

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Court No: 500-11-057805-208,
500-11-057804-201

SUPERIOR COURT
(Commercial Division)
Bankruptcy and Insolvency Act

File No: 41-2607510,
41-2607508

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

**FREEMARK APPAREL BRANDS RETAIL BE
INC.**

and

FREEMARK APPAREL BRANDS GROUP INC.
legal persons duly incorporated under the laws of
Canada, having their principal places of business at
5640 Pare Street, Mount Royal, Quebec, H3B 1M1

Petitioners / Debtors

-and-

RICHTER ADVISORY GROUP INC.

Proposal Trustee

JOINT PROPOSAL

We, **Freemark Apparel Brands Retail BE Inc.** and **Freemark Apparel Brands Group Inc.** (collectively, the “**Debtors**” or the “**Companies**”), hereby submit the following joint proposal under the *Bankruptcy and Insolvency Act*:

1. **Definitions:** For all purposes relating to the present proposal under the *Bankruptcy and Insolvency Act*, the following terms shall have the following meaning:

“**Act**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

“**Amended Proposal**” means any amendment(s) of this Proposal, which will be tabled or conveyed at the first Creditors’ Meeting or any subsequent Creditors’ Meeting or further to any adjournment thereof or otherwise conveyed to the Creditors;

“Approval” means the situation arising from the Proposal or an Amended Proposal having been duly accepted by the required majority of creditors of the Companies and having been duly approved by the Court in a judgment which has become executory as a result of the delay for appeal having expired without there having been an appeal, or an appeal having been lodged and the judgment having been confirmed or the appeal withdrawn or otherwise settled;

“Committee” means the committee comprising up to five (5) individuals to be named by the creditors at the Creditors’ Meeting called to consider the Amended Proposal;

“Claim” means the claim of any Creditor of the Companies, whether it is a Secured Claim, a Preferred Claim, an Employee Claim or an Unsecured Claim which existed as at the date of the filing of the Notice of Intention. Therefore, it does not include a Subsequent Claim;

“Court” means the Superior Court of the District of Montréal sitting in bankruptcy and insolvency matters (Commercial Division);

“Creditor” means the holder of a Claim;

“Creditors’ Meeting” means the meeting of Creditors to be held for the purpose of considering and voting upon this Proposal or any Amended Proposal, and any adjournment(s) of such meeting;

“Crown Claims” means the claims of Her Majesty in right of Canada or of a province described in subsection 60(1.1) of the Act that were outstanding at the time of the filing of the Notices of Intention;

“Directors” means the past and present directors of each of the Companies;

“Employee Claim(s)” means, for each employee, the aggregate sum of all amounts owing to such employee, including any amounts owing in respect of notice of termination or pay in lieu thereof and severance claims, as set forth in the Employee Claim Notice;

“Employee Claim Notice” means the notice sent to each employee together with this Proposal setting out the employee’s Employee Claim;

“Employee Creditor” means a Creditor having an Employee Claim;

“Landlords” means those Creditors of which the Companies was a commercial tenant under a lease of real property, as acknowledged by the Companies;

“Landlord Claims” means the Unsecured Claims of the Landlords for the lesser of (i) the actual losses resulting from the disclaimers of leases or (ii) the amount calculated in accordance with the formula provided for at Section 65.2(4)b of the Act, which Claims shall be treated as Unsecured Claims in accordance with Section 65.2(5) of the Act;

“Notice of Intention” means the Notice of Intention to Make a Proposal under the Act filed by the Companies on January 21, 2020;

“Preferred Claims” means all Claims of a Creditor of the Companies governed by section 136 the Act and to be paid in priority by the Companies to all other Unsecured Claims in the distribution of the Shareholder’s Contribution;

“Preferred Creditor” means a Creditor having a Preferred Claim;

“Proposal” means this Proposal;

“Proposal Expenses” means all fees, expenses, liabilities and obligations of the Trustee, and all legal fees, consulting fees and accounting fees on and incidental to the proceedings arising out of the Notice of Intention, the Proposal, the Amended Proposal and any matter related to the current process and including without limitation advice to the Companies and the Trustee and their representation in connection therewith;

“Proven Claim” means the amount accepted by the Companies for any Claim, or further to the Court's determination and then as per the final judgment to be rendered and that the delay of appeal has expired without having been an appeal, or an appeal having been lodged and the judgment having been confirmed or the appeal withdrawn or otherwise settled;

“Related Creditor” means each of Freemark Apparel Brands Retail BE Inc and Freemark Apparel Brands Group Inc.;

“Related Creditor Claim” means the Claim of a Related Creditor;

“Restructuring Claim” means any right of any person against the Companies in connection with any indebtedness, liability or obligation of any kind owed to such person arising out of the restructuring, the disclaimer or the termination of any contract, lease, employment agreement, collective agreement or any other agreement, whether written or oral, after the date of the Notices of Intention, including any right of any person who receives a notice of repudiation or termination from the Companies. Without limiting the generality of the foregoing, a Restructuring Claim shall include Landlord Claims;

“Secured Claims” means Claims of Secured Creditors within the meaning of the Act;

“Secured Creditor” means a Creditor having a Secured Claim;

“Subsequent Claims” means the claims arising in respect to goods supplied, services rendered or other consideration given as and from the date of the filing of the Notice of Intention up to the time of Approval;

“Subsequent Creditor” means the holder of a Subsequent Claim;

“Trustee” means Richter Advisory Group Inc., the Trustee under the Notice of Intention and the Trustee named in the Proposal of the Companies;

“Unsecured Claims” means in respect of the Companies, the claims of the Unsecured Creditors including claims of every nature and kind whatsoever, whether due or not due for payment as of the date of the filing of the Notice of Intention as well as contingent or unliquidated claims arising

out of any transaction entered into by one of the Companies prior to the date thereof. "Unsecured Claims" shall include Restructuring Claims, but exclude Secured Claims, Preferred Claims, Crown Claims and Subsequent Claims;

"Unsecured Creditor" means a Creditor having an Unsecured Claim;

2. **Purpose of the Proposal:**

On January 21, 2020, each of Freemark Apparel Brands Retail BE Inc. and Freemark Apparel Brands Group Inc. filed a Notice of Intention. To facilitate the administration of the Notices of Intention, and due to the integrated nature of operations of the Debtors, the Court, on January 31, 2020 authorized the joint administration. In the same spirit and for the very same reason, the Companies have jointly filed this Proposal.

Subsequent to the filing of the Notices of Intention, the Debtors closed their retail operations entirely and, further to a sale process, sold their wholesale operations, certain inventory and intellectual property pursuant to a transaction which was approved and authorized by the Court on March 27, 2020. The remaining retail inventory is in the process of being liquidated.

At the present time, based on the amount owing to the principal secured creditor, the Debtors' assets will not yield sufficient realization to permit a distribution to the Unsecured Creditors of the Debtors. However, the Debtors intend to engage with their insurers under their directors and officers insurance policy and to explore all other avenues to secure a source of funding to enable a proposal to be filed. Under the Act, the time period for the filing of a proposal is six months from the date of the filing of the Notices of Intention, which expires on July 21, 2020. Accordingly, the Debtors require additional time to determine if funding for a proposal is available from their Director and Officers insurance policy or otherwise. An additional delay is generally advantageous to Unsecured Creditors as it provides for the possibility of a viable proposal to be filed.

Accordingly, this is a holding Proposal designed to provide the Companies sufficient time to determine if a viable proposal can be filed. At the Creditors' Meeting, it is intended that same will be adjourned for a period of up to six (6) months during which time the Companies will complete their discussions with the Director and Officer's insurers and look for other sources of funding and either file an Amended Proposal to be voted on by the Creditors or the Companies will go bankrupt.

3. **Secured Claims:** The Secured Claims shall be paid in accordance with arrangements existing between the Companies and the holders of Secured Claims or as may be arranged between the Companies and the holders of Secured Claims. The Companies declare that this Proposal is not made and any Amended Proposal shall not be made in respect of the security of the Secured Creditors;
4. **Employee Claims:** Each employee which is in agreement with the Employee Claim Notice shall not be required to file a proof of claim and his (her) Proven Claim shall be deemed to be as set forth in the Employee Claim Notice, for voting and distribution purposes under the Proposal and any Amended Proposal. Employees who do not agree with the amount of their claim as set forth in the Employee Claim Notice must complete and file their proof of claim in respect of their Claim, prior to the first Creditors' Meeting if they wish to vote on the Proposal or any Amended Proposal,

together with any and all supporting documents, and a proper statement of account, which proof of claim shall be dealt with pursuant to the Act;

5. **Amounts:**
 - (a) Crown Claims will be paid in full within six (6) months after the Approval, or as may otherwise be arranged with the Crown;
 - (b) owing to employees and former employees, that they would have been entitled to receive under Paragraph 136(1)(d) of the Act if the employer became bankrupt on the date of the filing of the Notices of Intention, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Approval, will be paid in full immediately after the Approval as per the Act.
6. **Proposal Expenses:** The Proposal Expenses shall be assumed by the Companies in priority to all Preferred Claims and Unsecured Claims;
7. **Preferred Claims:** The payment of the Preferred Claims other than those referred to in Section 5(b) hereof will be paid in full in priority to all Unsecured Claims, thirty (30) days after the Approval;
8. **Subsequent Claims:** The Companies declare that this Proposal is not made and any Amended Proposal shall not be made in respect of Subsequent Claims;
9. **Unsecured Claims :** The following provisions will apply to Unsecured Claims:
 - (a) payment of Unsecured Claims will be deferred for a period ending on the date fixed for the Creditors' Meeting to be called to consider the Proposal or an Amended Proposal;
 - (b) the Companies will table at the Creditors' Meeting called to consider the Proposal, or at any adjournment of such meeting, an Amended Proposal under which the Companies will propose a basis of payments to be made in full and final settlement of the Unsecured Claims;
10. **Committee:** The Committee shall have the power to:
 - (a) Advise the Trustee of matters relating to the administration of the Amended Proposal;
 - (b) Postpone the payment of any dividends to Unsecured Creditors herein provided;
 - (c) Waive, for any period of time, any default pursuant to or in relation to the Proposal or any Amended Proposal;
 - (d) Declare the Amended Proposal to be in default in the circumstances herin contemplated, and to instruct the Trustee to seek the annulment of the Amended Proposal pursuant thereto;
 - (e) Perform such acts, and grant such approvals, as may be performed and granted by inspectors in a bankruptcy;

11. **Reviewable Transactions and Preferential Payments:** Conditionally upon the Approval, the statutory terms of Sections 95 to 101 of the Act and any provision of provincial legislation having a similar objective (including but not limited to Articles 1631 to 1636 of the *Civil Code of Quebec*) shall not apply, the whole pursuant to Section 101.1 of the Act;
12. **Claims Against Directors:** In accordance with Section 50(13) of the Act, the Amended Proposal to be made will constitute a compromise of claims against the Directors that arose before the filing of the Notices of Intention and that relate to the obligations of the Companies where the directors are by law or otherwise liable in their capacity as Directors for the payment of such obligations, and acceptance of the Amended Proposal, upon Approval, will operate as a discharge in favour of such Directors with respect to such obligations. Nothing herein shall be interpreted as an acknowledgement of any liability or obligation of the Directors;
13. **Related Creditors:** Conditional upon the Approval, the Related Creditors waive and renounce to (i) any right to prove in whole or in part any Related Creditor Claim it may have and (ii) any dividend that is or could be payable to it under the Amended Proposal.
14. **Trustee:** The Trustee will be the Trustee under the Proposal and all monies payable under the Proposal will be paid over to the Trustee which will remit the dividends in accordance with the terms of the Amended Proposal.

DATED AT MONTREAL, QUEBEC, this 21st day of July 2020.

**FREEMARK APPAREL BRANDS
RETAIL BE INC.**

Per 
Name: Lawrence Routtenberg

**FREEMARK APPAREL BRANDS
GROUP INC.**

Per 
Name: Lawrence Routtenberg