

# RICHTER

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF: QUEBEC  
DIVISION NO.:01-BEAUHARNOIS  
COURT NO.: 760-11-005445-123  
ESTATE NO.: 41-1698291

SUPERIOR COURT  
In Bankruptcy and Insolvency

IN THE MATTER OF THE PROPOSAL OF:

**Les Aliments Newland North America Inc./  
Newland North America Foods Inc.**

a body politic and corporate, duly  
incorporated according to law and having its  
head office at:  
1000 Saint-Charles Avenue, Suite 901  
Vaudreuil-Dorion, Quebec J7V 8P5

**Debtor**

- and -

**Richter Advisory Group Inc.  
(formerly RSM Richter Inc.)**

**Trustee**

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**REPORT OF THE TRUSTEE ON THE FINANCIAL SITUATION  
OF THE DEBTOR AND ON THE PROPOSAL  
(Sections 50(10) (b) and 50(5) of the *Bankruptcy and Insolvency Act*)**

## INTRODUCTION

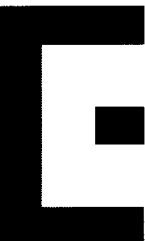
We refer to our report dated January 23, 2013 ("Report") which had been sent to you to provide you with certain information to better evaluate Newland North America Foods Inc.'s ("Newland or Debtor") January 17, 2013 Proposal and affairs. **Since the issuance of that Report, additional information has come to light which is relevant to the Creditors' assessment of the situation and their vote on the Proposal.** The Trustee's review of the additional information is not yet complete; however, the preliminary findings appear to be material enough for the Trustee to recommend that the vote on the Proposal **be postponed until completion** of its review and clarification of its preliminary findings. These significant developments can be summarized as follows:

- I. Security granted to P.J. Impex, a creditor of the Company;
- II. Other reviewable transactions;
- III. Realization of outstanding accounts receivable and inventory on hand.

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**We caution the reader that the information discussed herein emanates from the books and records of the Debtor. However, we have not conducted an audit of these books and records. Consequently, we cannot render an opinion as to the accuracy of the information contained herein.**

**I. Security granted to P.J. Impex Inc.**

On November 29, 2012, Newland granted a \$3MM security charge on its assets in the form of a Hypothec to a creditor named P.J. Impex Inc. ("P.J. Impex"). The existence of this security was not disclosed by the Debtor in its Statement of Affairs (unaudited balance sheet) which it executed concurrently with the filing of its Proposal.

The security was registered on December 4, 2012. The books and records of the Company indicate that, as of the date of the filing, the amount owed to P.J. Impex totaled approximately \$1.3MM. It should be noted that this amount is subject to change as the Company is still in the process of updating its records.

Per the documentation reviewed, the Hypothec was granted to secure a \$2.7MM promissory note for advances made prior to November 29, 2012. The details we have obtained regarding the promissory note indicate that the advances relate to shipments and transactions that occurred prior to November 29, 2012. Accordingly, *prima facie*, it would appear that the granting of such security may not be valid.

The above being said, there are various facts relating to the granting of the security to P.J. Impex which the Trustee has yet to obtain and assess. Upon the gathering of all relevant information, the Trustee intends to seek a legal opinion on the validity of this security. However, should the security be valid, the dividend payable to the unsecured creditors, whether it be in a Proposal or a Bankruptcy scenario, would be significantly reduced and possibly be totally eradicated.

**II. Other reviewable transactions**

As mentioned in our January 23, 2013 Report, we had not at that time performed a review of various transactions involving the Debtor, non-related third parties and related parties in the period shortly before the Company having filed for protection. The paydown of amounts in the **3 month** period (in respect of non-related parties) and **12 months** (in respect of related parties), prior to the filing of the Notice of Intention to Make a Proposal ("NOI") to specific creditors, **may** constitute transactions which the Trustee may be able to set aside for the benefit of the mass of creditors. Although our analysis is not yet fully complete, the preliminary results of our review in respect of "significant" payments to trade creditors for the last five months are as follows:

| Newland North America Foods Inc. |                      |                  |                  |                  |                  |                        |             |
|----------------------------------|----------------------|------------------|------------------|------------------|------------------|------------------------|-------------|
| Accounts Payable Review          |                      |                  |                  |                  |                  |                        |             |
| (In \$)                          | Balance at month end |                  |                  |                  |                  | Variation Aug. to Dec. |             |
| Major Supplier                   | Aug                  | Sept             | Oct              | Nov              | Dec              | (\$)                   | (%)         |
| <b>USD</b>                       |                      |                  |                  |                  |                  |                        |             |
| Agropackers SAC                  | -                    | -                | 190,168          | -                | 37,650           | 37,650                 | 0%          |
| Alisur SAC                       | 59,270               | 59,270           | -                | -                | -                | (59,270)               | -100%       |
| Ardo                             | 580,820              | 488,966          | 369,216          | 369,216          | 369,216          | (211,604)              | -36%        |
| Berry Brokers International      | 158,232              | -                | -                | -                | -                | (158,232)              | -100%       |
| Cixi Dafenf                      | 270,953              | 233,043          | 142,987          | 82,383           | 103,333          | (167,620)              | -62%        |
| Comfrut                          | 58,681               | 190,645          | 183,462          | 115,128          | 115,128          | 56,447                 | 96%         |
| DBS Polska SP ZOO                | 101,457              | 149,543          | 187,093          | 182,014          | 182,014          | 80,557                 | 79%         |
| Findus Sverige AB                | 799,583              | 721,710          | 561,865          | 479,893          | 479,893          | (319,691)              | -40%        |
| Flanders Best                    | 243,966              | 273,524          | 198,375          | 122,401          | 122,401          | (121,565)              | -50%        |
| FreezPak Logistic                | 276,263              | 309,920          | 277,174          | 398,837          | 414,036          | 137,772                | 50%         |
| Gandules Inc.                    | -                    | -                | 46,253           | 46,253           | 69,379           | 69,379                 | 0%          |
| Grasso Foods                     | 24,326               | 89,059           | 78,826           | 26,240           | 52,586           | 28,260                 | 116%        |
| Hanover Foods Corp               | 121,686              | 105,660          | 125,396          | 183,508          | 283,069          | 161,383                | 133%        |
| New Giant International          | 463,704              | 502,565          | 429,114          | 369,578          | 369,578          | (94,126)               | -20%        |
| Oerlemans Foods Netherland BV    | 121,982              | 108,652          | 89,234           | 89,234           | -                | (121,982)              | -100%       |
| PJ Impex                         | 3,216,968            | 3,441,227        | 2,962,962        | 1,631,043        | 1,631,621        | (1,585,347)            | -49%        |
| Quadrum Foods                    | -                    | -                | 311,804          | 316,614          | 316,614          | 316,614                | 0%          |
| RDM International                | 65,903               | 65,903           | 65,903           | 65,903           | 65,903           | -                      | 0%          |
| Remant Cool Logistics NV         | 59,428               | 185,690          | 232,300          | 137,450          | 102,450          | 43,022                 | 72%         |
| Sociedad Agricola Y Fruticola    | 61,794               | 61,794           | 10,633           | 10,633           | 10,633           | (51,161)               | -83%        |
| T.H. Weiss Inc                   | 156,217              | 230,491          | 243,787          | 241,079          | 316,496          | 160,278                | 103%        |
| Thai Frozen Foods                | 247,277              | 124,572          | 124,572          | 124,572          | 124,572          | (122,705)              | -50%        |
| Trinity Trading                  | 65,835               | 46,806           | -                | -                | -                | (65,835)               | -100%       |
| Zhongda Foods Limited            | 511,490              | 132,480          | 221,066          | 157,577          | 156,425          | (355,066)              | -69%        |
| <b>Major suppliers</b>           | <b>5,919,486</b>     | <b>5,928,667</b> | <b>5,521,697</b> | <b>3,772,198</b> | <b>4,034,874</b> | <b>(1,884,612)</b>     | <b>-32%</b> |
| <b>Other</b>                     | <b>2,124,603</b>     | <b>1,939,947</b> | <b>1,885,013</b> | <b>1,723,748</b> | <b>1,896,123</b> | <b>(228,480)</b>       | <b>-11%</b> |
| <b>Total AP</b>                  | <b>8,044,089</b>     | <b>7,868,614</b> | <b>7,406,710</b> | <b>5,495,946</b> | <b>5,930,996</b> | <b>(2,113,092)</b>     | <b>-26%</b> |

Note: Euro converted at 1:1.35. USD converted at 1:1.

As it appears from the table above which considers “month-end” balances, the **amounts** owing to certain suppliers have decreased significantly prior to the filing of the NOI. Consequently, some of the payments to suppliers may be considered as “preferential” under the Bankruptcy and Insolvency Act of Canada (“BIA”). However, the Trustee is still to finalize its analysis utilizing the **cutoff date of “exactly” three and twelve months from the NOI filing on December 18, 2012**; this being a lengthy manual procedure due to it being midmonth as opposed to the Debtor closing its records at the month-end.

The most significant decrease in terms of accounts payable “dollar amount” appears to be with two suppliers: P.J. Impex Inc. and Zhongda Foods Limited (Newland China). Below is an unaudited “roll-forward” reflecting the transactions between the Debtor and these two major suppliers for the 1 year period prior to the filing of the NOI. Again, these are month-end balances which will require further analysis with the exact cutoff date. The transactions can be summarized as follows:

| Newland North America Foods   |            |        |          |          |          |          |          |          |          |          |          |          |          |
|---|------------|--------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Review of transactions  |            |        |          |          |          |          |          |          |          |          |          |          |          |
| As at January 29, 2013  |            |        |          |          |          |          |          |          |          |          |          |          |          |
| (In 000's)  | Month end: | Jan-12 | Feb-12   | Mar-12   | Apr-12   | May-12   | Jun-12   | Jul-12   | Aug-12   | Sep-12   | Oct-12   | Nov-12   | Dec-12   |
| <b>PJ Impex - roll-forward per shipping dates</b>   |            |        |          |          |          |          |          |          |          |          |          |          |          |
| Accounts payable - beginning  | \$         | -      | \$ -     | \$ -     | \$ -     | \$ -     | \$ -     | \$ -     | \$ 599   | \$ 2,343 | \$ 2,991 | \$ 2,760 | \$ 1,636 |
| Shipped (excludes direct sales)   |            | -      | -        | 48       | -        | -        | -        | 599      | 1,778    | 1,934    | 1,490    | 429      | -        |
| Paid  |            | -      | -        | (48)     | -        | -        | -        | -        | (34)     | (1,286)  | (1,721)  | (1,553)  | -        |
| Inventory transferred from Newland to   |            | -      | -        | -        | -        | -        | -        | -        | -        | -        | -        | -        | (335)    |
| Accounts payable - end  | \$         | -      | \$ -     | \$ 0     | \$ -     | \$ -     | \$ -     | \$ 599   | \$ 2,343 | \$ 2,991 | \$ 2,760 | \$ 1,636 | \$ 1,301 |
| <b>(Newland China) Zhejiang Zhongda Newland Co - roll-forward per shipping dates</b>  |            |        |          |          |          |          |          |          |          |          |          |          |          |
| Accounts payable - beginning  | \$         | 2,298  | \$ 2,441 | \$ 2,263 | \$ 2,171 | \$ 2,308 | \$ 2,085 | \$ 1,536 | \$ 867   | \$ 565   | \$ 301   | \$ 156   | \$ 156   |
| Shipped   |            | 562    | 257      | 457      | 407      | 412      | 363      | 58       | 344      | 269      | 213      | -        | -        |
| Paid  |            | (419)  | (435)    | (549)    | (270)    | (635)    | (867)    | (720)    | (444)    | (496)    | (88)     | -        | -        |
| Debit note  |            | -      | -        | -        | -        | -        | (45)     | (7)      | (202)    | (37)     | (270)    | -        | -        |
| Accounts payable - end  | \$         | 2,441  | \$ 2,263 | \$ 2,171 | \$ 2,308 | \$ 2,085 | \$ 1,536 | \$ 867   | \$ 565   | \$ 301   | \$ 156   | \$ 156   | \$ 156   |
| <i>Note: This roll-forward was prepared using shipment and payment dates. Actual month end balance may not correspond to the theoretical month end balance.</i> |            |        |          |          |          |          |          |          |          |          |          |          |          |

As we understand it, P.J. Impex is not related to the Debtor; however, the Debtor's relationship to Newland China is yet to be determined. Additional analysis and inquiry will have to be performed in order to better assess the validity of these transactions and their possibility of clawback in favor of the mass of creditors.

### Related third parties

For the 1 year period preceding the NOI, the following disbursements to related parties have been noted from the Trustee's cursory review of the Debtor's transactions (excludes salaries, commissions and credit card expenses):

- Jonathan Morgan, President and Shareholder of Newland: ~\$62K. No description.
- 7258500 Canada Inc. (Jonathan Morgan's holding Company): ~\$473K. Most disbursements are described as loan repayments.
- Chen Wei, Shareholder of Newland: None.
- UCPharm Company Limited (Chen Wei's holdco): ~\$30K. Described as travel expenses.

Furthermore as mentioned above, the Trustee has yet to determine whether Newland China should be characterized as a related party as we have been informed that Ms. Chen Wei, a 50% shareholder of the Debtor, may also be a director of Newland China. If Newland China is related under the definition of the BIA, this would result in a longer review period for transactions between it and the Debtor.

### **III. Realization of outstanding accounts receivable and inventory on hand.**

As per the January 17, 2013 Proposal, \$1,6MM (the "Gross Amount", as defined in the Proposal) is to be paid as a dividend to the unsecured creditors, **net of all** Proposal costs, post-filing obligations, secured claims, priority claims and all other amounts to be paid in priority, within 90 days of the ratification of the Proposal by the Court.

At the time of the filing of the Proposal it was contemplated that the Gross Amount was to be generated from the collection of outstanding accounts receivable and the sale of the inventory on hand, utilizing certain "going concern" assumptions.

Since the issuance of our initial preliminary Report, a number of suppliers have asserted secured first ranking PACA claims (USA -- Perishable Agricultural Commodities Act) on some of Newland's accounts receivable and inventory. The accounts receivable targeted by the PACA claims are significant (over \$600K), the largest claimant being Hanover Foods Corp. for an amount in excess of \$350,000. Consequently, should the PACA claims be valid, there will be less availability for purposes of a dividend to the other creditors of the Debtor, thereby rendering a material difference from the initially contemplated distribution to the unsecured creditors. The Debtor, in consultation with its US legal counsel, is examining the status of these claims. This may take an extended period of time.

### **IV. Conclusion**

In view of the additional information which has come to our attention and requisite further analysis, the Trustee recommends that the First Meeting of Creditors, which has been called for the purpose to consider the Proposal, now be **deferred to a date convenient to the Creditors** ("Postponement"). This Postponement will hopefully allow sufficient time to clarify the various ambiguities and issues affecting the Creditors' vote.

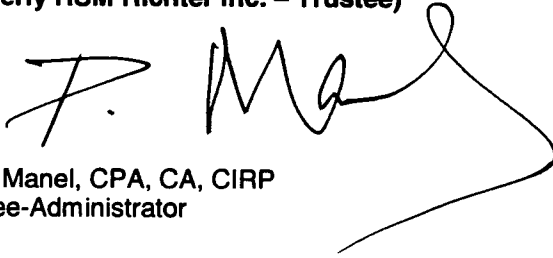
The Trustee has also discussed with Management of the Debtor and its legal counsel the possibility of Richter being appointed as Interim Receiver during the Postponement. The appointment of Richter as Interim Receiver should result in a greater level of comfort for the Creditors with regard to Newland's future collections and disbursements.

Additionally, a Committee of Creditors can be formed for purposes of assessing information and providing their input to the Trustee.

Respectfully submitted,

Dated at Montréal, Province of Quebec, this 7<sup>th</sup> day of February 2013.

**Richter Advisory Group Inc.**  
**(formerly RSM Richter Inc. – Trustee)**

A handwritten signature in black ink, appearing to read "P. Manel". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Philip Manel, CPA, CA, CIRP  
Trustee-Administrator