



Court File No. CV-20-00642013-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) THURSDAY, THE 11<sup>TH</sup>  
 )  
JUSTICE HAINEY ) DAY OF JUNE, 2020  
 )

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 HOLDINGS INC.,  
BOOTLEGGER CLOTHING INC., CLEO FASHIONS INC.  
AND RICKI'S FASHIONS INC. (collectively, the "**Applicants**")

**SISP APPROVAL ORDER**

**THIS MOTION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*, approving the SISP (as defined below) and certain related relief, was heard this day via videoconference.

**ON READING** the Notice of Motion of the Applicants, the affidavit of Mr. Gerald Bachynski sworn June 9, 2020 and the Exhibits thereto, and the First Report of Alvarez & Marsal Canada Inc., in its capacity as monitor (the "**Monitor**"), and on hearing the submissions of counsel to the Applicants, the Monitor, and such other counsel present, no one else appearing although duly served as appears from the affidavit of service of Sarah McLeod sworn June 10, 2020.

**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.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them under the Sale and Investment Solicitation Process attached hereto as Schedule "A" (the "SISP") or the Amended & Restated Initial Order of this Court dated June 11, 2020, as applicable.

#### **APPROVAL OF THE SISP**

3. **THIS COURT ORDERS** that the SISP (subject to any amendments thereto that may be made in accordance therewith and with this Order) be and is hereby approved and the Applicants and the Monitor, and their respective affiliates, partners, directors, employees, advisors, and agents (collectively, "Assistants") are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and this Order, and that the actions taken by the Applicants or the Monitor and their respective Assistants in implementing and carrying out the SISP prior to the date of this Order be and are hereby approved *nunc pro tunc*.

4. **THIS COURT ORDERS** that the Monitor, the Applicants, and their respective Assistants shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Monitor or the Applicants, as applicable, as determined by this Court.

5. **THIS COURT ORDERS** that the Monitor or the Applicants may apply to this Court for directions with respect to the SISP at any time during the term thereof.

#### **PROTECTION OF PERSONAL INFORMATION**

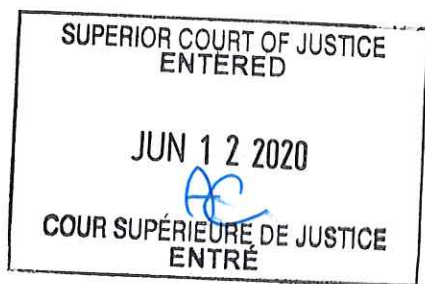
6. **THIS COURT ORDERS** that the Monitor, the Applicants, and their respective Assistants are hereby authorized and permitted under applicable law to disclose and provide to each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, and their advisors personal information of identifiable individuals in the custody or control of the Applicants relating to the Property and the operation of the Business, including human resources and payroll information, records pertaining to the Applicants' past and current employees, and information about any consumer, website visitor or other individual (collectively, "Personal Information"), but only to the extent

desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "Transaction"). Each Phase 1 Qualified Bidder and Phase 2 Qualified Bidder to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial privacy legislation and limit the use of such Personal Information to its evaluation for the purpose of effecting a Transaction, and if such bidder does not complete a Transaction, shall return all such information to the Monitor or the Applicants, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor or the Applicants.

**GENERAL**

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

8. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



A large, stylized handwritten signature in black ink, written over a horizontal line.

## SCHEDULE "A"

### SALE AND INVESTMENT SOLICITATION PROCESS

#### Introduction

On June 3, 2020 (the "**Filing Date**"), Comark Holdings Inc., Bootlegger Clothing Inc., cleo fashions Inc. and Ricki's Fashions Inc. (collectively, the "**Applicants**" or the "**Company**") sought and obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* ("**CCAA**" and the proceedings commenced thereby, the "**CCAA Proceedings**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

Pursuant to the Initial Order, among other things, (a) Alvarez & Marsal Canada Inc. was appointed as monitor of the Applicants in the CCAA Proceedings (in such capacity, the "**Monitor**"), and (b) the Applicants were authorized to pursue all avenues of refinancing, restructuring, sale or reorganizing the Company's business (the "**Business**") or property (the "**Property**"), in whole or part, subject to prior approval of the Court before any material refinancing, restructuring, sale or recapitalization is concluded.

Following the Filing Date, 9383921 Canada Inc. ("**ParentCo**") delivered to the Applicants an indicative term sheet (the "**ParentCo Term Sheet**") setting out the terms upon which it would be willing to complete a going concern Transaction (as defined below) in respect of substantially all of the Property, on the terms and conditions set out therein (the "**ParentCo Transaction**").

Accordingly, on June 11, 2020, the Applicants sought and obtained an Order of the Court (the "**SISP Approval Order**") authorizing the implementation of a two-phased sale and investment solicitation process on the terms set forth herein (the "**SISP**") to solicit interest in and opportunities for a sale or liquidation of, or investment in, all or part of the Property and/or Business (a "**Transaction**"), including proposals from third parties for the liquidation of the Applicants' inventory, furniture, equipment and fixtures, to determine whether a Transaction more favourable to the ParentCo Transaction (a "**Superior Offer**") may be identified and completed.

To facilitate the submission of third party LOIs (as defined below) and a purchase agreement representing the ParentCo Transaction (the "**ParentCo Purchase Agreement**") with the ultimate goal of completing a Transaction, the Applicants have commenced negotiations with their retail landlords (the "**Landlords**") seeking amendments to their leases that would support a restructured Business (the "**Rent Restructuring Plan**").

Also on June 11, 2020, the Applicants sought and obtained an Amended and Restated Initial Order from the Court that, among other things, authorized the Applicants to borrow under a credit facility from Canadian Imperial Bank of Commerce (in its capacity as lender pursuant to such facility, the "**DIP Lender**") on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated as of June 10, 2020 (the "**DIP Term Sheet**") and any definitive documents delivered or entered into pursuant thereto (collectively, and together with the DIP Term Sheet, the "**Definitive Documents**").

#### Opportunity

1. The SISP may result in one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of one or more of the Applicants as a going

concern, or a sale or liquidation of all, substantially all or one or more components of the Property and Business operations as a going concern or otherwise (the “Opportunity”).

2. Any sale or liquidation of the Property or investment in the Business will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Applicants, the Monitor or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

### **Key Dates**

3. The key dates for the SISP are as follows, as such dates may be modified or extended in accordance with the terms of this SISP or order of the Court:

June 11, 2020	Approval and commencement of the SISP
June 19, 2020 at 5:00 p.m. (prevailing Eastern Time)	Landlord deal deadline for completion of the Rent Restructuring Plan
<b>(“Rent Restructuring Plan Deadline”)</b>	
June 22, 2020 at 5:00 p.m. (prevailing Eastern Time)	Deadline for the submission of third-party non-binding letters of interest and the ParentCo Purchase Agreement
<b>(“Phase 1 Bid Deadline”)</b>	
June 24, 2020 at 3:00 p.m. (prevailing Eastern Time)	Deadline for submission of Phase 2 Qualified Bids (as defined below)
<b>(“Phase 2 Bid Deadline”)</b>	
June 24, 2020 at 11:59 p.m. (prevailing Eastern Time)	Deadline for selection of the Successful Bid (as defined below)
<b>(“Successful Bid Selection Deadline”)</b>	
June 30, 2020 at 10:00 a.m. (prevailing Eastern Time) or such other time as the Court may advise	Hearing of the Sale Approval Motion (as defined below)
<b>(“Sale Approval Motion Date”)</b>	
July 31, 2020, or such later date as may be agreed to by the Successful Bidder (as defined below) and the Applicants, in consultation with the Monitor and the DIP Lender	Deadline for completion of the transaction(s) represented by the Successful Bid
<b>(“Outside Date”)</b>	

## PHASE 1: NON-BINDING LOIs

### Qualified Bidders

4. Any party who wishes to participate in the SISP (a “**Potential Bidder**”) must:
  - (a) provide the Applicants with an executed non-disclosure agreement in form and substance satisfactory to the Applicants, in consultation with the Monitor, which will enure to the benefit of any Successful Bidder at Closing (as defined below) (an “**NDA**”); and
  - (b) provide written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect principals of the Potential Bidder, and financial disclosure or credit quality support or enhancement sufficient to allow the Applicants, in consultation with the Monitor, to make a reasonable determination as to the Potential Bidder’s financial and other capabilities to consummate a Transaction pursuant to a Superior Offer.
5. A Potential Bidder that previously executed an NDA that remains in effect may be deemed by the Applicants, with the consent of the Monitor, to satisfy the requirements set forth in paragraph 4(a).
6. A Potential Bidder that previously delivered the information set out in paragraph 4(b) to the Applicants may be deemed by the Applicants, with the consent of the Monitor, to satisfy the requirements set forth in paragraph 4(b).
7. A Potential Bidder that has satisfied the requirements set out in paragraph 4 and that the Applicants, in their reasonable business judgment and in consultation with the Monitor and the DIP Lender, have determined is likely (based on the availability of financing, experience and other considerations) to be able to consummate a transaction pursuant a Superior Offer may be deemed to be a “**Phase 1 Qualified Bidder**”.
8. At any time during the SISP, the Applicants may, in their reasonable business judgment after consultation with the Monitor and the DIP Lender, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a “Phase 1 Qualified Bidder” for the purposes of the SISP.
9. Notwithstanding paragraphs 4 to 8, ParentCo shall be deemed to be a Phase 1 Qualified Bidder for all purposes under, and at all times in connection with, this SISP.
10. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and evaluation of a potential Transaction.

### Due Diligence

11. The Applicants, in consultation with the Monitor, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Phase

- 1 Qualified Bidder such access to due diligence materials and information relating to the Property and Business as they may deem appropriate.
12. Due diligence access may include management presentations, access to electronic data rooms and other matters which a Phase 1 Qualified Bidder may reasonably request and as to which the Applicants, in their reasonable business judgment and after consulting with the Monitor, may agree.
  13. The Monitor shall coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders. All due diligence and information requests must be directed to Jamal Jomaa, Director, Alvarez & Marsal Canada Inc. at (416) 847-5205 or [jjomaa@alvarezandmarsal.com](mailto:jjomaa@alvarezandmarsal.com).
  14. Neither the Applicants nor the Monitor will be obligated to furnish any information relating to the Property or Business to any person other than to Phase 1 Qualified Bidders.
  15. The Applicants, in consultation with the Monitor and the DIP Lender, reserve the right to limit any Phase 1 Qualified Bidder's access to any confidential information (including any information in any data room) and to creditors, customers, landlords, suppliers or other stakeholders of the Applicants, where, in the Applicants' opinion after consultation with the Monitor, such access could negatively impact the SISP, the ability to maintain the confidentiality of the Applicants' confidential or competitive information, the Business, or the Property. For the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 1 Qualified Bidders if the Applicants, in consultation with the Monitor, determine such information to represent proprietary or sensitive competitive information.

#### **Rent Restructuring Plan**

16. The Applicants and the Landlords may, prior to the Rent Restructuring Plan Deadline, agree upon the Rent Restructuring Plan. Forthwith following the Rent Restructuring Plan Deadline, the terms of any amendments and/or other modifications to the leases and/or other agreements between any of the Applicants and the Landlords shall, subject to paragraph 15, be disclosed to each Phase 1 Qualified Bidder for the purposes of facilitating the submission of Qualified LOIs (as defined below).

#### **Non-Binding Letters of Intent from Qualified Bidders; ParentCo Purchase Agreement**

17. A Phase 1 Qualified Bidder that wishes to pursue a potential Transaction must deliver a non-binding letter of interest (an "LOI") to the Monitor at the email addresses specified in Schedule "A" hereto, so as to be received not later than the Phase 1 Bid Deadline.
18. Subject to paragraph 19, an LOI so submitted will be considered a qualified LOI (a "Qualified LOI") only if:
  - (a) it is submitted on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;
  - (b) it contains an indication of whether the Phase 1 Qualified Bidder is offering to:

- (i) acquire all, substantially all, or a portion of the Property (a “**Sale Proposal**”);
  - (ii) make an investment in, restructure, reorganize or refinance the Business/the Applicants (an “**Investment Proposal**”); or
  - (iii) conduct, or advise with respect to, a liquidation of the Applicants’ inventory, furniture, equipment, and fixtures (a “**Liquidation Proposal**”);
- (c) in the case of any of a Sale Proposal, an Investment Proposal, or a Liquidation Proposal:
- (i) the purchase price, funds to be invested, or consideration for the Applicants, as assessed pursuant to this paragraph 18, must be in an amount that can reasonably be expected to be sufficient to pay the aggregate amount owing to:
    - A. the DIP Lender pursuant to the Definitive Documents,
    - B. Canadian Imperial Bank of Commerce (“**CIBC**”) pursuant to that certain credit agreement dated as of August 20, 2015, and
    - C. ParentCo pursuant to that certain sponsor loan agreement dated as of August 20, 2015 and any other secured indebtedness owed by any Applicant to ParentCo,in full in cash, upon the closing of the transactions contemplated by the Sale Proposal, the Investment Proposal, or the Liquidation Proposal, as applicable, unless otherwise agreed by each of the DIP Lender, CIBC and ParentCo; and
  - (ii) it contains such other information as may be reasonably requested by the Applicants or the Monitor;
- (d) in the case of a Sale Proposal, it identifies or contains the following:
- (i) the purchase price or price range in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a description of the Phase 1 Qualified Bidder’s proposed treatment of material agreements (including leases) and employees of the Applicants (for example, any required lease amendments other than those contemplated in the Rent Restructuring Plan and anticipated employment offers);
  - (iv) the key terms and provisions to be included in any order of the Court approving the contemplated Sale Proposal;

- (v) a specific indication of the financial capability of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction (including, but not limited to, the sources of financing to fund the acquisition, preliminary evidence of the availability of such financing or such other form of financial disclosure and credit-quality support or enhancement that will allow the Applicants and the Monitor and each of their respective advisors to make a reasonable business or professional judgment as to the Phase 1 Qualified Bidder's financial or other capabilities to consummate the transaction and to perform all obligations to be assumed in such transaction; and the steps necessary and associated timing to obtain financing and any related contingencies, as applicable);
  - (vi) a description of the conditions and approvals required for a final and binding offer, including any anticipated corporate, securityholder or other internal approvals, an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vii) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
  - (viii) an acknowledgement that any Sale Proposal is made on an "as-is, where-is" basis;
  - (ix) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation any regulatory approvals and any form of agreement required from a government body, stakeholder or other third party ("**Third-Party Agreement**") and an outline of the principal terms thereof; and
  - (x) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (e) in the case of an Investment Proposal, it identifies the following:
- (i) a detailed description of how the Phase 1 Qualified Bidder proposes to structure the Investment Proposal;
  - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business/the Applicants in Canadian dollars;
  - (iii) the key assumptions supporting the Phase 1 Qualified Bidder's valuation;
  - (iv) the key terms and provisions to be included in any order of the Court approving the contemplated Investment Proposal;
  - (v) a description of the Phase 1 Qualified Bidder's proposed treatment of the Applicants' liabilities, material agreements (including leases) and employees (for example, any required lease amendments other than those contemplated in the Rent Restructuring Plan and anticipated employment offers);

- (vi) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);
  - (vii) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction (including, but not limited to, the sources of capital to fund the investment, preliminary evidence of the availability of such capital or such other form of financial disclosure and credit-quality support or enhancement that will allow the Applicants and the Monitor and each of their respective advisors to make a reasonable business or professional judgment as to the Phase 1 Qualified Bidder's financial or other capabilities to consummate the transaction, steps necessary and associated timing to obtain such capital and any related contingencies, as applicable, and a sources and uses analysis);
  - (viii) a description of the conditions and approvals required for a final and binding offer, including any anticipated corporate, securityholder or other internal approvals, an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (ix) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
  - (x) an acknowledgement that any Investment Proposal is made on an "as-is, where-is" basis;
  - (xi) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation any regulatory approvals and any Third-Party Agreement required and an outline of the principal terms thereof; and
  - (xii) any other terms or conditions of the Investment Proposal which the Phase 1 Qualified Bidder believes are material to the transaction;
- (f) in the case of a Liquidation Proposal, it identifies or contains the following:
- (i) the scope of the Property to be included in the liquidation, including goods, lease designation rights, and receivables, if applicable, and any related exclusions;
  - (ii) the structure of the offer, including whether the offer is made on a 'net minimum guarantee' or 'fee' basis, any sharing of proceeds, any adjustments thereto, and the treatment of sale expenses, all in Canadian dollars;
  - (iii) in the case of a 'net minimum guarantee' offer, a specific indication of the financial capability of the Phase 1 Qualified Bidder to make the guarantee payments;

- (iv) a description of the conditions and approvals required for a final and binding offer, including any anticipated corporate, securityholder or other internal approvals, an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (v) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
  - (vi) the key terms and provisions to be included in any order of the Court approving the contemplated Liquidation Proposal, including any key terms and provisions to be included in the related sale guidelines;
  - (vii) an acknowledgement that any Liquidation Proposal is made on an “as-is, where-is” basis; and
  - (viii) any other terms or conditions of the Liquidation Proposal which the Phase 1 Qualified Bidder believes are material to the transaction;
19. The Applicants, with the consent of the Monitor and the DIP Lender, may waive compliance with any one or more of the requirements specified above (other than the requirement set forth in paragraph 18(c)(i)) and deem any such non-compliant bid to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal, Investment Proposal, or Liquidation Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.
20. Notwithstanding paragraphs 17 to 19, should ParentCo wish to pursue the Opportunity, it must deliver a duly executed copy of the ParentCo Purchase Agreement to the Monitor at the email addresses specified in Schedule “A” hereto, so as to be received not later than the Phase 1 Bid Deadline, and the ParentCo Purchase Agreement must remain irrevocable and open for acceptance until the selection of the Successful Bidder. The ParentCo Purchase Agreement shall be consistent with, or contain terms that are superior to, the ParentCo Term Sheet.

**Preliminary Assessment of Qualified LOIs, ParentCo Purchase Agreement, and Subsequent Process**

21. Following the Phase 1 Bid Deadline, the Applicants, in consultation with the Monitor and the DIP Lender, will assess the Qualified LOIs and the ParentCo Purchase Agreement, as applicable.
22. If it is determined by the Applicants, in consultation with the Monitor and the DIP Lender, that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (i) has a bona fide interest in completing a Sale Proposal, Investment Proposal, or Liquidation Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed a “**Phase 2 Qualified Bidder**”, provided that the Applicants may, in their reasonable business judgment and after consultation with the Monitor and the DIP Lender, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some bidders from the process). In the event that ParentCo has submitted the ParentCo Purchase Agreement in accordance with paragraph 20, then ParentCo will be deemed to be a Phase 2 Qualified

Bidder for all purposes under, and at all times in connection with, this SISP. Only Phase 2 Qualified Bidders shall be permitted to proceed to the second phase of the SISP (“Phase 2”), if any.

23. In the event that:
- (a) no Qualified LOI or ParentCo Purchase Agreement is received by the Phase 1 Bid Deadline, the Applicants shall bring a motion before the Court seeking advice and directions;
  - (b) the ParentCo Purchase Agreement is received by the Phase 1 Bid Deadline and no Qualified LOI has been received, then ParentCo shall be deemed to be the Successful Bidder, and the Applicants shall seek approval of, and authority to consummate, the ParentCo Purchase Agreement and the transactions provided for therein at the Sale Approval Motion; and
  - (c) at least one Qualified LOI has been received by the Phase 1 Bid Deadline, then the SISP shall proceed to Phase 2, below.
24. Upon the determination by the Applicants, in consultation with the Monitor and the DIP Lender, of the manner in which Phase 2 shall proceed, the Applicants, in consultation with the Monitor, will prepare a bid process letter for Phase 2 (the “**Bid Process Letter**”), and the Bid Process Letter will be (a) sent by the Applicants or the Monitor to all Phase 2 Qualified Bidders, and (b) posted by the Monitor on the website the Monitor maintains in respect of the CCAA Proceedings. The process and timing set out in the Bid Process Letter may be based on such factors and circumstances as the Applicants, in consultation with the Monitor and the DIP Lender, consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified LOIs received; (ii) the extent to which the Qualified LOIs relate to the same Property or Business or involve Investment Proposals predicated on certain Property or Business; (iii) the scope of the Property or Business to which any Qualified LOIs may relate; and (iv) whether the ParentCo Purchase Agreement has been received.
25. Notwithstanding paragraph 23, at any time following the Phase 1 Bid Deadline, the Applicants, in their reasonable business judgment and in consultation with the Monitor and the DIP Lender, may determine that Phase 2 is not required and proceed to execute definitive documentation with respect to a transaction contemplated in a Qualified LOI or the ParentCo Purchase Agreement submitted before the Phase 1 Bid Deadline.

## **PHASE 2: FORMAL OFFERS AND SELECTION OF SUCCESSFUL BIDDER**

26. Subject to any adjustments made to Phase 2 set out in the Bid Process Letter and any further Court order regarding the SISP, the conduct of Phase 2 shall proceed as set out herein.
27. Phase 2 Qualified Bidders that wish to make a formal binding Sale Proposal, Investment Proposal or Liquidation Proposal shall submit a binding offer that complies with all of the following requirements prior to the Phase 2 Bid Deadline:
- (a) the bid shall comply with each of the requirements set forth in respect of Qualified LOIs;

- (b) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase, make an investment in, or liquidate some or all of the Property or Business;
- (c) the bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable and open for acceptance until the selection of the Successful Bidder (as defined below);
- (d) the bid includes duly authorized and executed transaction agreements, including the purchase price, investment amount, and/or any other key economic terms expressed in Canadian dollars (the "**Transaction Amount**"), together with all exhibits and schedules thereto, all applicable ancillary agreements with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), and proposed orders to approve the transaction by the Court;
- (e) be accompanied by evidence acceptable to the Applicants, in consultation with the Monitor, demonstrating such Phase 2 Qualified Bidder's ability (including financial ability) to close the transaction contemplated by its bid, including through internal resources or sufficient non-contingent debt and/or equity funding commitments;
- (f) the bid is not conditioned on: (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder; and/or (ii) obtaining financing;
- (g) the bid fully discloses the identity of each entity that will be entering into the transaction or the financing (including through the issuance of debt in connection with such bid), or that is participating or benefiting from such bid, and such disclosure shall include, without limitation: (i) in the case of a Phase 2 Qualified Bidder formed for the purposes of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Qualified Bidder and the terms and participation percentage of such equity holder's interest in such bid; and (ii) the identity of each entity that has or will receive a benefit from such bid from or through the Phase 2 Qualified Bidder or any of its equity holders and the terms of such benefit;
- (h) the bid includes a commitment by the Phase 2 Qualified Bidder to provide a non-refundable cash deposit in the form of a wire transfer to an account to be specified by the Monitor (or such other form acceptable to the Applicants in consultation with the Monitor) in the amount of not less than ten percent (10%) of the Transaction Amount upon the Phase 2 Qualified Bidder being selected as the Successful Bidder, unless otherwise agreed to by the Applicants with the consent of the Monitor;
- (i) the bid includes acknowledgements and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and the Applicants prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents, the Business and/or the Property in making its bid; (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or

otherwise, regarding the Business, Property, or the Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicants;

- (j) the bid includes evidence, in form and substance reasonably satisfactory to the Applicants, in consultation with the Monitor, of authorization and approval from the Phase 2 Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction agreement(s) submitted by the Phase 2 Qualified Bidder;
  - (k) be accompanied by an acknowledgement that the Phase 2 Qualified Bidder may not be provided with an opportunity to improve its bid following the Phase 2 Bid Deadline;
  - (l) the bid contains other information required by the Applicants or the Monitor in the Bid Process Letter;
  - (m) the bid provides for Closing to occur no later than the Outside Date; and
  - (n) the bid is received by the Phase 2 Bid Deadline.
28. Notwithstanding paragraph 27, in the event that ParentCo has submitted the ParentCo Purchase Agreement in accordance with paragraph 20, each Phase 2 Qualified Bidder shall be provided with a copy of the ParentCo Purchase Agreement and invited to submit a Superior Offer in a similar form and on terms no less favorable than those contained in the ParentCo Purchase Agreement that provides for minimum consideration equal to that contemplated by the ParentCo Purchase Agreement plus no less than \$100,000 (an "Overbid"). An Overbid may be submitted in addition to or in the alternative of any bid submitted by a Phase 2 Qualified Bidder pursuant to paragraph 27. Each Overbid must:
- (a) be in the form of the ParentCo Purchase Agreement, together with all exhibits and schedules thereto, all applicable ancillary agreements with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), and proposed orders to approve the transaction by the Court;
  - (b) be accompanied by a mark-up of the ParentCo Purchase Agreement. For certainty, an Overbid may contain alterations, modifications, additions, or deletions of any terms of the ParentCo Purchase Agreement so long as, after giving effect to the same, the terms of the Overbid taken as a whole are no less favorable than those contained in the ParentCo Purchase Agreement; and
  - (c) otherwise comply with the requirements set out in paragraph 27.
29. For greater certainty, ParentCo shall be entitled to submit an Overbid.
30. Following the Phase 2 Bid Deadline, the Applicants, in their reasonable business judgment and in consultation with the Monitor and the DIP Lender, will assess each bid submitted by a Phase 2 Qualified Bidder pursuant to paragraph 27 and any Overbids received to determine whether they comply the requirements set out in paragraphs 27 and 28, as applicable (each a "Phase 2 Qualified Bid"). For greater certainty, the ParentCo

Purchase Agreement and any Overbid submitted by ParentCo shall be deemed to be a Phase 2 Qualified Bid.

31. The Applicants may, in their reasonable business judgment and in consultation with the Monitor and the DIP Lender, aggregate separate non-overlapping Phase 2 bids from unaffiliated Phase 2 Qualified Bidders to create one "Phase 2 Qualified Bid".

#### **Evaluation of Competing Bids**

32. Only Phase 2 Qualified Bidders whose bids have been designated as Phase 2 Qualified Bids are eligible to become the Successful Bidder.
33. The Applicants, with the approval of the Monitor and the DIP Lender, may waive strict compliance with any one or more of the requirements specified above and deem any such non-compliant bid to be a Phase 2 Qualified Bid.
34. A Phase 2 Qualified Bid will be valued based upon numerous factors, including, without limitation, items such as the following, as applicable: Transaction Amount or purchase price contemplated by the Phase 2 Qualified Bid, the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transaction(s), the proposed transaction documents, the effects of the bid on the stakeholders of the Applicants, factors affecting the speed, certainty and value of the transaction (including any regulatory or legal approvals or third party contractual arrangements required to close the transactions), the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Applicants, in consultation with the Monitor and the DIP Lender.

#### **Selection of Successful Bid**

35. Prior to the Successful Bid Selection Deadline, the Applicants, in their reasonable business judgment and in consultation with the Monitor and the DIP Lender, will: (a) review and evaluate each Phase 2 Qualified Bid, provided that each Phase 2 Qualified Bid may be negotiated among the Applicants, in consultation with the Monitor, and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations; and (b) identify the highest or otherwise best bid (the "**Successful Bid**", and the Phase 2 Qualified Bidder making such Successful Bid, the "**Successful Bidder**") for any particular Property or the Business in whole or part. The determination of any Successful Bid by the Applicants, in consultation with the Monitor and the DIP Lender, shall be subject to approval by the Court.
36. The Applicants shall have no obligation to enter into a Successful Bid, and reserve the right, after consultation with the Monitor and the DIP Lender, to reject any or all Phase 2 Qualified Bid.

#### **Sale Approval Motion Hearing**

37. The hearing of the motion to approve any transaction with a Successful Bidder (the "**Sale Approval Motion**") shall take place on the Sale Approval Motion Date.

38. As part of the Sale Approval Motion, the Applicants shall seek, among other things, approval from the Court to consummate any Successful Bid.
39. All Phase 2 Qualified Bids, other than the Successful Bid, if any, shall be deemed rejected by the Applicants on and as of the date of approval of the Successful Bid by the Court.

#### **Closing the Successful Bid**

40. The Applicants and the Successful Bidder shall take all reasonable steps to complete the transaction(s) contemplated by the Successful Bid as soon as possible after the Successful Bid is approved by the Court (“Closing”).

#### **Confidentiality, Stakeholder/Bidder Communication and Access to Information**

41. All discussions regarding a Sale Proposal, Investment Proposal, Liquidation Proposal, LOI or Phase 2 bid should be directed through the Monitor. Under no circumstances should the management of the Applicants or any creditor, customer, landlord supplier or other stakeholder of the Applicants be contacted or communicated with directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process. For greater certainty, nothing herein shall preclude a stakeholder from contacting potential bidders with the agreement of the Monitor to advise that the Applicants have commenced a SISP and that they should contact the Monitor if they are interested.
42. If it is determined by the Applicants, in consultation with the Monitor, that it would be worthwhile to facilitate a discussion between a Phase 1 Qualified Bidder or Phase 2 Qualified Bidder (as applicable, depending on the stage of the SISP) and a stakeholder or other third party as a consequence of a condition to closing or potential closing condition identified by such bidder, the Applicants with the consent of the Monitor may provide such bidder with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such bidder to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by the Applicants, in consultation with the Monitor. The Monitor must be provided with the opportunity to be present at all such communications or meetings.

#### **General**

43. The Monitor will oversee, in all respects, the conduct of the SISP by the Applicants and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out herein and in the SISP Approval Order, and is entitled to receive all information in relation to the SISP.
44. If there is a Successful Bid, the applicable deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Sale Approval Motion will be applied to the purchase price or other consideration to be paid or investment amount to be made by the Successful Bidder, as applicable, upon closing of the approved transaction and will be non-refundable.

45. If a Successful Bidder breaches its obligations under the terms of the SISP, its deposit shall be forfeited as liquidated damages and not as a penalty.
46. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Applicants.
47. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with their participation in the SISP, including submission of any LOI, Phase 2 bid, due diligence activities, completion of a Successful Bid and any negotiations or other actions whether or not they lead to the consummation of a transaction.
48. The Applicants shall have the right to modify the SISP (including, without limitation, to select a back-up bid, to extend the Rent Restructuring Plan Deadline, Phase 1 Bid Deadline, the Phase 2 Bid Deadline or any other deadline, or otherwise pursuant to the Bid Process Letter) with the prior written approval of the Monitor and the DIP Lender if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that, all Potential Bidders remaining in the SISP at the applicable time shall be advised of any substantive modification to the procedures set forth herein.
49. All bidders (including Phase 1 Qualified Bidders and Phase 2 Qualified Bidders) shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the SISP, including the qualification of bids, the construction and enforcement of the SISP, and Closing, as applicable.
50. For the avoidance of doubt, any approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

## SCHEDULE "A"

Alvarez & Marsal Canada Inc., solely in its capacity  
as CCAA monitor of Comark Holdings Inc., Bootlegger Clothing Inc.,  
cleo fashions Inc., and Ricki's Fashions Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, Ontario M5J 2J

Attention: Al Hutchens, Managing Director ([ahutchens@alvarezandmarsal.com](mailto:ahutchens@alvarezandmarsal.com))  
Josh Nevsky, Senior Director ([jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com))  
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Zach Gold, Associate ([zgold@alvarezandmarsal.com](mailto:zgold@alvarezandmarsal.com))

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED      Court File No: CV-20-00642013-00CL  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK HOLDINGS INC.,  
BOOTLEGGER CLOTHING INC., CLEO FASHIONS INC. AND RICKI'S FASHIONS INC.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SISP APPROVAL ORDER**

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