

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act (the "BIA"),
R.S.C. 1985, c. B-3)

No.:500-11-052107-170 / 500-11-052108-178 /
500-11-052109-176 / 500-11-052106-172

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

FREEMARK APPAREL BRANDS ESP INC.

-and-

FREEMARK APPAREL BRANDS USA INC.

-and-

FREEMARK APPAREL BRANDS INC.

-and-

FREEMARK APPAREL BRANDS TEC INC.

Debtors/Petitioners

- and -

RICHTER ADVISORY GROUP INC.

Trustee

**MOTION FOR THE AUTHORIZATION OF A SALE AND INVESTOR
SOLICITATION PROCESS**

(Section 183 of the *Bankruptcy and Insolvency Act (the "BIA")*)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE
REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL
DISTRICT OF MONTRÉAL, THE PETITIONER RESPECTFULLY SUBMITS THE
FOLLOWING:**

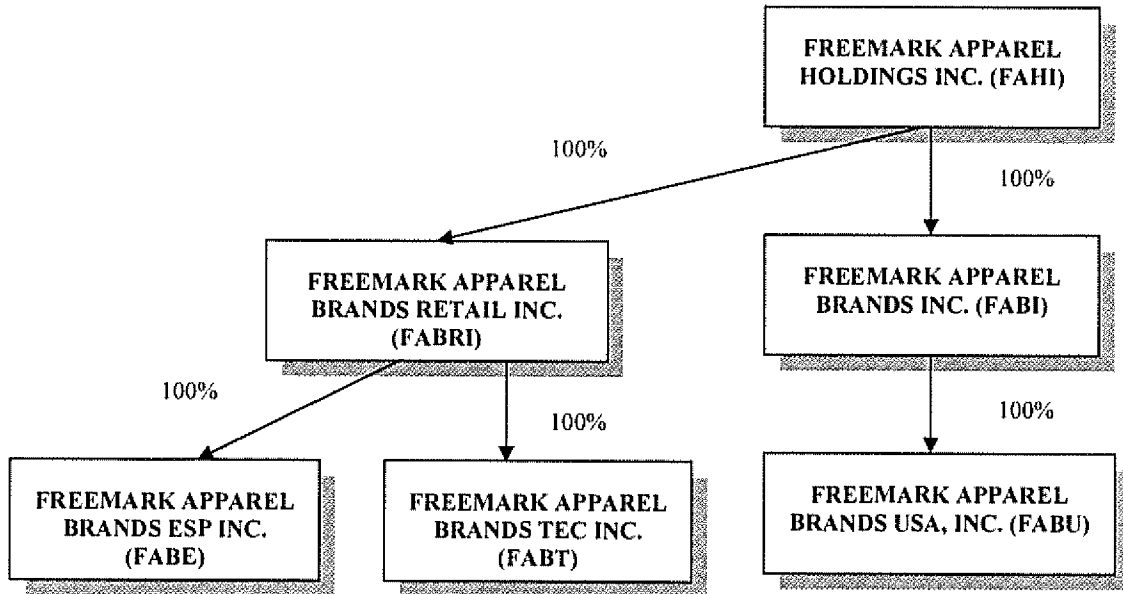
I. INTRODUCTION

1. By the present motion, Freemark Apparel Brands ESP Inc. (“**FABE**”), Freemark Apparel Brands USA, Inc. (“**FABU**”), Freemark Apparel Brands Inc. (“**FABI**”) and Freemark Apparel Brands Tec Inc. (“**FABT**”) seek an order of this Court authorizing FABE, FABU, FABT and FABI, with the assistance of Richter Advisory Group Inc. (“**Richter**”), to conduct a sale and investor solicitation process (the “**SISP**”) in order to market the Business (hereinafter defined) and related assets and approving the SISP procedures produced herewith as **Exhibit R-1** (the “**SISP Procedures**”).

II. FACTUAL & PROCEDURAL BACKGROUND

2. FABE with FABT are owned by Freemark Apparel Brands Retail Inc. (“**FABRI**”). FABRI is owned by Freemark Apparel Holdings Inc. (“**FAHI**”) which also own FABI which in turn owns FABU. FABI, FAHI, FABE, FABRI, FABT and FABU are collectively hereinafter defined as the “**FAB Group**”.

3. The FAB Group organizational chart can be represented as follows:



4. The FAB Group is a premier retailer of branded apparel, operating since 2004 (the “**Business**”). The Business can be considered more fully as follows:

(i) As of the date of the Notices of Intention to Make a Proposal (the “**NOI Filings**”) FABE and FABT operated 58 retail locations throughout Canada under the following banners: Bench, Scotch & Soda, Esprit and Thread+Copper. FABT now operates the Bench and Thread+Copper stores while FABE operates the Esprit stores. The number of retail locations has decreased since the NOI Filings as a result of a sale transaction with Scotch & Soda and the disclaimer of leases for some unprofitable stores;

- (ii) FABI operates the wholesale business of the FAB Group in Canada. FABI has long-standing relationships with The Bay, Simons, Winners, Saks Off 5th and many other retailers;
 - (iii) FABU operates the wholesale business of the FAB Group in the United States; and
 - (iv) The FAB Group has or had licensing agreements for the following world class brands: Bench., Scotch & Soda, Esprit and Garcia.
5. On February 17, 2017, each of FABI, FABT, FABI and FABU filed a notice of intention to make a proposal. On February 23, 2017, this Court allowed the joint administration of the four matters.
6. HSBC Bank Canada (“**HSBC**”) is the FAB’s Group’s first ranking secured creditor.

III. SALE AND INVESTOR SOLICITATION PROCESS

7. As part of its restructuring, the FAB Group has mandated Richter to conduct the SISP, in consultation with HSBC, in order to market the Business and related assets to one or more potential acquirers, investors or strategic partners.
8. The SISP is urgently required so as to (i) prevent the precipitous loss of the value of the Business, (ii) allow, if possible, for the continuation of operations of the Business, (iii) preserve, if possible, jobs of the FAB Group's employees and (iv) protect the interests of the FAB Group’s stakeholders.
9. The SISP was designed by the FAB Group, in consultation with its advisors, Richter and HSBC, and will be administered by the FAB Group in tandem with Richter and in consultation with HSBC, the whole in accordance with the SISP Procedures.
10. In order to attract interest from various parties, Richter will send a teaser document to parties who operate in the same or similar industry as the FAB Group as well as financial investors and liquidators, which will contain summary information about the Business and will inform the recipient of the availability of additional information. Such parties will be identified by the FAB Group and Richter, in consultation with HSBC, with the additional assistance of Richter's network and database.
11. Parties interested in obtaining more detailed information about the FAB Group and/or becoming a party qualified to make an offer will be required to sign a non-disclosure agreement (“**NDA**”) with Richter.
12. Interested parties who have executed a NDA may then proceed to submit offers (the “**Offers**”) including, but not limited to, offers proposing to acquire the Business, all or any part of the FAB Group's assets, to make an investment in the FAB Group or to liquidate the FAB Group's inventory. Offers would need to be submitted by no later than April 21, 2017 (or such later date designated by the FAB Group with the consent of Richter in consultation with HSBC), together with a deposit equal to the lesser of

\$100,000 or 5% of the consideration under the proposed transaction, the whole as appears from the SISP Procedure Documents.

13. The FAB Group, with the assistance of Richter in consultation with HSBC, will evaluate the Offers to determine whether each offeror is a "Qualified Bidder" pursuant to the SISP Procedure Documents ("Qualified Bidders") and whether each of the Offers constitutes a "Qualified Bid" pursuant to the requirements under the SISP Procedure ("Qualified Bids" and each a "Qualified Bid").
14. The Qualified Bidders will be informed of the FAB Group's decision in respect of their respective Qualified Bids in writing by no later than April 26, 2017 (or such later date designated by the FAB Group with the consent of Richter).
15. Once a successful bidder is approved in accordance with the SISP Procedure, the relevant entity of the FAB Group will seek this Court's authorization and approval of the transaction contemplated by such bidder's offer. The closing of the sale and purchase envisaged by a successful Qualified Bid would need to occur no later than May 12, 2017 (or such later date designated by the FAB Group with the consent of Richter in consultation with HSBC).
16. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion for the Authorization of a Sale and Investor Solicitation Process* (the "Motion");

APPROVE and AUTHORIZE the Sale and Investor Solicitation Process ("SISP");

APPROVE and AUTHORIZE the Request for Offer produced as Exhibit R-1 (the "SISP Procedures"), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with the consent of Richter Advisory Group Inc. ("Richter");

AUTHORIZES Richter to conduct the SISP and to implement and perform any and all actions contemplated under the SISP Procedures or related thereto;

ORDER the provisional execution of the judgment to be rendered on the Motion notwithstanding appeal.

THE WHOLE, without costs, save in the event of a contestation

MONTRÉAL, March 14, 2017

Davis Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for the Debtors.


NOTICE OF PRESENTATION

TO THE SERVICE LIST

TAKE NOTICE that the *Motion for the Authorization of a Sale and Investor Solicitation Process* will be presented for hearing and allowance at 8:45 on March 16, 2017 in room 16.10 in the Montréal Courthouse, located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, or so soon thereafter as Counsel may be heard.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, March 14, 2017



DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtors