

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

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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**

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**AMENDED 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 amended 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 this Amended Joint Proposal;

**“Approval”** means the situation arising from the 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there having been an appeal, or an appeal having been lodged and the judgment having been confirmed or the appeal withdrawn or otherwise settled;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. For greater certainty, “Claim” does not include Subsequent Claims;

**“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 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;

**“Distribution Pool”** has the meaning set forth in paragraph 2 hereof;

**“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 the Original Proposal setting out the employee’s Employee Claim;

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

**“FABI”** has the meaning set forth in paragraph 2 hereof;

**“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;

**“Original Proposal”** means the Proposal filed by the Companies on July 20, 2020, which this Amended Proposal amends;

**“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 Distribution Pool;

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

**“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 Original 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 Freemark Apparel Holdings 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;

**“Transaction”** has the meaning set forth in paragraph 2 hereof;

**“Trustee”** means Richter Advisory Group Inc., the Trustee under the Notice of Intention and the Trustee named in the Original Proposal and the Amended 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 to Freemark Apparel Brands International Inc. (“**FABI**”) pursuant to a transaction which was approved and authorized by the Court on March 27, 2020 (the “**Transaction**”).

On July 20, 2020, the Companies filed a holding Proposal designed to provide the Companies sufficient time to determine if a viable proposal could be filed. At the Creditors’ Meeting held on August 11, 2020, the Creditors voted in favour of a resolution to adjourn the Creditors’ Meeting for a period of up to six (6) months during which time the Companies intended to complete their discussions with the Director and Officer’s insurers and look for other sources of funding in order to file an Amended Proposal to be voted on by the Creditors.

The Companies’ discussions with the Director and Officer’s insurers did not lead to an agreement on the funding of a viable proposal. However, FABI offers to inject an aggregate amount of \$400,000 (the “**Distribution Pool**”), upon the terms and conditions set out in this Amended Proposal, for the sole purpose of distributing said Distribution Pool to the Creditors should this Amended Proposal be duly accepted by the Creditors and approved by the Court.

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 Amended Proposal is not made in respect of the security of the Secured Creditors.

4. **Crown Claims and other Amounts:**

- (a) Crown Claims, if any, will be paid in full within six (6) months after the Approval, or as may otherwise be arranged with the Crown;
- (b) Amounts 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 after the Approval as per the Act, as provided in Section 8 (a). For certainty, the amounts set forth in this Section 4 (b) shall be paid out of the Distribution Pool.

5. **Proposal Expenses:** The Proposal Expenses shall be paid by the Companies in priority to all Preferred Claims and Unsecured Claims. For greater certainty, the Proposal Expenses shall not be paid out of the Distribution Pool.

6. **Preferred Claims:** The payment of the Preferred Claims shall be paid out of the Distribution Pool. Preferred Claims will be paid in full in priority to all Unsecured Claims within the time period set forth in Section 8 below
7. **Subsequent Claims:** The Companies declare that this Amended Proposal shall not be made in respect of Subsequent Claims.
8. **Unsecured Claims:** The Proven Claims of Unsecured Creditors shall be paid from the Distribution Pool, in full and final settlement of their Unsecured Claims, without interest, in the manner set forth in Section 8.
9. **Distribution Pool:** The Distribution Pool shall be remitted to the Trustee as follows: (i) no later than five (5) business days after the Approval, FABI shall remit to the Trustee an amount of \$85,000 and (ii) no later than 4 months after the Approval, FABI shall remit to the Trustee an amount of \$315,000. The Distribution Pool shall be distributed by the Trustee as follows and in the following order:
  - a) First, to Preferred Creditors in payment of their Proven Claims which are Preferred Claims. These amounts shall be distributed within fifteen (15) days after the Approval;
  - b) Second, the balance of the Distribution Pool, to be distributed to the Unsecured Creditors with a Proven Claim, as follows:
    - (1) the lesser of: (i) the amount of the Proven Claim of such Unsecured Creditor and (ii) \$1,000 (the "**First Level Distribution**") which amount, subject to paragraph c) below, shall be disbursed within 5 months after Approval;
    - (2) an amount equal to such Unsecured Creditor's pro rata share, calculated on the basis of the remaining amount of its Proven Claim, of any amount remaining in the Distribution Pool after the distribution of all of the First Level Distribution amounts, and subject to paragraph c) below, to all Unsecured Creditors ("**Second Level Distribution**"). The Second Level Distribution will be paid by the Trustee within 5 months after the Approval;
  - c) the distributions referred to above shall be net of any amount to be set aside by the Trustee while Claims are being determined, litigated or for any disputed Claim. The Trustee shall use its best judgment in the determination of any amount which should be set aside, and for which period. Once all Claims have been settled or adjudicated with a final judgment, any amount set aside pursuant to this paragraph c) shall be disbursed by the Trustee.
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 Amended Proposal;
  - (d) Declare the Amended Proposal to be in default in the circumstances herein 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, this Amended Proposal 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 (a “**D&O Claim**”), and acceptance of the Amended Proposal, upon Approval, will operate as a discharge in favour of such Directors with respect to such D&O Claims, provided that nothing in the present paragraph shall waive, compromise, discharge or release (i) any D&O Claim that is not permitted to be released pursuant to Section 50(14) of the Act and (ii) any claim against an insurer, including Axis Reinsurance Company (Canadian Branch) in respect of a D&O Claim. Nothing herein shall be interpreted as an acknowledgement of any liability or obligation of the Directors.
13. **Claims against FABI:** this Amended Proposal will constitute a compromise of claims against FABI that arose before the filing of this Amended Proposal and that relate to the obligations of the Companies, their assets, their operations, the termination or disclaimer of any agreements to which any of the Companies were a party or the Transaction, and acceptance of this Amended Proposal, upon Approval, will operate as a discharge in favour of FABI with respect to such claims.
14. **Related Creditor:** Conditional upon the Approval, the Related Creditor waives and renounces 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.
15. **Trustee:** The Trustee will be the Trustee under the Amended Proposal and all monies payable under the Amended 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 10th day of February 2021.

**FREEMARK APPAREL BRANDS RETAIL  
BE INC.**

Per Lawrence Routtenberg  
Name: Lawrence Routtenberg

**FREEMARK APPAREL BRANDS GROUP  
INC.**

Per Lawrence Routtenberg  
Name: Lawrence Routtenberg