stalking Horse Bid as well as those bidding procedures associated with acceptance of the Stalking Horse Bid; and (iii) this SISP would terminate.
- 6.11 If one or more Qualified Bids are received but no such bids are recommended by the Monitor as Stalking Horse Bids, then the Monitor will recommend to the Board of Directors that the SISP continue into Phase 2.

*Lender Claims*

- 6.12 In order to be a Qualified LOI or a Qualified Bid, prospective purchasers and/or investors must indicate that their bid will be of an amount sufficient to pay the Lender Claims (as

defined in the SISP) in full on closing unless alternative arrangements are made that are acceptable to the Lender. The Lender Claims comprise the obligations due under the Salus Credit Agreement, as well as the DIP Facility. As the obligations under the DIP Facility as at a closing date will not be known with certainty at the time LOIs or bids are made, prospective purchasers and investors will need to obtain an understanding of the forecast obligations of the Applicant to the Lender at a projected closing date to ascertain the minimum threshold amount that would “qualify” their LOI or bid. To that end, the Proposed Monitor has been advised an anticipated calculation of the Lender Claims at the Outside Date will be available to participants in the due diligence data room shortly after the commencement of the SISP. Furthermore, given uncertainty around the Applicant’s ability to forecast accurately into the future, these amounts will be updated with additional/more current information as such information becomes available.

*Ability of the Lender to designate LOIs as Qualified LOIs and bids as Qualified Bids*

- 6.13 The SISP provides a mechanism whereby, in the event that no Qualified LOI is received and there is no reasonable prospect of a Qualified LOI resulting in a Qualified Bid and the SISP moving to Phase 2, the Lender can designate one or more LOIs as a Qualified LOI.
- 6.14 If no Qualified Bids are received the Lender may designate one or more of the Final Bids as Qualified Bids.

*General Comments Regarding the SISP*

- 6.15 The SISP timeline was developed by way of extensive negotiations among the Applicant, the Financial Advisor, the Lender and their respective legal advisors. The Proposed

Monitor was also involved in discussions regarding the SISP. All participants were cognizant of the liquidity issues facing the Applicant in determining the timelines for the SISP. The SISP and its timeline are supported by all of the aforementioned parties and were developed to take into account the balance between the time required to administer all phases of a commercially reasonable sale/investment process and the available financial resources and business imperatives of the Applicant.

- 6.16 The Proposed Monitor is of the view that the option of the Applicant to proceed by selecting a Stalking Horse Bidder provides increased flexibility that is beneficial to the realization process.
- 6.17 The Monitor will supervise the SISP and, in particular, will supervise the Financial Advisor's performance pursuant to its engagement by Comark. The Financial Advisor will manage the day-to-day execution of the SISP. Comark is required to assist and support the efforts of the Monitor and the Financial Advisor as provided for in the SISP. In the event that clarification is required with respect to the SISP, the Monitor or the Applicant will seek the advice and direction of the Court.
- 6.18 At certain points in the SISP, continued negotiation and discussion will be required among the parties. The Proposed Monitor has been involved with the development of the SISP and believes such parties have been and will continue to act reasonably to achieve a going concern transaction for the Business. Accordingly, the Proposed Monitor believes that the timeline and mechanics established by the SISP are commercially reasonable and should allow for a process to be conducted to identify and close a transaction that will result in either (a) a sale of the Business in whole or in part; or (b) an investment in the Business or its Divisions by a third party purchaser/investor.

## **7.0 CASH MANAGEMENT SYSTEM**

- 7.1 Comark maintains a centralized cash management system (the “**Cash Management System**”) which is administered from the Head Office.
- 7.2 The Applicant’s bank accounts are maintained and controlled by Senior Management, utilizing cash management systems established at Toronto Dominion Bank (“**TD**”) where the Applicant has approximately 8 bank accounts. All debit and credit card receipts are deposited daily into a deposit account with TD. Each store maintains a “deposit only” account into which cash receipts are deposited daily. These local deposit accounts are at various institutions and are transferred electronically on a daily basis into the same deposit account with TD. Other bank accounts include payroll and term deposit accounts.
- 7.3 As detailed in the Bachynski Affidavit, on March 5, 2015, pursuant to the provisions of the Salus Credit Agreement and the Blocked Depository Account Agreement dated October 31, 2014 (the “**Blocked Account Agreement**”), which provide that, 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 at TD and under the control of Salus (the “**Blocked Account**”), all cash, credit and debit receipts, Salus delivered a letter to TD instructing TD to exercise control over the Blocked Account and to transfer funds in accordance with the Blocked Account Agreement.
- 7.4 Accordingly, since March 9, 2015, daily, at the request of Salus, TD has initiated a transfer of the funds in the Blocked Account to an account designated by Salus. Given that the Blocked Account has now been activated, Comark no longer has access to funds to make disbursements without a formal borrowing request being made to and approved

by Salus under the terms of the Salus Credit Agreement. Comark's current practice is to make these borrowing requests on an as-needed basis. The funding provided by Salus in respect of Comark's borrowing requests is deposited into a bank account at TD that Comark uses for its disbursements (the "**Disbursement Account**").

7.5 Comark's cash management systems provided by TD also include Electronic Data Interchange ("**EDI**") payment services, which are essentially an accounts payable outsourcing service provided by TD.

7.6 Through the EDI systems, Comark provides instruction to TD regarding payments to be made to specified Comark vendors, following which TD then makes EDI-formatted payments either electronically, or by cheque on behalf of Comark to those vendors. These payments are funded by TD and then immediately drawn from the Disbursement Account. The Company has a term deposit assigned to TD in the amount of approximately \$1.1 million which functions as cash collateral to support the EDI banking arrangements.

#### *Currency*

7.7 In order to manage its foreign currency exposure, Comark has entered into a series of foreign exchange forward and options contracts through TD (the "**Foreign Exchange Contracts**") for terms not exceeding 9 months. As at March 16, 2015, the aggregate notional net amount purchased under the Foreign Exchange Contracts was US\$19 million at forward rates ranging from 1.1087 to 1.2535. The Foreign Exchange Contracts have maturity dates ranging from March 18, 2015 to August 26, 2015.

7.8 Comark has a term deposit in the amount of approximately US\$1.75 million at TD which acts as collateral for the Foreign Exchange Contracts. As at March 16, 2015, all of the Foreign Exchange Contracts were “in the money”.

7.9 The Applicants intend to continue using the existing cash management system during the CCAA Proceedings, and are seeking the approval of the Court to do so. The Proposed Monitor is of the view that the continued use of the existing cash management system is required and appropriate in order for Comark to successfully complete the CCAA Proceedings.

## **8.0 CCAA CASH FLOW FORECAST**

8.1 The Applicant, with the assistance of the Proposed Monitor, has prepared a 13-week cash flow forecast (the “**Cash Flow Forecast**”) for the period from March 29, 2015 to June 27, 2015 (the “**Cash Flow Period**”). A copy of the Cash Flow Forecast is attached to this Report as Appendix “A”.

8.2 The Cash Flow Forecast is presented on a weekly basis during the Cash Flow Period and represents Comark management’s estimates of the projected cash flow during the Cash Flow Period. The Cash Flow Forecast has been prepared using the probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast (the “**Cash Flow Assumptions**”).

8.3 The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor’s cash flow statement as to its reasonableness and to file a report with the Court on the Monitor’s findings. Pursuant to this standard, the Proposed

Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of management and employees of Comark. The Proposed Monitor reviewed information provided by management for the Cash Flow Assumptions. Since the Cash Flow Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

- 8.4 Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that: (a) the Cash Flow Assumptions are not consistent with the purpose of the Cash Flow Forecast; (b) as at the date of this Report, the Cash Flow Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the Cash Flow Assumptions; or (c) the Cash Flow Forecast does not reflect the Cash Flow Assumptions.

8.5 A summary of the Cash Flow Forecast is set out in the table below.

<b>Comark</b>	
<b>Unaudited Summary of Forecast Cash Flow (Note 1)</b>	
<b>For the 13-week period ended June 27</b>	
<b>(\$000's)</b>	
	<b>Amount (\$)</b>
<b>Forecast Cash Inflow</b>	
Collections	79,957
<b>Forecast Total Receipts</b>	<u>79,957</u>
<b>Forecast Cash Outflow</b>	
Inventory purchases	36,507
Occupancy, vehicle, taxes, selling and general	26,067
Payroll and benefits	15,494
Capital expenditures	350
Professional fees	3,817
<b>Total Forecast Outflow</b>	<u>82,235</u>
<b>Net Operating Cash Flow</b>	(2,278)
<b>Interest and Fees</b>	<u>(2,044)</u>
<b>Net Cash Flow and Incremental Financing</b>	<u>(4,322)</u>
<b>Note 1</b>	Readers are cautioned to read the Terms of Reference as set out previously in this report for information regarding the preparation of the Cash Flow Forecast.
<b>Note 2</b>	Advances for interest and financing fees are non-cash. Interest and financing fees paid in kind and applied to the balance of the DIP revolver.
<b>Note 3</b>	For continuity of financing including the pre-filing revolving credit facility and DIP facility, please refer to Appendix A.

8.6 The Proposed Monitor notes the following with respect to the Cash Flow Forecast:

- a) The Applicant currently expects to have cash resources of approximately \$1 million in the week the CCAA Proceedings are commenced (the week ending March 28, 2015). Senior Management advises that the this amount is sufficient in order to manage the payment cycle of the Business, including timing differences that can occur between receipts, and the funding of major disbursement items such as inventory purchases, payroll, occupancy and other costs.

- b) Over the course of the Cash Flow Period, the Applicant has forecast a net cash outflow of approximately \$2.3 million.
- c) The Cash Flow Forecast reflects an ending DIP Facility balance of \$24.2 million representing an incremental increase in financing of \$4.3 million over the amount outstanding under the pre-filing Revolving Credit Facility.
- d) The Cash Flow Forecast includes the continued payment of debt service costs on the debt owing under the Revolving Credit Facility.
- e) Senior Management expects to fund the cash flow requirements of the Business with forecast cash resources and drawdowns under the DIP Facility.

8.7 The Cash Flow Forecast has been prepared solely for the purpose described above and readers are cautioned that it may not be appropriate for other purposes.

8.8 Senior Management's Representation Letter is attached to this Report as Appendix "B".

## **9.0 DEBTOR IN POSSESSION FINANCING**

### Overview

9.1 As described later in this Report, 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. As a consequence, Comark does not have access to liquidity to discharge its financial obligations.

9.2 Given the deterioration in the Applicant's financial position and its current liquidity crisis, the Applicant cannot continue to operate without the DIP Facility (described below) being approved.

9.3 In order to assist with funding working capital and general corporate amounts during the CCAA Proceedings, the Applicants are seeking approval of: (i) an Amended and Restated Credit Agreement dated as of March 26, 2015 pursuant to which Salus (the “**DIP Lender**”) will provide financing (the “**DIP Facility**”) to Comark in the maximum amount of \$32 million, subject to availability under the Borrowing Base Calculation contemplated in the DIP Facility; and (ii) the creation of a related charge to secure the DIP Facility (the “**DIP Lender’s Charge**”). The Cash Flow Forecast identifies an immediate requirement for DIP financing in the first week of the CCAA Proceedings.

9.4 Senior Management and the Applicant’s advisors believe that the DIP Facility is the only realistic source of funding available, given the urgency of the proposed filing, the prominent position of the Lender in the capital structure of the Applicant and the minimal level of Comark’s existing cash on hand.

Summary of DIP Facility Terms

9.5 The DIP Facility is attached to the Bachynski Affidavit and is summarized in the table below. Terms capitalized in the table have the meaning ascribed in the DIP Facility.

<b>Comark Summary of DIP Facility Terms</b>	
<b>Total Availability</b>	<ul style="list-style-type: none"> <li>• The lesser of: (a) the Maximum Amount of \$32 million, (b) the Borrowing Base, or (c) extensions of credit required under and set out in the Budget, plus outstanding principal amount of pre-filing Revolving Credit Facility.</li> </ul>
<b>Effective Date</b>	<ul style="list-style-type: none"> <li>• Date of the Initial Order</li> </ul>
<b>Purpose/Permitted Payments</b>	<ul style="list-style-type: none"> <li>• Limited to amounts set out in the Restructuring Plan and the Budget approved by Salus.</li> </ul>
<b>Significant Terms</b>	<ul style="list-style-type: none"> <li>• Initial Order must be granted and issued and provide for a DIP Lender's Charge;</li> <li>• The establishment of a cash flow budget and a restructuring plan that is satisfactory to the DIP Lender;</li> <li>• The DIP Lender shall have received control agreements with respect to the deposit accounts of the Borrower which effectively provides for a sweeping of the Borrower's gross receipts, such collections are to be applied to reduce pre-filing Revolving Credit Facility; and</li> <li>• Other covenants which appear customary under the circumstances.</li> </ul>
<b>Fees and Interest</b>	<ul style="list-style-type: none"> <li>• Interest Rate per annum: LIBOR + 5.75 (as at March 24, 2015 LIBOR was approximately 0.25%; however, the DIP Facility contains a LIBOR floor of 1.00%)</li> <li>• Exit fee of 4% of total outstanding borrowing at exit under the DIP, the pre-filing Revolving Credit Facility and the pre-filing Term Loan Facility</li> <li>• Collateral monitoring fee of US\$7,000 per month</li> </ul>
<b>Security</b>	<ul style="list-style-type: none"> <li>• All assets and property of the Borrower and DIP Lender's Charge.</li> </ul>
<b>Maturity</b>	<ul style="list-style-type: none"> <li>• The earliest of: (i) completion of a transaction in compliance with the SISF; and (ii) a default.</li> </ul>
<b>DIP Lender's Charge</b>	<ul style="list-style-type: none"> <li>• DIP Lender's Charge to rank subordinate only to the Administration Charge and the Directors' Charge (all further defined herein). DIP Lender's Charge in amount of \$32 million to ensure fees, costs and expenses are covered.</li> </ul>

9.6 The DIP Facility contains various affirmative covenants, negative covenants, events of default and conditions that, in the Proposed Monitor's view, are reasonable and customary for this type of financing, including the granting of the DIP Lender's Charge.

9.7 The DIP Facility offered by Salus is not a new facility layered on top of the pre-filing credit facilities. Rather, it is an amended version of the pre-filing Salus Credit Agreement pursuant to which Salus would be prepared to commence to provide liquidity, despite the prior default by the Applicant.

- 9.8 A condition precedent to the DIP Facility is the requirement of the Applicant to pay down the pre-filing obligations in respect of the Revolving Credit Facility component of the Salus Credit Facility through a sweeping mechanism whereby the Applicants' gross receipts will be swept through the Blocked Account to Salus and applied toward the pre-filing Revolving Credit Facility consistent with the pre-filing practices under the Cash Management System. Post-filing operating and other costs of the Applicant during the period of the pay-down of the Revolving Credit Facility (which should occur over the course of approximately 5 weeks after the DIP Facility becomes available to the Applicant), would be funded as required by advances from the DIP Facility (secured by the DIP Lender's Charge).
- 9.9 The principal amount of the pre-filing Term Loan Facility (approximately US \$43.1 million) will not be paid down during the proposed availability of the DIP Facility, though interest, at the pre-filing default rate of 11.50% will continue to be paid monthly, in arrears.
- 9.10 The Applicant owed approximately \$25.5 million under the pre-filing Revolving Credit Facility as at March 25, 2015, which had provided for a maximum availability of \$32 million. The default rate of interest currently payable by the Applicants on this amount is 6.75% (LIBOR + 3.75% + 2.00% default rate; however, there is a LIBOR floor of 1.00%), which is the same as the pre-default rate of interest under the proposed DIP Facility.
- 9.11 The proposed DIP Facility would not increase the availability of \$32 million under the present Revolving Credit Facility but it would allow the Applicants to once again have access to this availability, subject to the revised credit agreement. The Applicant's Cash

Management System will continue and the cash will be applied to reduce the obligations owing under pre-filing Revolving Credit Facility (but not the pre-filing Term Loan Facility) and the Applicant's liquidity needs will be dependent upon drawdowns under the DIP Facility revolving loan, which will be secured by the DIP Lender's Charge.

- 9.12 Ultimately, the DIP Facility will not result in a greater level of secured debt than was contemplated under the pre-filing Facilities (absent the default that occurred). Furthermore, as there is no indication of any deficiencies in Salus' security package and the Applicants have advised that they do not intend the DIP Lender's Charge to prime any other secured parties' purchase money security interests or statutory deemed trusts, the fact that the DIP Lender's Charge will increase while the secured pre-filing Revolving Credit Facility will be paid down should have no negative impact on other stakeholders.
- 9.13 As part of the DIP Facility, the DIP Lender is entitled to be reimbursed for certain Credit Party Expenses (as defined in the DIP Facility). One such expense relates to any foreign exchange losses incurred by the Lender in connection with the Lender's need to purchase Canadian dollars with which to fund its Revolving Credit Facility. The net realized currency and or loss will fluctuate throughout the term of these CCAA Proceedings. The Proposed Monitor is of the view that this type of arrangement is typical in asset backed lending arrangements where a U.S. lender is required to advance in Canadian.
- 9.14 The Proposed Monitor has considered the interest rate, the fees (including the exit fee associated with the DIP Facility) and the capitalized credit party expenses relative to other similar comparable facilities during the course of recent restructurings in Canada.

The Proposed Monitor is of the view that the pricing (including the interest rate and all such fees) is consistent with comparable debtor-in-possession financing facilities.

9.15 The Applicant is seeking the approval of the DIP Facility by this Court in order to provide stability during the CCAA Proceedings and to ensure the Applicant has sufficient liquidity to carry on business while completing the SISF, in order to maximize realizations for the benefit of stakeholders.

9.16 Senior Management has advised the Proposed Monitor that it believes the Applicant can abide by all of the terms of the DIP Facility.

9.17 The Proposed Monitor recommends that the Court approve the DIP Facility. In arriving at this recommendation, the Proposed Monitor considered: (i) the facts and circumstances of the Applicant; (ii) section 11.2(4) of the CCAA; (iii) the financial terms of the DIP Facility relative to comparable facilities and the fact that it is the only realistic source of funding available given the urgency of the proposed filing, the prominent position of the Lender in the capital structure of the Applicant and the minimal level of Comark's existing cash on hand; (iv) the stability and flexibility the DIP Facility will provide to ensure there is sufficient liquidity to facilitate the CCAA Proceedings and the SISF, to maximize realizations; and (v) the interests of the Applicant's stakeholders.

9.18 In providing this recommendation, the Proposed Monitor is aware that s. 11.2(1) of the CCAA prohibits the DIP Lender's Charge from securing an obligation that exists before the requested order is made. The Proposed Monitor, having consulted with its counsel, is of the view that since the pre-filing Revolving Credit Facility is being reduced by the use of the Applicant's cash generated from its business, the DIP Lender's Charge is only securing advances made post-filing under the DIP Facility.

## **10.0 PAYMENTS DURING CCAA PROCEEDINGS**

10.1 Comark intends to make payments for goods and services supplied post-filing as contemplated in the Cash Flow Forecast. In addition, the Applicant is requesting as part of the Proposed Initial Order, the authority (but not the requirement) to pay pre-filing amounts with the consent of the Monitor and in accordance with the Budget (as defined in the DIP Facility) to certain critical suppliers of goods or services, if required, to ensure the continuity of Comark's supply chain and the continued supply of other goods and services that are critical to the Business, in all cases subject to availability under the DIP Facility and in accordance with the Budget. These critical service providers include:

- a) distribution services – logistics or supply chain providers, customs brokers and clearing houses, freight forwarding providers; and
- b) payment processing services – providers of credit, debit and gift card processing related services.

The Applicant is also requesting authority (but not the requirement) to pay: (i) outstanding or future amounts owing in respect of customer rebates, refunds, discounts, Loyalty Programs, or other amounts on account of similar customer programs or obligations; (ii) outstanding or future amounts related to honouring gift cards issued before or after the commencement of proceedings; (iii) all amounts payable in respect of customs and duties for goods; and (iv) with the consent of the Monitor, other suppliers if, in the opinion of Comark, the supplier is critical to the continued operation of the Business.

10.2 Each of the Divisions participates in co-branded community events or cause marketing with certain charitable organizations, including the Breast Cancer Society of Canada, the

Canadian Womens' Foundation and local food banks. The money donated by Comark's customers for a variety of these charitable initiatives is comingled with Comark's other funds. As at March 17, 2015, Comark has received funds totaling \$148,082 from customers in respect of charitable donations. Comark is seeking approval in the Initial Order to pay this to the intended charitable organizations.

- 10.3 The Proposed Monitor is of the view that the above relief is reasonable and appropriate in the circumstances, taking into consideration: (i) the scale of Comark's operations; (ii) the positive impact of minimizing disruption to the delivery of inbound goods-in-transit to Comark's distribution centres and to the delivery of outbound inventory from the distribution centres to the retail stores, on the continued operation of the Business; and (iii) the Applicant's desire to maximize value in the SISP.

#### **11.0 KEY EMPLOYEE RETENTION PLAN**

- 11.1 In order to facilitate and encourage the continued participation of senior and operational management and other key employees during the SISP and the CCAA Proceedings, the Applicants are seeking approval of: (i) a KERP for certain employees who are considered by the Applicant to be critical to the successful completion of the CCAA Proceedings (the "**KERP Participants**"); and (ii) the creation of a related charge to secure the payments due under the KERP.

11.2 Under the provisions of the KERP, each of the KERP Participants will receive a set amount, payable in increments upon certain milestones in the CCAA Proceedings, as follows:

- a) 25% payable on the 3 month anniversary of the date of the Initial Order (the “**First Milestone**”); and
- b) 75% payable on the earliest of:
  - i. The closing of:
    - a. A going concern sale of the Division that employs the respective KERP Recipient, or
    - b. A going concern sale of all or substantially all of Comark’s assets;
  - ii. The completion of a liquidation process in respect of the assets of the Division that employs the respective KERP Recipient; and
  - iii. The 15 month anniversary of the date of the Initial Order (the “**Second Milestone**”, and together with the First Milestone, the “**Milestones**”)

In the event that, at the end of Phase 1 of the SISP, the Applicant, in consultation with the Monitor, the Financial Advisor and the Lender, in accordance with the SISP determines that the Division that employs the respective KERP Participant should be liquidated rather than sold as a going concern, the KERP amount for that KERP Participant will be reduced by 30% and will be payable in a lump sum upon termination of that KERP Participant.

The maximum aggregate amount of payments under the KERP is approximately \$1.81 million.

- 11.3 The KERP, which includes the identification of the participants and their respective amounts payable, is appended to the Bachynski Affidavit filed under seal with this Court.
- 11.4 The KERP was developed by Comark in consultation with the Proposed Monitor. The Proposed Monitor supports the creation of the KERP as: (i) it will provide stability to the Business, and facilitate the successful completion of the CCAA Proceedings by encouraging senior and operational management and other key employees to remain with Comark, as required; (ii) the KERP Participants are considered to be key to the SISP and their participation will assist in maximizing realizations for the benefit of stakeholders; and (iii) the number of KERP Participants is proportionate to the size and nature of the Business and the Milestones are consistent with the timeline set out in the SISP.
- 11.5 The Proposed Monitor is of the view that the KERP is reasonable and appropriate in the circumstances.

## **12.0 COURT ORDERED CHARGES SOUGHT IN THE PROPOSED INITIAL ORDER**

- 12.1 The Proposed Initial Order provides for four charges (collectively, the “**Charges**”), as described below.

### *Administration Charge*

- 12.2 The Proposed Initial Order provides for a charge in an amount not to exceed \$1.2 million in favour of the Monitor, counsel to the Monitor, counsel to Comark, and the Financial Advisor (the “**Administration Charge**”).
- 12.3 The Proposed Monitor assisted the Applicant in the calculation of the Administration Charge and is of the view that it is reasonable and appropriate in the circumstances,

having regard to the scale of the proceedings, potential work involved at peak times, and the size of the charges approved in similar proceedings.

*KERP Charge*

- 12.4 The Proposed Initial Order provides for a charge in an amount not to exceed \$1.81 million (the “**KERP Charge**”) in favour of the KERP Participants as security for all amounts becoming payable under the KERP.
- 12.5 The Proposed Monitor is of the view that the KERP Charge is required and is reasonable in the circumstances.

*Directors’ and Officers’ Charge*

- 12.6 The Proposed Initial Order provides that the Applicant jointly and severally indemnifies the directors and officers against obligations and liabilities that they may incur as directors and officers of the Applicant after the commencement of the CCAA Proceedings, except to the extent that the obligation or liability was incurred as a result of an officers’ or directors’ gross negligence or willful misconduct.
- 12.7 The Proposed Initial Order provides for a charge in the amount of \$3.0 million (the “**Directors’ Charge**”) in favour of the Applicants’ directors and officers as security for any obligations or liabilities that may arise after the commencement of the CCAA Proceedings, except to the extent that such obligation or liability is incurred as a result of such directors’ or officers’ gross negligence or willful misconduct. The Proposed Monitor understands that adequate indemnification insurance coverage for the directors and officers would not be obtainable at a reasonable cost.

12.8 The Proposed Monitor assisted the Applicants in the calculation of the Directors' Charge, taking into consideration the amount of the Applicants' payroll, vacation pay and federal and provincial sales tax liabilities. The Proposed Monitor is of the view that the Directors' Charge is required, is within a realistic range of liability and is reasonable in the circumstances.

*DIP Lender's Charge*

12.9 The Proposed Initial Order provides for a DIP Lender's Charge as security for outstanding advances made under the DIP Facility, all as more fully described above at paragraphs 9.0 to 9.18. It is a condition of the DIP Facility that the DIP Lender's Charge be granted by the Court. Such charges are customary when a DIP Facility has been approved by the Court.

12.10 The Proposed Monitor is of the view that the DIP Facility represents necessary financing which affords the Applicant the opportunity to run the SISP and/or otherwise reorganize its affairs and it does not appear that there would be material financial prejudice to other Comark stakeholders as a result of this financing.

12.11 The Proposed Monitor recommends that the Court approve the DIP Facility and accordingly, also supports the granting of the DIP Lender's Charge.

*Priority of Charges Created by the Initial Order*

12.12 The priorities of the Charges are proposed to be as follows:

- a) First – Administration Charge (to the maximum amount of \$1.2 million);
- b) Second – the KERP Charge (to the maximum amount of \$1.81 million);
- c) Third – Directors' Charge (to the maximum amount of \$3.0 million); and

d) Fourth – DIP Lender’s Charge.

12.13 In summary, the Proposed Monitor has assisted in the preparation and/or reviewed the calculations that support the Administration Charge, the Directors’ Charge, the DIP Lender’s Charge, and the KERP Charge, and believes the amounts are reasonable in the circumstances. The Proposed Monitor notes the quantum and priority ranking of all proposed charges is supported by the Lender.

### **13.0 PROPOSED MONITOR'S RECOMMENDATIONS**

13.1 For the reasons set out in this Report, the Proposed Monitor is of the view that the relief requested by the Applicant is reasonable and respectfully recommends that this Court make the Order granting the relief sought by the Applicants.

\*\*\*\*\*

All of which is respectfully submitted to this Court this 25<sup>th</sup> day of March, 2015.

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



Per: John Walker  
Senior Vice President

## APPENDIX A

### Cash Flow Forecast for the 13-Week Period Ending June 27, 2015

Comark Inc.

Cash Flow Forecast for the 13-week period March 29 to June 27, 2015

(Unaudited, in \$000s CAD)

(week ending ==>)	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	13-week total
	4-Apr	11-Apr	18-Apr	25-Apr	2-May	9-May	16-May	23-May	30-May	6-Jun	13-Jun	20-Jun	27-Jun	
Sales receipts	4,957	5,062	5,107	6,005	5,816	6,253	6,030	6,085	6,812	6,124	7,235	7,235	7,235	79,957
<b>TOTAL RECEIPTS</b>	<b>4,957</b>	<b>5,062</b>	<b>5,107</b>	<b>6,005</b>	<b>5,816</b>	<b>6,253</b>	<b>6,030</b>	<b>6,085</b>	<b>6,812</b>	<b>6,124</b>	<b>7,235</b>	<b>7,235</b>	<b>7,235</b>	<b>79,957</b>
<b>DISBURSEMENTS</b>														
Inventory purchases	2,888	3,369	1,806	3,716	1,761	3,573	1,698	2,155	2,068	2,667	4,231	3,425	3,149	36,507
Salaries and benefits	652	1,899	672	1,897	726	1,700	597	1,695	561	1,788	561	1,728	563	15,041
KERP payments	-	-	-	-	-	-	-	-	-	-	-	-	453	453
Rent and occupancy	3,312	39	2,801	130	2,446	125	2,443	125	125	2,449	133	2,450	133	16,713
Professional fees	303	-	447	-	763	25	264	100	749	128	289	-	749	3,817
Capital expenditures	15	25	25	25	25	25	30	30	30	30	30	30	30	350
Other expenses	1,153	407	685	500	1,133	502	728	561	1,235	528	759	584	580	9,353
<b>TOTAL DISBURSEMENTS</b>	<b>8,324</b>	<b>5,739</b>	<b>6,437</b>	<b>6,268</b>	<b>6,854</b>	<b>5,951</b>	<b>5,760</b>	<b>4,666</b>	<b>4,768</b>	<b>7,590</b>	<b>6,004</b>	<b>8,218</b>	<b>5,657</b>	<b>82,235</b>
<b>NET CASH FLOW BEFORE DEBT SERVICE</b>	<b>(3,367)</b>	<b>(677)</b>	<b>(1,330)</b>	<b>(263)</b>	<b>(1,039)</b>	<b>302</b>	<b>270</b>	<b>1,419</b>	<b>2,044</b>	<b>(1,466)</b>	<b>1,231</b>	<b>(983)</b>	<b>1,578</b>	<b>(2,278)</b>
<b>CONTINUITY OF FINANCING</b>														
<b>PRE-FILING REVOLVING CREDIT FACILITY</b>														
Opening Balance	19,902	14,945	9,883	4,775	-	-	-	-	-	-	-	-	-	19,902
Less: Cash receipts	(4,957)	(5,062)	(5,107)	(4,775)	-	-	-	-	-	-	-	-	-	(19,902)
<b>ENDING BALANCE</b>	<b>14,945</b>	<b>9,883</b>	<b>4,775</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>DIP FACILITY</b>														
Opening Balance	-	8,992	14,730	21,167	26,205	27,917	27,615	27,345	25,926	23,881	26,051	24,819	25,802	-
Fees and interest	668	-	-	-	673	-	-	-	-	703	-	-	-	2,044
Draw / (repayment), net	8,324	5,739	6,437	5,038	1,039	(302)	(270)	(1,419)	(2,044)	1,466	(1,231)	983	(1,578)	22,180
<b>ENDING DIP BALANCE</b>	<b>8,992</b>	<b>14,730</b>	<b>21,167</b>	<b>26,205</b>	<b>27,917</b>	<b>27,615</b>	<b>27,345</b>	<b>25,926</b>	<b>23,881</b>	<b>26,051</b>	<b>24,819</b>	<b>25,802</b>	<b>24,224</b>	<b>24,224</b>
<b>TOTAL FINANCING</b>														
Ending Position	<b>23,936</b>	<b>24,613</b>	<b>25,943</b>	<b>26,205</b>	<b>27,917</b>	<b>27,615</b>	<b>27,345</b>	<b>25,926</b>	<b>23,881</b>	<b>26,051</b>	<b>24,819</b>	<b>25,802</b>	<b>24,224</b>	<b>24,224</b>

To be read in conjunction with the attached Notes and Summary of Assumptions.

In the Matter of the CCAA Proceedings of Comark Inc. ("Comark" or the "Company")

**Disclaimer**

In preparing this cash flow forecast (the "Forecast"), Comark has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast includes assumptions discussed below with respect to the requirements and impact of a filing under the Companies' Creditors Arrangement Act ("CCAA"). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

**Overview:**

The Forecast assumes that Comark files for protection under the CCAA on March 26, 2015. Comark, with the assistance of the Monitor, has prepared the Forecast based primarily on historical results and Comark's current expectations. The Forecast includes the impact related to the closure of certain stores. The Forecast is presented in thousands of Canadian dollars. Receipts and disbursements denominated in US currency have been converted into Canadian dollars at an exchange rate of C\$1:US \$0.78, throughout the period.

**Assumptions**

**1) Opening Position**

The pre-filing revolving credit facility balance is made up of amounts outstanding at the commencement of the forecast period. Customer collections will be applied to the pre-filing Revolving Credit Facility in accordance with the Salus Credit Agreement. The DIP Facility will be used to fund the Company's cash requirements throughout the period.

**2) Sales Receipts**

Receipts from sales are estimated based on Management's current sales forecast. Sales taxes are included in forecast receipts and certain adjustments have been made for credit / debit card processing fees and anticipated gift card sales.

**3) Inventory Purchases**

Inventory purchases include product to be delivered post filing and a provision for certain critical supplier payments in accordance with the Initial Order. The timing of disbursements is based on expected shipping and delivery dates of in-transit and on-order goods, and future purchases. Following the closure of certain stores, remaining inventory will be transferred to the continuing stores or sold through the eCommerce channels.

**4) Salaries and Benefits**

Disbursements include payroll, payroll taxes and employee benefits for salaried and hourly employees, and are forecast based on historical run-rates. Employee payments are reduced in accordance with planned store closures. The Forecast includes amounts disbursed in accordance with the Key Employee Retention Plan.

**5) Rent and Occupancy**

The Forecast assumes that rent and occupancy expenses are paid semi-monthly. Rent includes all Bootlegger, Ricki's and cleo store locations as well as headquarter offices in Mississauga, Winnipeg and Vancouver. Rent also includes occupancy costs, utilities and realty taxes. Disbursements related to utilities are estimated based on monthly run-rate amounts. The Forecast accounts for planned store closures, providing at least 30-day notice to landlords.

**6) Professional Fees**

These disbursements include payments to Comark's financial advisors and legal counsel, the Monitor and its legal counsel, and counsel to the Lenders.

**7) Capital Expenditures**

Capital expenditures include disbursements for sustaining capex only.

**8) Other Expenses**

These disbursements include projected overhead and store expenses including selling, general and administrative expenses, marketing expenses, telecom and technology expenses, insurance, supplies and other operating expenses.

**9) DIP Fees and Interest**

During the current 13 week period, DIP fees and interest include interest for the DIP loan and term loan only.

**APPENDIX B**  
**Management's Representation Letter Regarding the Cash Flow**  
**Forecast**

**[Attached]**

March 25, 2015

Alvarez & Marsal Canada Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1

Attention: John Walker

Dear Sirs

**Re: Comark Inc. ("Comark", or the "Company") – CCAA section 10(2) Prescribed Representations with Respect to Cash Flow Forecast**

In connection with the application by the Applicants for the commencement of proceedings under the *Companies' Creditors Arrangement Act*, the management of Comark has, with the assistance of Alvarez & Marsal, prepared the attached 13-week projected cash flow statement for the period March 29, 2015 to June 27, 2015 (the "**Cash Flow Statement**") and the list of assumptions on which the Cash Flow Statement is based. The purpose of the Cash Flow Statement is to determine the liquidity requirements of Comark during the CCAA proceedings.

Comark confirms that the hypothetical assumptions on which the Cash Flow Statement is based are reasonable and consistent with the purpose described herein, and the probable assumptions are suitably supported and consistent with the plans of the Company and provide a reasonable basis for the projections. All such assumptions are disclosed in notes to the Cash Flow Statement (the "**Notes**").

Since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projections have been prepared solely for the purpose described herein, using the probable and hypothetical assumptions set out in the Notes. Consequently, readers are cautioned that the Cash Flow Statement may not be appropriate for other purposes.

Yours truly,



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Gerald Bachynski  
Chief Executive Officer

(Authorized director or officer of Comark Inc.)

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

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**PROPOSED MONITOR'S**  
**PRE-FILING REPORT**

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**GOODMANS LLP**

Barristers & Solicitors

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Lawyers for the Proposed Monitor