

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:	)	Chapter 11
	)	
	)	Case No. 08-03675-BHL-11
ATA AIRLINES, INC.	)	
	)	
Debtor	)	

DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) FIXING A RECORD DATE; (III) ESTABLISHING A DEADLINE TO FILE NOTICE OF CURE CLAIMS; (IV) APPROVING SOLICITATION PROCEDURES; (V) APPROVING FORM OF BALLOT AND ESTABLISHING VOTING PROCEDURES; AND (VI) ESTABLISHING NOTICE AND OBJECTION PROCEDURES WITH RESPECT TO CONFIRMATION OF THE CHAPTER 11 PLAN OF THE DEBTOR

Hearing:	January 12, 2009 10 a.m. EST
Location:	U.S. Courthouse 46 E. Ohio Street, Room 349 Indianapolis, IN 46204
Telephonic Participation	
Dial-In:	800-559-0863
Passcode:	5294867#

ATA Airlines, Inc. (the “Debtor”) files this Motion for Entry of an Order (i) Approving the Disclosure Statement; (ii) Fixing a Record Date; (iii) Establishing a Deadline to File Notice of Cure Claims; (iv) Approving Solicitation Procedures; (v) Approving Form of Ballot and Establishing Voting Procedures; and (vi) Establishing Notice and Objection Procedures With Respect to Confirmation of the Chapter 11 Plan of the Debtor (the “Motion”).

I. Overview

1. On December 12, 2008, the Debtor filed its (a) Chapter 11 Plan of the Debtor, dated December 12, 2008 (the “Plan”);¹ and (b) Disclosure Statement Under 11 U.S.C. § 1125 in

¹ If not defined in this Motion, capitalized terms are defined in Glossary of Defined Terms attached as an exhibit to the Plan. Any capitalized term that is not defined in the Plan shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules, as applicable.

Support of the Chapter 11 Plan of the Debtor, dated December 12, 2008 (the “Disclosure Statement”). The Plan implements the Global Settlement between the Debtor, JPMorgan Chase, N.A. (as Administrative Agent), the Official Committee of Unsecured Creditors (the “Committee”), the Unions and Batman that (a) resolves all claims asserted by the Debtor’s former employees, (b) provides for funding of the Plan, and (c) provides for distributions to former employees and other unsecured creditors that would not occur absent the Global Settlement.

2. As the Court is aware, one of the WARN Act adversary proceedings pending against the Debtor is a putative class action styled *Batman, et al., v. ATA Airlines, Inc., et al.*, Adv. No. 08-50208 (the “Batman WARN Adversary”). The Debtor and the Batman plaintiffs have filed (or will soon file) a Joint Motion for Preliminary Approval of Class Action Settlement in the Batman WARN Adversary (the “Class Certification Motion”). In the Class Certification Motion, the parties seek certification of a class in the Batman WARN Adversary and preliminary approval of the Global Settlement as it relates to the Batman class.

3. The Class Certification Motion contemplates a 25-day period for class members to opt out of the settlement class. One condition to the Global Settlement is that the aggregate amount of claims held by employees that opt out of the Batman class cannot exceed \$75,000. If the opt outs remain under the \$75,000 threshold, the Class Certification Motion contemplates that the Court will consider final approval of the Global Settlement in conjunction with Plan confirmation.

4. The Court has set the hearing to consider approval of the Disclosure Statement for January 12, 2009 (the “Disclosure Statement Hearing”). As reflected in this Motion, the Debtor seeks approval of the Disclosure Statement on that date. However, if the Court approves the

Disclosure Statement at the January 12 hearing, the Debtor will not send out the Disclosure Statement until after the opt out period expires. The Debtor seeks approval of the Disclosure Statement *now* so that a Court-approved disclosure statement will be part of the information provided to Batman class members as part of the settlement documentation required under Fed. R. Civ. P. 23. Further, holding the Disclosure Statement until after the opt out period expires will enable the Debtor to determine the aggregate claims asserted by opt outs and to fully disclose the status of the Batman class certification process in the Disclosure Statement that is included in the Solicitation Materials.

II. Jurisdiction

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate for the relief sought is 11 U.S.C. §§ 105, 502, 1125, 1126, and 1128 and Rules 2002, 3017, 3018, and 3020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

III. Facts

6. On April 2, 2008 (the “Petition Date”), the Debtor filed a voluntary petition (the “Bankruptcy Case”) for relief under chapter 11 of title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Bankruptcy Court”).

7. The Debtor continues to manage its property and assets as debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee or examiner has been appointed.

8. On April 16, 2008, the United States Trustee appointed the Committee.

IV. Relief Requested

9. The Debtor, pursuant to 11 U.S.C. §§ 105, 502, 1125, 1126 and 1128 and Rules 2002, 3017, 3018 and 3020 of the Bankruptcy Rules, seeks entry of an order (a) approving the Disclosure Statement; (b) fixing a record voting date; (c) establishing a procedure and deadline for the establishment of cure amounts related to the assumption and assignment of Executory Contracts; (d) approving solicitation procedures; (e) approving form of the Ballot and establishing voting procedures; and (f) establishing notice and objection procedures with respect to confirmation of the Plan. The Debtor will submit a proposed form of order authorizing the relief requested herein prior to the Disclosure Statement Hearing (the “Disclosure Statement Approval Order”).

A. The Disclosure Statement Contains Adequate Information

10. Section 1125 of the Bankruptcy Code requires the proponent of a chapter 11 plan to provide holders of impaired claims and equity interests a disclosure statement that contains “adequate information” regarding the proposed plan. “Adequate information” is defined as:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information does not include such information about any other possible or proposed plan.

11 U.S.C. §1125(a). A disclosure statement must, as a whole, provide information that is reasonably practicable to permit an “informed judgment” by impaired creditors entitled to vote on the plan. *See In re Dakota Rail, Inc.*, 104 B.R. 138, 142 (Bankr. D. Minn. 1989); *see also In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (adequacy of disclosure statement “is to be determined on a case-specific basis under a flexible standard that

can promote the policy of chapter 11 towards fair settlement through a negotiation process between informed interested parties”).

11. A bankruptcy court has broad discretion in determining the adequacy of the information contained in a disclosure statement. *See Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988); *Dakota Rail*, 104 B.R. at 143 (bankruptcy court has “wide discretion to determine . . . whether a disclosure statement contains adequate information”). The determination of whether a disclosure statement contains adequate information is made on a case-by-case basis, focusing on the unique facts and circumstances of each case. *See In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001).

12. The Disclosure Statement contains information of a type, detail and quantity “that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan” as required by Bankruptcy Code section 1125, and should therefore be approved.

13. The Bankruptcy Court has set the hearing to consider approval of the Disclosure Statement for January 12, 2009 (the “Disclosure Statement Hearing”).

B. Establishment of Voting Record Date

14. Bankruptcy Rule 3018(a) provides that the “date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing” is the record date for determining which holders of claims and equity interests are entitled to vote to accept or reject a plan. Fed. R. Bankr. P. 3018(a). Bankruptcy Rule 3018(a) sets a default record date based on when the bankruptcy court enters an order approving a disclosure statement.

15. The Debtor requests that the Court set the date of the Disclosure Statement Hearing as the record date (the “Voting Record Date”) for determining (a) Claimholders and Interestholders entitled to receive Solicitation Materials (defined below) and any other notices approved by the Bankruptcy Court and (b) Claimholders and Interestholders entitled to vote to accept or reject the Plan, notwithstanding anything to the contrary in the Bankruptcy Rules.

16. To compile a list of the Claimholders and Interestholders as of a certain date in the Bankruptcy Case, however, the Debtor needs advance notice of the date that will serve as the record date. To ensure that the Debtor has sufficient time to distribute the Solicitation Materials and other notices required by the approved solicitation procedures, the record date must occur on or shortly after the Disclosure Statement Hearing.

C. Procedures and Deadline to File Notice of Cure Claims

17. Pursuant to the Plan, on the Effective Date, all Executory Contracts listed on the Schedule of Assumed Executory Contracts (the “Assumed Contracts”) shall be deemed assumed by the Reorganized Debtor, and to the extent necessary, assigned to New ATA as more fully described in Article 5 of the Plan. All Executory Contracts not set forth on the Schedule of Assumed Executory Contracts will be deemed rejected as of the Effective Date. Additionally, all CBAs with any of the Unions shall be deemed terminated, extinguished, and rejected under Bankruptcy Code sections 365(a) and 1113(a) and of no further force and effect.

18. Section 365 of the Bankruptcy Code requires that, among other things, the Debtor² cure any existing monetary defaults with respect to the Assumed Contracts by making “cure” payments (the “Cure Amount”) to the non-debtor parties to the Assumed Contracts. To

² On December 2, 2008, the Bankruptcy Court entered an order approving the bid proposal submitted by Southwest Airlines Co. (“Southwest”) for the acquisition of the Debtor’s business, which transaction is implemented in the Plan. Under the bid proposal, Southwest is solely liable for the payment of any and all Cure Claims associated with the assumption and assignment of any executory contracts or unexpired leases to New ATA.

ensure that all non-debtor parties have an opportunity to assert a claim for a Cure Amount, the Debtor requests that the Bankruptcy Court enter an order (a) establishing a Cure Claim Bar Date that is the first Business Day after fifteen (15) days from the date the Disclosure Statement is approved; (b) establishing a Cure Claim Objection Deadline that is the first Business Day after fifteen (15) days from the Cure Claim Bar Date; and (c) approving the procedures described below:

- To the extent a counterparty to an Executory Contract disputes the Cure Amount identified in the Schedule of Assumed Executory Contracts with respect to the Executory Contract, such counterparty must file a Proof of Cure Claim in the Bankruptcy Case on or before the Cure Claim Bar Date and shall serve such Proof of Cure Claim on the Debtor, JPMorgan, the Committee and the Buyer. If a Proof of Cure Claim is not filed by the Cure Claim Bar Date, the proposed Cure Amount specified on the Schedule of Assumed Executory Contracts with respect to such party's Executory Contract shall be the Cure Amount for that Executory Contract.
- The Debtor and the Buyer shall have the right to examine any Proof of Cure Claim filed by any party, and shall have the right to object to and contest the Disputed Cure Amount asserted therein. Any objection concerning a Disputed Cure Amount must be filed with the Bankruptcy Court and served on the party asserting such Disputed Cure Amount.
- Within ten (10) Business Days after the Effective Date, the Buyer shall: (1) pay, in cash, all Cure Amounts related to Executory Contracts listed on the Schedule of Assumed Executory Contracts, other than Disputed Cure Amounts, and (2) for each Executory Contract listed on the Schedule of Assumed Contracts subject to a Disputed Cure Amount, deposit in escrow funds in an amount equal to such Disputed Cure Amount pending final determination of the Cure Amount applicable to such Executory Contract.
- Neither the exclusion nor inclusion of any Executory Contract from the Schedule of Assumed Executory Contracts, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or unexpired lease is in fact an executory contract or that the Debtor has any liability thereunder.

19. The Debtor proposes to serve notice of the above procedures by mailing the Solicitation Materials to all non-debtor parties to the Assumed Contracts as part of the

solicitation process for the Plan. The Debtor believes that such notice will constitute good and sufficient notice of the proposed cure claim procedures, and that no further notice is necessary.

D. Approval of Solicitation Procedures

Duties of the Debtor and BMC

20. On April 4, 2008, the Bankruptcy Court entered an order approving the Debtor's application to retain BMC Group, Inc. ("BMC") as its claims agent. Subsequently, the Debtor sought and obtained the Bankruptcy Court's approval to expand BMC's services to include (a) serving as the Debtor's noticing agent and (b) assisting the Debtor in its analyses of Preference Actions. Besides its other duties, BMC will assist the Debtor in mailing the Solicitation Materials to parties in interest.

21. The Debtor will be responsible for receiving, tabulating, and reporting on Plan ballots. Holders of Claims and Equity Interests must submit their ballots to the following address:

HAYNES AND BOONE, LLP
Attn: Jermaine K. Johnson
1 Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010

22. Further, the Debtor proposes that it shall be responsible for responding to inquiries from holders of Claims and Equity Interests relating to the Plan, the Disclosure Statement and related matters, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan. Any questions or concerns should be directed to the following:

HAYNES AND BOONE, LLP
Attn: Kourtney P. Lyda
1 Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010
Phone: (713) 547-2000

Ballots and Voting Deadline

23. The Debtor requests that the Bankruptcy Court establish a deadline (the “Voting Deadline”) by which parties entitled to vote to accept or reject the Plan must submit their ballots. The Debtor will propose a specific date for the Voting Deadline at the Disclosure Statement Hearing.

24. The Debtor also requests approval of the ballot that is attached as Exhibit 1 (the “Ballot”) or approval of a ballot that is substantially in the form of Exhibit 1. Bankruptcy Rule 3017(d) requires the Debtor to mail a form of ballot, which substantially conforms to Official Form No. 14, only to “creditors and equity security holders entitled to vote on the plan.” Fed. R. Bankr. P. 3017(d). Local Rule B-3018-1 requires that a ballot be in the form provided in the Appendix to the Local Rules for the Southern District of Indiana. The Debtor proposes to distribute to holders of Claims and Equity Interests whose votes are to be solicited the proposed form of Ballot attached to this Motion. The Ballot is based on Official Form No. 14 and includes all of the material information contained in Local Form “Ballot and Deadline For Filing Ballot Accepting or Rejecting Plan,” but has been modified to address the particular aspects of this chapter 11 case and to include certain additional information that the Debtor believes is relevant and appropriate for each such class of claims and interests.

25. All Ballots will be accompanied by a pre-addressed return envelope addressed to Haynes and Boone, LLP, Attn: Jermaine K. Johnson, 1 Houston Center, 1221 McKinney, Suite 2100, Houston, Texas 77010.

Content and General Transmission of Solicitation Materials

26. Bankruptcy Rule 3018(a) enumerates the materials to be distributed to all impaired holders of Claims and Equity Interests following approval of the Disclosure Statement. Under Rule 3018(a), the Debtor requests that the Court establish a deadline (the “Solicitation Mailing Date”) by which the Debtor must transmit or cause to be transmitted, the following documents (the “Solicitation Materials”)³:

- the Disclosure Statement;
- the Plan;
- the Plan Documents, as defined below;
- solicitation letter from the Committee;
- the Notice of (i) Approval of Disclosure Statement; (ii) Establishment of Voting Record Date; (iii) Establishment of Deadline to File Notice of Cure Claims; (iv) Hearing on Confirmation of the Chapter 11 Plan of the Debtor; (v) Procedures for Objecting to Confirmation of the Chapter 11 Plan; and (vi) Procedures and Deadline for Voting on the Chapter 11 Plan that is attached as Exhibit 2 to this Motion; and
- to the extent applicable, a Ballot and envelope and/or notice appropriate for the specific creditor or interest holder, in substantially the forms attached to the Disclosure Statement Approval Order attached hereto (as may be modified for particular classes and with instructions attached thereto).

27. The Debtor will file all exhibits, schedules and/or appendices (the “Plan Documents”) to the Plan and Disclosure Statement with the Court on or before the Solicitation Mailing Date. Thereafter, copies of the Plan Documents will be available in accordance with the procedures set forth below.

28. The Debtor proposes that the following parties in interest receive the Solicitation Materials: (a) the United States Trustee (without a Ballot); (b) all holders of Claims and Equity Interests entitled to vote on the Plan; (c) all non-debtor parties to Assumed Contracts; and (d) all

³ The Debtor will propose a specific date for the Solicitation Mailing Deadline at the Disclosure Statement Hearing.

parties in interest who have filed a special notice requesting a copy of the Disclosure Statement or Plan. The Debtor requests that it be relieved of any duty to transmit the Solicitation Materials (and any notices relating to the Plan, including any notice of confirmation) to parties for whom the Debtor does not have a complete mailing address or to those parties for whom any mailings are or have been returned as undeliverable.

29. For the avoidance of doubt, the Debtor requests that the Court authorize the Debtor *not* to solicit Plan votes from individual Union members as potential holders of Class 1.1 and Class 4 Claims. The Unions negotiated the Global Settlement on behalf of the Union members represented by each Union. Under the relevant collective bargaining agreements, the Unions are the authorized representatives of the individual Union members. In that capacity, each Union filed a group proof of claim on behalf of its respective members. Based on these group claims, it is appropriate for the Unions to vote the group claims with respect to the Plan, which incorporates the Global Settlement negotiated by the Unions. Accordingly, the Debtor will send Solicitation Materials to each Union and solicit *one* vote from each Union on behalf of their respective Union members.

30. Similarly, for the avoidance of doubt, the Debtor requests that the Court authorize the Debtor *not* to solicit Plan votes from individual members of the class that might be certified in the Batman WARN Adversary as potential holders of Class 1.1 and Class 4 Claims. Counsel for the Batman plaintiffs negotiated the Global Settlement on behalf of the Batman plaintiffs and all potential members of the Batman class action. In accordance with a prior Bankruptcy Court order, the Batman plaintiffs have filed a class proof of claim on behalf of all potential class members. Based on the class proof of claim, it is appropriate for the Batman plaintiffs to vote that claim with respect to the Plan, which incorporates the Global Settlement. Accordingly, the

Debtor will send Solicitation Materials to counsel for the Batman plaintiffs and solicit *one* vote on behalf of all class members. The Debtor will transmit Solicitation Materials to any individual who opts out of the Global Settlement.

Transmission to Certain Holders of Claims and Equity Interests Deemed to Reject the Plan

31. Classes that do not retain or receive any property under a chapter 11 plan of are deemed to reject the plan. 11 U.S.C. § 1126(g); *see also In re Walnut Equip. Leasing* 1999 WL 1068448, at *2 (Bankr. E.D. Pa. 1999) (“A class that is to receive nothing under a plan is deemed to reject the plan and is not entitled to vote.”) (citation omitted). Holders of Equity Interests in Class 6 (the “Interestholders”) do not retain or receive any property under the Plan, and are deemed to reject it. Accordingly, the Debtor will not send Ballots to the Interestholders. The Debtor proposes to send Interestholders a notice, substantially in the form attached as Exhibit 3, informing such holders (a) of their treatment under the Plan, and (b) that they are not entitled to vote on the Plan and are deemed to have voted to reject the Plan. The Debtor believes that mailing such notice, in addition to the Solicitation Materials, satisfies the requirements of Bankruptcy Rule 3017(d) with respect to Interestholders.

E. Procedures for Vote Tabulation

32. The Debtor requests that the Court, pursuant to section 105(a) of the Bankruptcy Code, approve the guidelines set forth below for vote tabulation. The proposed procedures will provide useful guidelines for the Debtor and parties in interest and minimize the potential for inconsistent results in vote tabulation.

33. **Vote Tabulation and Counting.** The Debtor proposes that any timely received Ballot that contains sufficient information to permit the identification of the claimant and that is cast as an acceptance or rejection of the Plan be counted and be deemed to be cast as an

acceptance or rejection, as the case may be, of the Plan. The foregoing general procedures will be subject to the following exceptions and clarifications:

- (a) If no proof of claim has been timely filed, (i) the voted amount of a Claim shall be equal to the amount listed for the particular Claim in the Schedules of Assets and Liabilities to the extent such Claim is not listed as contingent, unliquidated, or disputed, and (ii) the Claim shall be placed in the appropriate Class, based on the Debtor's records and consistent with the Schedules of Assets and Liabilities;
- (b) If no proof of claim has been timely filed and to the extent such Claim is listed as contingent, unliquidated, or disputed based on the Debtor's records and consistent with the Schedules of Assets and Liabilities, then any Ballot filed by such a Claimholder will not be counted;
- (c) If a proof of claim has been timely filed, and has not been objected to before the expiration of the Voting Deadline, the voted amount of that Claim shall be as specified in the timely-filed proof of claim;
- (d) If no proof of interest has been filed, the voted amount of an Equity Interest shall be equal to the amount listed for the particular Equity Interest in the List of Equity Security Holders, and the Equity Interest shall be placed in the appropriate Class based on the Debtor's records and consistent with the Schedule of Equity Interests;
- (e) If a proof of interest has been timely filed, and has not been objected to before the expiration of the Voting Deadline, the voted amount of that Equity Interest shall be as specified in the timely filed proof of interest;
- (f) Subject to subparagraph (g) below, a Claim or Equity Interest that is the subject of an objection filed before the Voting Deadline shall be disallowed for voting purposes, except to the extent and in the manner that the Debtor indicates in its objection that the Claim or Equity Interest should be allowed for voting or other purposes;
- (g) If a Claim or Equity Interest has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the voted amount and classification shall be that set by the Bankruptcy Court;
- (h) If a Claimholder or Interestholder or its authorized representative did not use the Ballot provided by the Debtor, the Official Ballot Form authorized under the Federal Rules of Bankruptcy Procedure, or a substantially similar form of ballot, such Ballot will not be counted;
- (i) If the Ballot is not received by the Debtor on or before the Voting Deadline at the place fixed by the Bankruptcy Court, the Ballot will not be counted;

- (j) If the Ballot is not signed by the Claimholder or Interestholder or its authorized representative, the Ballot will not be counted;
- (k) If the individual or institution casting the Ballot (whether directly or as a representative) was not the holder of a Claim or Equity Interest on the Disclosure Statement Approval Date, the Ballot will not be counted;
- (l) If the Claimholder or Interestholder or its authorized representative did not check one of the boxes indicating acceptance or rejection of the Plan, or checked both such boxes, the Ballot will not be counted;
- (m) Whenever a Claimholder or Interestholder (or its authorized representative) submits more than one Ballot voting the same Claim(s) or Equity Interest(s) before the applicable deadline for submission of Ballots, except as otherwise directed by the Bankruptcy Court after notice and a hearing, the last such Ballot shall be deemed to reflect the voter's intent and shall supersede any prior Ballots;
- (n) If a representative of Claimholders or Interestholders is authorized to file a proof of claim or proof of interest on behalf of the Person it represents, pursuant to an order of the Bankruptcy Court, or otherwise, such representative may submit one Ballot voting all Claims or Equity Interests so long as such Ballot complies with all other tabulation procedures above.

34. To facilitate the balloting process, the Debtor requests that the Court establish a deadline for objecting to claims solely for the purposes of determining whether the holder of such Claim(s) may vote on the Plan and the amount of such Claims for voting purposes. The Debtor will propose a specific deadline at the Disclosure Statement Hearing.

35. The Debtor believes that the foregoing procedures provide for a fair and equitable voting process. As mentioned above, if any creditor seeks to challenge or establish the allowance of its Claim for voting purposes, the Debtor requests that the Court direct such creditor to serve on the Debtor and file with the Court a motion requesting temporary allowance of such Claim in a different amount for purposes of voting to accept or reject the Plan no later than fifteen (15) days before the Confirmation Hearing (the "Motion for Temporary Allowance Deadline"). The Debtor further proposes in accordance with Bankruptcy Rule 3018 that, as to any creditor filing such a motion, such creditor's Ballot should not be counted unless the

creditor's claim is temporarily allowed by the Court for voting purposes, after notice and a hearing.

36. **Changing Votes.** Notwithstanding Bankruptcy Rule 3018(a), the Debtor proposes that whenever two or more Ballots are cast voting the same claim prior to the Voting Deadline, the latest dated Ballot actually received by the Debtor before the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior Ballots; provided, however, that where an ambiguity exists as to which Ballot reflects the voter's intent, the Debtor reserves the right to contact the creditor and calculate the vote according to such voter's written instructions. This procedure is without prejudice to the Debtor's right to object to the validity of the second Ballot on any basis permitted by law and, if the objection is sustained, to count the first Ballot for all purposes. This procedure of counting the last Ballot is consistent with practice under various state and federal corporate and securities laws, and it will spare the Court and the Debtor the time and expense of responding to motions brought pursuant to Bankruptcy Rule 3018(a) and attempting to show cause for changing votes. Furthermore, the Debtor proposes that in its sole discretion it can agree to allow a creditor to change its vote after the Voting Deadline without further order of the Court.

37. **No Vote Splitting; Effect.** The Debtor proposes that the Court clarify that claim splitting is not permitted and order that creditors must vote all of their claims within a particular class to either accept or reject the Plan.

38. **Absence of Votes in a Class.** The Debtor requests that if no votes to accept or reject the Plan are received with respect to a particular class, such class be deemed to have voted to accept the Plan. *See In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263, 1266 (10th Cir. 1988)

(holding non-voting, non-objecting judgment lien creditor who was only member of class was deemed to have accepted plan of reorganization).

39. **Execution of Ballots By Authorized Representatives.** Federal Rule of Bankruptcy Procedure 3018(c) requires that an acceptance or rejection of a chapter 11 plan shall be in writing, identify the plan accepted or rejected, be signed by the creditor or equity security holder or an authorized agent. The proposed Ballot requires the identification of persons signing in a fiduciary or representative capacity. To be counted, completed Ballots signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity must indicate their capacity when signing. The Debtor proposes that Ballot signatories be required (if requested by the Debtor) to submit proper evidence satisfactory to the Debtor of their authority to so act, and that failure to indicate the capacity of the signatory to the Ballot may result in the Ballot being deemed invalid and not counted. The Debtor also requests that a Ballot filed by a representative of any of the Unions or Batman shall be deemed valid and enforceable. The Debtor further requests that for purposes of voting tabulation, a Ballot filed by a representative shall account for the total number of represented parties with respect to the numerosity requirement set forth in the Plan and Disclosure Statement.

40. **Waivers of Defects and Other Irregularities Regarding Ballots.** The Debtor further requests that, unless otherwise directed by the Bankruptcy Court, all questions concerning the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots will be determined by the Debtor in its sole discretion, whose determination will be final and binding. The Debtor reserves the right to reject any and all Ballots not in proper form, the acceptance of which would, in the opinion of the Debtor or its

counsel, be unlawful. The Debtor further reserves the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtor (or the Bankruptcy Court) determines. The proposed Disclosure Statement Approval Order provides that neither the Debtor nor any other person will be under any duty to provide notification of defects or irregularities with respect to Ballots, nor will any of them incur any liability for failure to provide such notification; provided, however, that the Debtor will comply with Local Bankruptcy Rule B-3018-1 regarding ballot reporting and certification. Unless otherwise directed by the Bankruptcy Court, (a) delivery of such Ballots will not be deemed to have been made until any irregularities have been cured or waived, and (b) Ballots previously furnished, and as to which any irregularities have not subsequently been cured or waived, will be invalidated.

41. **Withdrawal of Votes.** The Debtor requests that, except as otherwise directed by the Bankruptcy Court after notice and a hearing, any holder of a Claim (or its authorized representative) in an impaired Class who has delivered a valid Ballot for the acceptance of the Plan may withdraw such acceptance by delivering a written notice of withdrawal to the Debtor at any time before the Voting Deadline. The Debtor further requests that any holder of a Claim (or its authorized representative) in an impaired Class who has delivered a valid Ballot for the rejection of the Plan may withdraw such rejection by delivering a written notice of withdrawal to counsel for the Debtor at any time before the Confirmation Hearing. The Debtor requests that, to be valid, a notice of withdrawal must:

- (a) contain the description of the Claims to which it relates and the aggregate principal amount or number of shares represented by such Claims;
- (b) be signed by the Claimholder (or its authorized representative) in the same manner as the Ballot; and

- (c) be received by counsel for the Debtor in a timely manner at the addresses set forth in this Disclosure Statement for the submission of Ballots.

42. The Debtor reserves the absolute right to contest the validity of any such withdrawals of Ballots. Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of Ballots that is not received in a timely manner by the Debtor will not be effective to withdraw a previously furnished Ballot. If a Claimholder submits a valid notice of withdrawal before the Voting Deadline, such holder may submit a new Ballot, and such Ballot will be counted so long as it is received before the Voting Deadline and is otherwise submitted in accordance with the Disclosure Statement Approval Order.

43. **Ballot Report and Certification.** In accordance with Local Bankruptcy Rule B-3018-1, the Debtor will file the Section 1126 Ballot Report Form and the Certification of Balloting Report three (3) days before the Confirmation Hearing.

F. Copies and Review of Documents

44. Copies of the Plan, Disclosure Statement, Plan Documents and all pleadings and orders of the Bankruptcy Court are publicly available at www.bmcgroup.com.

45. Copies of the Plan, Disclosure Statement and Plan Documents may also be obtained, at the requesting parties' expense, upon written request, from BMC at BMC Group, Inc., P.O. Box 921 El Segundo, CA 90245-0921, Attn: ATA Airlines, Inc.

G. Proposed Order

46. For the Court's reference, the Debtor has attached a proposed form of order granting this Motion as Exhibit 4.

V. Conclusion

47. The Debtor requests that the Court approve the above-described solicitation and other procedures under the Bankruptcy Code and the Bankruptcy Rules. The Debtor also requests that the Court grant such other and further relief as may be just and proper.

Dated: December 12, 2008

BAKER & DANIELS LLP

/s/ Terry E. Hall

Terry E. Hall (#220421-49)
300 N. Meridian Street, Suite 2700
Indianapolis, Indiana 46204
Tele: (317) 237-0300
Fax: (317) 237-1000
Email: terry.hall@bakerd.com

- and -

HAYNES AND BOONE, LLP
Kenric D. Kattner
Texas Bar No. 11108400
Blaine F. Bates
Texas Bar No. 24029979
Jason Binford
Texas Bar No. 24045499
1221 McKinney Street, Suite 2100
Houston, Texas 77010
Tele: (713) 547-2000
Fax: (713) 547-2600
Email: ATA@haynesboone.com

Judith Elkin
Texas Bar No. 06522200
Haynes and Boone, LLP
153 East 53rd Street
Suite 4900
New York, New York 10022
Tele: (212) 659-7300
Fax: (212) 918-8989

Counsel for ATA Airlines, Inc.

Exhibit 1

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:) Chapter 11
)
) Case No. 08-03675-BHL-11
ATA AIRLINES, INC.)
)
Debtor)

**BALLOT FOR HOLDERS OF ALL CLASSES OF CLAIMS AND INTERESTS TO
ACCEPT OR REJECT CHAPTER 11 PLAN OF THE DEBTOR**

**VOTING DEADLINE: _____ P.M., PREVAILING EASTERN TIME, ON _____,
2008**

THIS BALLOT IS TO BE USED BY HOLDERS OF ALL CLASSES OF CLAIMS AND INTERESTS. PLEASE COMPLETE, SIGN AND DATE THIS BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE PROMPTLY. IF YOUR VOTE HAS NOT BEEN RECEIVED BY THE DEBTOR'S COUNSEL BY _____ P.M., E.T., ON OR BEFORE _____, 2008, **IT WILL NOT BE COUNTED. FACSIMILE SIGNATURES WILL NOT BE ACCEPTED WITHOUT THE WRITTEN CONSENT OF THE DEBTOR.**

ATA Airlines, Inc. (the "Debtor") is soliciting votes with respect to its Chapter 11 Plan (the "Plan") described in and attached to the Disclosure Statement dated _____, 2009. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

To have your vote count, this Ballot must be completed and returned to the Debtor, as indicated on the enclosed return envelope. Please see the "Instructions for Completing the Ballot" below for additional information.

The Plan can be confirmed by the United States Bankruptcy Court and thereby made binding upon you if (a) the Plan is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims in such class that votes on the Plan and (b) if it otherwise satisfies the requirements of section 1129(a) of title 11 of the United States Code (the "Bankruptcy Code"). If the requisite acceptances are not obtained, the Bankruptcy Court may nonetheless confirm the Plan if it finds that the Plan provides fair and equitable treatment to, and does not discriminate unfairly against, the class or classes rejecting it, and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

Item 1. Aggregate Principal Amount of Claim.

This Ballot is cast by or on behalf of the holder of the Class _____
Claim in the aggregate principal amount of \$ _____.

Item 2. Class ____ (_____ Claimant) Vote.

The holder of the _____ Claim votes its claim as follows (check one box only):

ACCEPT
THE PLAN

☐

-OR-

REJECT
THE PLAN

☐

Item 3. Certification

By returning this Ballot, the voter certifies and/or acknowledges that: (a) the claim holder has been provided with a copy of the Disclosure Statement, including the Plan; and (b) the claim holder has full power and authority to vote to accept or reject the Plan.

NAME: _____

SOCIAL SECURITY OR
FEDERAL TAX ID NO. _____

BY: _____
(If appropriate)

TITLE: _____
(If appropriate)

ADDRESS: _____

TELEPHONE NUMBER. () _____ - _____

DATE: _____

**THE VOTING DEADLINE IS _____ P.M., PREVAILING EASTERN TIME.,
ON _____, 2008. ALL BALLOTS MUST BE RECEIVED BY THE VOTING
DEADLINE.**

BALLOTS SHALL BE SENT TO THE FOLLOWING ADDRESS:

HAYNES AND BOONE LLP
Attn: Jermaine K Johnson
1 Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010

INSTRUCTIONS FOR COMPLETING THE BALLOT

The Debtor is soliciting your vote with respect to the Plan referred to in the Disclosure Statement. Please review the Disclosure Statement in its entirety, including exhibits, before you vote.

On _____, 2008, the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division, signed an order which establishes certain procedures (the "Voting Procedures") for the solicitation and tabulation of votes to accept or reject the Plan. The Voting Procedures are described in section _____ of the Disclosure Statement. Please review the Voting Procedures carefully before completing this Ballot.

Instructions: Please complete this Ballot as follows:

- (a) Complete Item 1;
- (b) Vote to accept or reject the Plan by checking the appropriate box in Item 2;
- (c) Review the acknowledgment and certification set forth in Item 3;
- (d) Date this Ballot, and provide your address if it does not appear on the Ballot; and
- (e) If you are completing this Ballot on behalf of another entity, indicate your relationship with such entity and the capacity in which you are signing, and provide proof of your authorization to so sign.

TO HAVE YOUR VOTE COUNT, YOU MUST COMPLETE, SIGN AND RETURN THIS BALLOT SO THAT IT IS RECEIVED BY THE DEBTOR NO LATER THAN _____ P.M., E.T., ON _____, 2008.

YOUR ORIGINAL SIGNATURE IS REQUIRED ON THE BALLOT IN ORDER FOR YOUR VOTE TO COUNT.

YOU MUST VOTE ALL OF YOUR CLAIMS WITHIN CLASS ____ UNDER THE PLAN EITHER TO ACCEPT OR REJECT THE PLAN. A BALLOT THAT PARTIALLY ACCEPTS AND PARTIALLY REJECTS THE PLAN WILL NOT BE COUNTED.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIAL, INCLUDING THE PLAN, PLEASE CALL:

BMC Group, Inc.
Re: ATA Airlines
P.O. Box 921
El Segundo, CA 90245-1035.
Ph: (888) 909-0100

Please Note: This Ballot shall not constitute or be deemed a proof of claim or equity interest.

Exhibit 2

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:) Chapter 11
)
) Case No. 08-03675-BHL-11
ATA AIRLINES, INC.)
)
Debtor)

**NOTICE OF (I) APPROVAL OF DISCLOSURE STATEMENT; (II) ESTABLISHMENT OF
VOTING RECORD DATE; (III) ESTABLISHMENT OF A DEADLINE TO FILE NOTICE OF
CURE CLAIMS; (IV) HEARING ON CONFIRMATION OF THE CHAPTER 11 PLAN OF THE
DEBTOR; (V) PROCEDURES FOR OBJECTING TO CONFIRMATION OF THE
CHAPTER 11 PLAN; AND (VI) PROCEDURES AND DEADLINE
FOR VOTING ON THE CHAPTER 11 PLAN**

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST AND EQUITY INTERESTS IN THE
ABOVE-CAPTIONED DEBTOR AND DEBTOR-IN-POSSESSION:

PLEASE TAKE NOTICE THAT:

1. **Approval of Disclosure Statement.** By order dated _____, 2008 (the "Order"), the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court") approved the Disclosure Statement Under 11 U.S.C. §1125 in Support of the Debtor's Chapter 11 Plan, dated _____, 2008 (the "Disclosure Statement") filed by **ATA AIRLINES**. ("ATA" or the "Debtor"), and authorized the Debtor to solicit votes with regard to the approval or rejection of the Debtor's Chapter 11 Plan, dated _____, 2008, attached as Exhibit 1 to the Disclosure Statement (as may be amended, the "Plan").
2. **Confirmation Hearing.** A hearing (the "Confirmation Hearing") to consider confirmation of the Plan shall be held before the Honorable Basil H. Lorch III, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division, 116 U.S. Courthouse, 46 E. Ohio St., Indianapolis, IN 46204, on _____, 2009 at _____. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court without further notice to parties in interest, and the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan, without further notice to interested parties.
3. **Record Date for Voting Purposes.** All creditors who hold claims on _____, 2008 (the "Voting Record Date") shall be entitled to vote on the Plan, as described in the Order.
4. **Voting Deadline.** All votes to accept or reject the Plan must be received by _____ p.m. (prevailing Eastern Time) on _____, 2009 (the "Voting Deadline"). Any failure to follow

the voting instructions contained in the Order and on the Ballots that will be included in the Solicitation Materials that will be sent to creditors and interest holders entitled to vote on the Plan may disqualify your Ballot and your vote.

5. **Parties in Interest Not Entitled to Vote.** Holders of unimpaired claims and holders of claims or interests who will receive no distribution under the Plan are not entitled to vote on the Plan. Such holders shall receive a Notice of Non-Voting Statuses, rather than a Ballot and Solicitation Materials.
6. **Objections to Confirmation.** Objections, if any, to the confirmation of the Plan must (i) be in writing; (ii) be in the English language; (iii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iv) state with particularity the basis and nature of any objection to the Plan; and (v) be filed, together with proof of service, with the Bankruptcy Court and served so that they are received by the following parties, no later than _____, 2009: (i) counsel for the Debtor, Haynes and Boone, LLP, 1 Houston Center, 1221 McKinney, Suite 2100, Houston, Texas 77010, attn: Kenric Kattner, and Baker & Daniels, LLP, 300 N. Meridian Street, Suite 2700, Indianapolis, Indiana 46204, attn: Terry E. Hall; (ii) counsel for the Official Committee of Unsecured Creditors, Ottberbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169, attn: Steve Soll; (iii) counsel for JPMorgan Chase Bank, N.A., Simpson Thacher & Bartlett, LLP, 425 Lexington Avenue, New York, New York 10117, attn: Kathy McLendon; and (iv) the United States Trustee, 101 West Ohio Street, Suite 1000, Indianapolis, Indiana 46204, attn: Ronald J. Moore.
7. **Executory Contracts and Unexpired Leases.** Pursuant to the Plan, the Debtor will assume certain Executory Contracts (the “Assumed Contracts”) as more fully described in Article 5 of the Plan. More specifically, the Reorganized Debtor shall assume and assign to New ATA all Executory Contracts set forth on the Schedule of Assumed Executory Contracts (attached to the Plan). All Executory Contracts not specified on the Schedule of Assumed Executory Contracts are deemed rejected as of the Effective Date; provided, however, all Collective Bargaining Agreements with any labor unions shall be deemed extinguished and rejected on the Confirmation Date. Any monetary amounts required as Cure Amounts for an Executory Contract to be assumed and assigned pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, as provided in section 5.5(b) of the Plan. In the event of a dispute regarding any Cure Amount or any other matter pertaining to assumption and assignment of any Executory Contract, the Cure Amount required by section 365(b)(1) of the Bankruptcy Code shall be determined by the Bankruptcy Court (or by agreement of the Parties) and made following the existence of a final order resolving such dispute.
8. **Bar Date for Filing Notice of Cure Claim and Objections Thereto.** The Bankruptcy Court has established [●], 2009 at 4:00 p.m. prevailing Eastern time as the deadline (the “Cure Claim Bar Date”) for non-debtor parties to an Assumed Contract to file a claim (the “Cure Claim”) asserting that there are existing monetary defaults not identified on the Schedule of Assumed Executory Contracts that must be cured pursuant to 11 U.S.C. § 365(b). A Cure Claim must be in writing and filed with the Bankruptcy Court, and it must state a calculation of the amount (the “Cure Amount”) necessary to cure all defaults under the Assumed Contract(s). All Cure Claims must also be served on the following parties: (i) counsel for the Debtor, Haynes and Boone, LLP, 1 Houston Center, 1221 McKinney, Suite 2100, Houston, Texas 77010, attn: Kenric Kattner, and Baker & Daniels, LLP, 300 N. Meridian Street, Suite 2700, Indianapolis, Indiana 46204, attn: Terry E. Hall; (ii) counsel for the Official Committee of Unsecured Creditors, Ottberbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169, attn: Steve Soll; (iii) counsel for JPMorgan Chase Bank, N.A., Simpson Thacher & Bartlett, LLP, 425

Lexington Avenue, New York, New York 10117, attn: Kathy McLendon; and (iv) counsel for Southwest Airlines, Inc., Baker & McKenzie LLP, One Prudential Plaza, Suite 3600, 130 East Randolph Drive, Chicago, Illinois 60601, attn: David F. Heroy

9. Debtor, JPMorgan, the Committee and the Buyer by the Cure Claim Bar Date so as to be actually received by the Cure Claim Bar Date. Any Cure Claim not timely filed and served by the Cure Claim Bar Date in accordance with this Notice shall be waived and forever barred, and the proposed Cure Amount specified on the Schedule of Assumed Executory Contracts with respect to such party's Executory Contract shall be the Cure Amount for the Executory Contract. The Debtor and the Buyer each has the right to object to any Cure Claim and seek a judicial determination of any applicable Cure Amount relating to any Assumed Contract.
10. **Additional Information.** Any party in interest wishing to view the Plan and Disclosure Statement may view such documents at www.bmcgroup.com. Any party in interest wishing to obtain (i) information about the solicitation procedures or balloting; or (ii) if such party does not have access to the Internet, copies of the Plan or Disclosure Statement, should contact the Debtor's claims and noticing agent, BMC Group, Inc., P.O. Box 921 El Segundo, CA 90245-0921, telephone [●], facsimile [●].

Dated: _____, 2009

BAKER & DANIELS, LLP

Terry E. Hall (#220421-49)
300 N. Meridian Street,
Suite 2700
Indianapolis, Indiana 46204
Tele: (317) 237-0300
Fax: (317) 237-1000
Email: terry.hall@bakerd.com

- and -

HAYNES AND BOONE, LLP
Kenric D. Kattner
Texas Bar No. 11108400
Blaine F. Bates
Texas Bar No. 24029979
Jason Binford
Texas Bar No. 24045499
1221 McKinney Street, Suite 2100
Houston, Texas 77010
Tele: (713) 547-2000
Fax: (713) 547-2600
Email: ATA@haynesboone.com

Judith Elkin
Texas Bar No. 06522200
Haynes and Boone, LLP
153 East 53rd Street
Suite 4900
New York, New York 10022
Tele: (212) 659-7300
Fax: (212) 918-8989

Counsel for ATA Airlines, Inc.

Exhibit 3

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:	)	Chapter 11
	)	
	)	Case No. 08-03675-BHL-11
ATA AIRLINES, INC.	)	
	)	
Debtor	)	

NOTICE OF NON-VOTING STATUS WITH RESPECT TO IMPAIRED CLASSES	Hearing:	January 12, 2009 10 a.m. EST
	Location:	U.S. Courthouse 46 E. Ohio Street, Room 349 Indianapolis, IN 46204
	Telephonic Participation	
	Dial-In:	800-559-0863
	Passcode:	5294867#

PLEASE TAKE NOTICE THAT on December 12, 2008, ATA Airlines, Inc., the debtor and debtor-in-possession in the above-captioned case (“ATA” or the “Debtor”), filed its Chapter 11 Plan of the Debtor (as it may be amended, supplemented or modified, the “Plan”), and the Disclosure Statement under 11 U.S.C. § 1125 in Support of the Debtor’s Chapter 11 Plan (as it may be amended, supplemented or modified, the “Disclosure Statement”), with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Bankruptcy Court”). By order entered on _____, 2008 (the “Disclosure Statement Approval Order”), the Bankruptcy Court approved the adequacy of the information contained in the Disclosure Statement, along with certain procedures to be used in connection with solicitation of votes on the Plan.

UNDER THE TERMS OF THE PLAN, YOU ARE NOT ENTITLED TO RECEIVE OR RETAIN ANY PROPERTY ON ACCOUNT OF YOUR OWNERSHIP OF EQUITY INTERESTS IN ATA AIRLINES, INC. PURSUANT TO SECTION 1126(G) OF THE BANKRUPTCY CODE, YOU ARE DEEMED TO HAVE REJECTED THE PLAN AND ARE NOT ENTITLED TO VOTE ON THE PLAN. ACCORDINGLY, THE ENCLOSED DOCUMENTS, WHICH INCLUDE A COPY OF THE PLAN AND DISCLOSURE STATEMENT, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

PLEASE TAKE FURTHER NOTICE that a hearing to consider confirmation of the Plan (the “Confirmation Hearing”) will be held at _____.m. (prevailing Eastern time) on _____, 2009 before the Honorable Basil H. Lorch III in the United States Bankruptcy Court for the Southern District of

Indiana, Indianapolis Division, 116 U.S. Courthouse, 46 E. Ohio St., Indianapolis, IN 46204. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court without further notice to parties in interest. **ANY PARTY IN INTEREST OBJECTING TO THE PLAN MUST FILE AN OBJECTION (A “CONFIRMATION OBJECTION”) TO CONFIRMATION OF THE PLAN NO LATER THAN _____.M. (PREVAILING EASTERN TIME) ON _____, 2009 (THE “OBJECTION DEADLINE”).** Confirmation Objections must be written, filed and served in accordance with the instructions contained in the Disclosure Statement Approval Order, a copy of which is contained in the solicitation materials that accompany this Notice. **CONFIRMATION OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER DESCRIBED IN THE DISCLOSURE STATEMENT APPROVAL ORDER SHALL NOT BE CONSIDERED AND SHALL BE DEEMED OVERRULED.**

Dated: _____, 2008

BAKER & DANIELS, LLP

Terry E. Hall (#220421-49)
300 N. Meridian Street,
Suite 2700
Indianapolis, Indiana 46204
Tele: (317) 237-0300
Fax: (317) 237-1000
Email: terry.hall@bakerd.com

- and -

HAYNES AND BOONE, LLP
Kenric D. Kattner
Texas Bar No. 11108400
Blaine F. Bates
Texas Bar No. 24029979
Jason Binford
Texas Bar No. 24045499
1221 McKinney Street, Suite 2100
Houston, Texas 77010
Tele: (713) 547-2000
Fax: (713) 547-2600
Email: ATA@haynesboone.com

Judith Elkin
Texas Bar No. 06522200
Haynes and Boone, LLP
153 East 53rd Street
Suite 4900
New York, New York 10022
Tele: (212) 659-7300
Fax: (212) 918-8989

Counsel for ATA Airlines, Inc.

Exhibit 4

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:	)	Chapter 11
	)	
	)	Case No. 08-03675-BHL-11
ATA AIRLINES, INC.	)	
	)	
Debtor	)	

ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) FIXING A RECORD DATE; (III) ESTABLISHING A DEADLINE TO FILE NOTICE OF CURE CLAIMS; (IV) APPROVING SOLICITATION PROCEDURES; (V) APPROVING FORM OF BALLOT AND ESTABLISHING VOTING PROCEDURES; AND (VI) ESTABLISHING NOTICE AND OBJECTION PROCEDURES WITH RESPECT TO CONFIRMATION OF THE CHAPTER 11 PLAN OF THE DEBTOR	Hearing:	January 12, 2009 10 a.m. EST
	Location:	U.S. Courthouse 46 E. Ohio Street, Room 349 Indianapolis, IN 46204
	Telephonic Participation	
	Dial-In:	800-559-0863
	Passcode:	5294867#

CONFIRMATION HEARING

[•], 2009 at [•] [•].m.

United States Bankruptcy Court, 116 U.S. Courthouse, 46 E. Ohio St., Indianapolis, IN 46204

THE DEBTOR'S DEADLINE FOR SERVING SOLICITATION MATERIALS:

(a) [•], 2009

DEADLINE FOR OBJECTIONS TO CLAIMS FOR VOTING PURPOSES:

(b) [•], 2009

DEADLINE FOR FILING MOTIONS FOR TEMPORARY ALLOWANCE OF CLAIMS:

(c) [•], 2009

DEADLINE FOR OBJECTIONS TO CONFIRMATION:

(d) [•], 2009

DEADLINE FOR FILING BALLOTS ACCEPTING OR REJECTING PLAN:

(e) [•], 2009

THE DEBTOR'S DEADLINE FOR FILING
BALLOT REPORT AND CERTIFICATION:

(f) [•], 2009

The Bankruptcy Court conducted a hearing on January 12, 2009 (the "Disclosure Statement Hearing") to consider approval of the Disclosure Statement Under 11 U.S.C. §1125 in Support of the Chapter 11 Plan of the Debtor (the "Disclosure Statement") filed by ATA Airlines, Inc. (the "Debtor" or the "Plan Proponent") in support of the Chapter 11 Plan of the Debtor, as may be further amended (the "Plan").⁴ Notice of the Disclosure Statement Hearing and of the Debtor's Motion For Entry of an Order (i) Approving the Disclosure Statement; (ii) Fixing a Record Date; (iii) Establishing a Deadline to File Notice of Cure Claims; (iv) Approving Solicitation Procedures; (v) Approving Form of Ballot and Establishing Voting Procedures; and (vi) Establishing Notice And Objection Procedures With Respect to Confirmation of the Chapter 11 Plan of the Debtor (the "Motion") is sufficient. The Disclosure Statement (as amended, if amendments were announced by the Debtor or required by the Bankruptcy Court at the hearing) contains "adequate information" regarding the Plan in accordance with 11 U.S.C. § 1125(a). Therefore, pursuant to 11 U.S.C. § 1125(b) and

⁴ Capitalized terms that are not otherwise defined herein shall have the same meaning as such terms are given in the Glossary of Defined Terms attached to the Plan as Exhibit A.

Bankruptcy Rule 3017(b), the Disclosure Statement is APPROVED. Further, the Motion is GRANTED.

A hearing to consider confirmation of the Plan (the "Confirmation Hearing") has been set. This Order approves certain solicitation and balloting procedures with respect to the Plan, and sets forth the deadlines and requirements relating to confirmation as requested by the Plan Proponent, and as provided in the Bankruptcy Code, Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and local rules of the Bankruptcy Court (the "Local Rules"). Accordingly, it is ORDERED:

1. HEARING TO CONSIDER CONFIRMATION OF PLAN

The Bankruptcy Court has set a hearing to consider confirmation of the Plan for the date and time indicated above as **CONFIRMATION HEARING**. The Confirmation Hearing may be continued to a future date by notice given in open court at the Confirmation Hearing.

2. DEADLINE FOR OBJECTIONS TO CONFIRMATION AND BRIEFING

(A) The last day for filing and serving objections to confirmation of the Plan is indicated above as **DEADLINE FOR OBJECTIONS TO CONFIRMATION**. Objections to confirmation shall be filed with the Bankruptcy Court and served so as to be actually received by the **DEADLINE FOR OBJECTIONS TO CONFIRMATION** upon the Confirmation Service List, which consists of the following parties: (1) counsel for the Debtor, Haynes and Boone, LLP, 1 Houston Center, 1221 McKinney, Suite 2100, Houston, Texas 77010, attn: Kenric Kattner, and Baker & Daniels, LLP, 300 N. Meridian Street, Suite 2700, Indianapolis, Indiana 46204, attn: Terry E. Hall; (2) counsel for the Committee, Ottberbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169, attn: Steve Soll; (3) counsel for JPMorgan Chase Bank, N.A., Simpson Thacher & Bartlett, LLP, 425 Lexington Avenue, New

York, New York 10117, attn: Kathy McLendon; and (4) the United States Trustee, 101 West Ohio Street, Suite 1000, Indianapolis, Indiana 46204, attn: Ronald J. Moore.

(B) Briefs in Support of Confirmation of the Plan shall be filed with the Bankruptcy Court and served upon the parties listed on the Confirmation Service List so as to be actually received by _____, 2009 at 4:00 p.m. prevailing Eastern time. Responses to objections to confirmation (and any memorandum of law in support of such responses) shall be filed with the Bankruptcy Court and served upon those parties listed on the Confirmation Service List so as to be actually received by _____, 2009 at 4:00 p.m. prevailing Eastern time.

3. DEADLINE FOR FILING BALLOTS ACCEPTING OR REJECTING PLAN

The last day for filing a Ballot (as defined below in Item 10) accepting or rejecting the Plan (the “Voting Deadline”) is indicated above as **DEADLINE FOR FILING BALLOTS ACCEPTING OR REJECTING PLAN**. All parties entitled to vote will receive a Ballot from the Plan Proponent by mail pursuant to paragraph 6(A) of this order. If a Claimholder’s entire Claim has been objected to, such Claimholder will not have the right to vote until the objection is resolved, and any vote will not be counted, unless such Claimholder requests, and receives, after notice and hearing, an order of the Bankruptcy Court under Bankruptcy Rule 3018(a) temporarily allowing the Claim for voting purposes.

4. DEADLINE FOR OBJECTIONS TO CLAIMS

The last day for filing and serving objections to Claims solely for purposes of determining whether the holder of such Claims(s) may vote on the Plan and the amount of such claim(s) for voting purposes is indicated above as **DEADLINE FOR OBJECTIONS TO CLAIMS FOR VOTING PURPOSES**. The deadline to file and serve objections to Claims for all other purposes shall be as set forth in the Plan, if confirmed, or otherwise by further order of

the Bankruptcy Court or pursuant to the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or applicable Local Rules.

5. DEADLINE FOR FILING MOTIONS FOR TEMPORARY ALLOWANCE OF CLAIMS

The last day for filing and service a motion requesting an order under Bankruptcy Rule 3018(a) temporarily allowing a Claim for voting purposes is indicated above as **DEADLINE FOR FILING MOTIONS FOR TEMPORARY ALLOWANCE OF CLAIMS**.

6. DEBTOR'S OBLIGATIONS

(A) On or before the date indicated above as **DEBTOR'S DEADLINE FOR SERVING SOLICITATION MATERIALS**, the Debtor shall serve Solicitation Materials (as that term is defined below in Item 9) on (1) the United States Trustee (without a Ballot); (2) all holders of Claims and Equity Interests entitled to vote on the Plan; (3) all non-debtor parties to Assumed Contracts; and (4) all parties in interest who have filed a special notice requesting a copy of the Disclosure Statement or Plan. The Debtor is hereby relieved of any duty to transmit the Solicitation Materials (and any notices relating to the Plan, including any notice of confirmation) to parties for whom the Debtor does not have a complete mailing address or to those parties for whom any mailings are or have been returned as undeliverable.

(B) The Debtor need not solicit Plan votes from individual Union members as potential holders of Class 4 General Unsecured Claims. The Unions have filed group proofs of claim on behalf of their respective members. Accordingly, the Debtor is authorized to send Solicitation Materials to each Union and solicit *one* vote from each Union on behalf of their respective Union members. For purposes of voting tabulation, a Ballot filed by a representative of a Union shall account for the total number of represented parties with respect to numerosity under Bankruptcy Code section 1126(c).

(C) Similarly, the Debtor need not solicit plan votes from individual members of the class that has been (or will be) certified in the adversary proceeding styled, *Batman, et al., v. ATA Airlines, Inc., et al.*, Adv. No. 08-50208 (who might be holders of Class 4 General Unsecured Claims). In accordance with a prior Bankruptcy Court order, the Batman class representatives have filed a class proof of claim on behalf of all class members. Accordingly, the Debtor is authorized to send Solicitation Materials to counsel for the Batman plaintiffs and solicit *one* vote on behalf of all class members. For purposes of voting tabulation, a Ballot filed by a representative of a Union shall account for the total number of represented parties with respect to numerosity under Bankruptcy Code section 1126(c).

(D) The Debtor shall publish the Confirmation Hearing Notice electronically at www.bmcgroup.com/ataairlines.

(E) On or before 4:00 p.m. prevailing Eastern time on the date indicated above as **DEBTOR'S DEADLINE FOR FILING BALLOT REPORT**, the Debtor shall file with the Bankruptcy Court the Section 1126 Ballot Report Form and the Certification of Balloting Report that are required by Local Rule B-3018-1.

7. ESTABLISHMENT OF VOTING RECORD DATE

Pursuant to Bankruptcy Rule 3018(a), the Bankruptcy Court hereby establishes a record date of _____, 2009 (the "Voting Record Date") for purposes of determining (a) Creditors and Interestholders entitled to receive Solicitation Materials and other notices required by the solicitation procedures approved by this Court and (b) Creditors entitled to vote to accept or reject the Plan. To the extent a Person (as defined in the Plan) was not a Creditor as of the Voting Record Date but is subsequently determined to hold a Claim pursuant to an order of the

Bankruptcy Court temporarily allowing such Claim for voting purposes, such Person shall be entitled to vote to accept or reject the Plan.

8. ESTABLISHMENT OF CURE CLAIM BAR DATE AND PROCEDURES

Pursuant to the Plan, on the Effective Date, all executory contracts and unexpired leases listed on the Schedule of Assumed Executory Contracts shall be deemed assumed by Reorganized Debtor (the “Assumed Contracts”) as more fully described in Article 5 of the Plan. Under the Plan, all executory contracts and unexpired leases not listed on the Schedule of Assumed Executory Contracts attached to the Plan will be deemed rejected as of the Effective Date. Additionally, all CBAs with any of the Unions shall be deemed terminated, extinguished, and rejected under Bankruptcy Code sections 365(a) and 1113(a), and of no further force and effect.

Section 365 of the Bankruptcy Code requires that, among other things, the Debtor cure any existing monetary defaults with respect to the Assumed Contracts by making “cure” payments (the “Cure Amount”) to any non-debtor parties to the Assumed Contracts. The Court hereby establishes _____, 2009, as the Cure Claim Bar Date. The Court further establishes _____, 2009, as the Cure Claim Objection Deadline. To ensure that all non-debtor parties have an opportunity to assert a claim for a Cure Amount, the Bankruptcy Court hereby approves the following procedures:

- (a) To the extent a counterparty to an Executory Contract disputes the Cure Amount identified in the Schedule of Assumed Executory Contracts with respect to the Executory Contract, such counterparty must file a Proof of Cure Claim in the Bankruptcy Case on or before the Cure Claim Bar Date and shall serve such Proof of Cure Claim on the Debtor, JPMorgan, the Committee and the Buyer. If a Proof of Cure Claim is not filed by the Cure Claim Bar Date, the proposed Cure Amount specified on the Schedule of Assumed Executory Contracts with respect to such party’s Executory Contracts shall be the Cure Amount for that Executory Contract.

- (b) The Debtor and the Buyer shall have the right to examine any Cure Claim filed by any party, and shall have the right to object to and contest the Disputed Cure Amount asserted therein. Any objection to a Disputed Cure Amount must be filed with the Bankruptcy Court and served on the party asserting such Disputed Cure Amount.
- (c) Within ten (10) Business Days after the Effective Date, the Buyer shall: (1) pay, in cash, all Cure Amounts related to Executory Contracts listed on the Schedule of Assumed Executory Contracts, other than Disputed Cure Amounts, and (2) for each Executory Contract listed on the Schedule of Assumed Contracts subject to a Disputed Cure Amount, deposit in escrow funds in an amount equal to such Disputed Cure Amount pending final determination of the Cure Amount applicable to such Executory Contract.
- (d) Neither the exclusion nor inclusion of any Executory Contract by the Debtor on the Schedule of Assumed Executory Contracts, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or unexpired lease is in fact an executory contract or that the Debtor has any liability thereunder.
- (e) Except as otherwise provided in the Plan and Disclosure Statement, each Claim resulting from the rejection of an Executory Contract pursuant to the Plan shall be filed with the Bankruptcy Court no later than the first Business Day that is thirty (30) days after the Confirmation Date or such earlier date that may be set by the Bankruptcy Court concerning a particular Executory Contract.

The Debtor shall provide notice of these procedures by mailing the Solicitation Materials to all non-debtor parties to the Assumed Contracts by the Solicitation Mailing Date (as defined in Item 9 below). The Assumed Contracts shall be listed by the Debtor on a schedule (the “Assumption Schedule”) and filed with the Bankruptcy Court no later than _____, 2009 and shall be made available as a Plan Document as described in Item 9 below.

9. SOLICITATION PROCEDURES

Solicitation Materials. Pursuant to Bankruptcy Rule 3017(d), the Debtor is hereby authorized to distribute the following documents (the “Solicitation Materials”) to all parties set forth in paragraph 6(A) above on or before _____, 2009 (the “Solicitation

Mailing Date”), subject to the limitations contained herein, by United States mail, first-class postage prepaid, or by hand delivery or by overnight courier:

- (a) the Disclosure Statement;
- (b) the Plan;
- (c) a solicitation letter from the Committee;
- (d) the Notice of (i) Approval of Disclosure Statement; (ii) Establishment of Voting Record Date; (iii) Establishment of Deadline to File Notice of Cure Claims; (iv) Hearing on Confirmation of the Chapter 11 Plan of the Debtor; (v) Procedures for Objecting to Confirmation of the Chapter 11 Plan; and (vi) Procedures and Deadline for Voting on the Chapter 11 Plan (attached to the Motion as Exhibit 2); and
- (e) to the extent applicable, a Ballot and envelope and/or notice appropriate for the specific creditor or interest holder, in substantially the forms attached to the Motion (as maybe modified for particular classes and with instructions attached thereto).

Plan and Disclosure Statement Exhibits, Schedules and Appendices (the “Plan Documents”). The Debtor will file the Plan Documents by the Solicitation Mailing Date. After the Solicitation Mailing Date, copies of the Plan Documents will be available in accordance with the procedures set forth below for availability of the Plan and Disclosure Statement.

Transmission to Certain Claimholders and Interestholders Who Are Deemed to Reject the Plan. The Debtor is not required to send Ballots to holders of Claims or Interests in classes that are unimpaired, or in classes that are deemed to reject the Plan pursuant to 11 U.S.C. §1126(g). Specifically, the Debtor is not required to solicit votes or send Ballots to Interestholders and Claimholders in Classes 1.2 (Allowed Priority Unsecured Non-Tax Claims) and 6 (Equity Interests).

Availability of Plan, Disclosure Statement, and Plan Documents. The Debtor shall make copies of the Plan and Disclosure Statements and, after the Solicitation Mailing Date, the Plan

Documents, publicly available at www.bmcgroup.com. In addition, copies of the Plan and Disclosure Statement (including the Plan Documents) may also be obtained (upon written request) from BMC Group, Inc., P.O. Box 921 El Segundo, CA 90245-0921, Attn: ATA Air.

10. BALLOTS, BALLOTING PROCEDURES AND TABULATION

The Bankruptcy Court hereby approves the form of ballot attached to the Motion as Exhibit 1 (the “Ballot”) and authorizes the Debtor to use such Ballot in substantially the same form and containing substantially similar content, for soliciting votes of creditors and interestholders entitled to vote on the Plan. Further, the following Ballot tabulation procedures are APPROVED:

Votes Counted. A timely-received Ballot that contains sufficient information to permit the identification of the claimant and is cast as an acceptance or rejection of the Plan shall be counted and be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan, subject to the following exceptions and clarifications:

- (a) If no proof of claim has been timely filed, (i) the voted amount of a Claim shall be equal to the amount listed for the particular Claim in the Schedules of Assets and Liabilities to the extent such Claim is not listed as contingent, unliquidated, or disputed, and (ii) the Claim shall be placed in the appropriate Class, based on the Debtor’s records and consistent with the Schedules of Assets and Liabilities;
- (b) If no proof of claim has been timely filed and to the extent such Claim is listed as contingent, unliquidated, or disputed based on the Debtor’s records and consistent with the Schedules of Assets and Liabilities, then any Ballot filed by such a Claimholder will not be counted;
- (c) If a proof of claim has been timely filed, and has not been objected to before the expiration of the Voting Deadline, the voted amount of that Claim shall be as specified in the timely filed proof of claim;
- (d) If no proof of interest has been filed, the voted amount of an Equity Interest shall be equal to the amount listed for the particular Equity Interest in the List of Equity Security Holders, and the Equity Interest

shall be placed in the appropriate Class based on the Debtor's records and consistent with the Schedule of Equity Interests;

- (e) If a proof of interest has been timely filed, and has not been objected to before the expiration of the Voting Deadline, the voted amount of that Equity Interest shall be as specified in the timely filed proof of interest;
- (f) Subject to subparagraph (g) below, a Claim or Equity Interest that is the subject of an objection filed before the Voting Deadline shall be disallowed for voting purposes, except to the extent and in the manner that the Debtor indicates in its objection that the Claim or Equity Interest should be allowed for voting or other purposes;
- (g) If a Claim or Equity Interest has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the voted amount and classification shall be that set by the Bankruptcy Court;
- (h) If a Claimholder or Interestholder or its authorized representative did not use the Ballot provided by the Debtor, the Official Ballot Form authorized under the Federal Rules of Bankruptcy Procedure, or a substantially similar form of ballot, such Ballot will not be counted;
- (i) If the Ballot is not received by the Debtor on or before the Voting Deadline at the place fixed by the Bankruptcy Court, the Ballot will not be counted;
- (j) If the Ballot is not signed by the Claimholder or Interestholder or its authorized representative, the Ballot will not be counted;
- (k) If the individual or institution casting the Ballot (whether directly or as a representative) was not the holder of a Claim or Equity Interest on the Disclosure Statement Approval Date, the Ballot will not be counted;
- (l) If the Claimholder or Interestholder or its authorized representative did not check one of the boxes indicating acceptance or rejection of the Plan, or checked both such boxes, the Ballot will not be counted;
- (m) Whenever a Claimholder or Interestholder (or its authorized representative) submits more than one Ballot voting the same Claim(s) or Equity Interest(s) before the applicable deadline for submission of Ballots, except as otherwise directed by the Bankruptcy Court after notice and a hearing, the last such Ballot shall be deemed to reflect the voter's intent and shall supersede any prior Ballots;
- (n) If a representative of Claimholders or Interestholders is authorized to file a proof of claim or proof of interest on behalf of the Person it represents,

pursuant to an order of the Bankruptcy Court, or otherwise, such representative may submit one Ballot voting all Claims or Equity Interests so long as such Ballot complies with all other tabulation procedures above.

Changing Votes. Notwithstanding Bankruptcy Rule 3018(a), whenever two or more Ballots are cast voting the same claim prior to the Voting Deadline, the latest dated Ballot actually received by the Debtor prior to the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior Ballots; provided, however, that where an ambiguity exists as to which Ballot reflects the voter's intent, the Debtor reserves the right to contact the creditor and calculate the vote according to such voter's written instructions. This procedure is without prejudice to the Debtor's right to object to the validity of the second Ballot on any basis permitted by law and, if the objection is sustained, to count the first Ballot for all purposes. Furthermore, in its sole discretion, the Debtor is hereby authorized to agree to allow a creditor to change its vote after the Voting Deadline without further order of the Bankruptcy Court.

No Vote Splitting. Claim splitting is not permitted. Creditors and Interestholders must vote all of their Claims or Interests within a particular class to either accept or reject the Plan.

Absence of Votes in a Class. If no votes to accept or reject the Plan are received with respect to a particular class, such class is deemed to have voted to accept the Plan.

Execution of Ballots By Authorized Representatives. To be counted, completed Ballots signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity must indicate their capacity when signing. At the Debtor's request, Ballot signatories shall submit proper evidence satisfactory to the Debtor of their authority to so act. Failure to indicate the capacity of the signatory to the Ballot may result in the Ballot being deemed invalid and not counted.

Waivers of Defects and Other Irregularities Regarding Ballots. Unless otherwise directed by this Court, all questions concerning the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots will be determined by the Debtor in its sole discretion, whose determination will be final and binding. The Debtor may reject any and all Ballots not in proper form, the acceptance of which would, in the opinion of the Debtor or its counsel, be unlawful. Any defects or irregularities or conditions of delivery as to any particular Ballot must be cured within such time as the Bankruptcy Court determines. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtor (or this Court) determines. Neither the Debtor, nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by this Court, delivery of such Ballots will not be deemed to have been made until any irregularities have been cured or waived. Unless otherwise directed by this Court, Ballots previously furnished, and as to which any irregularities have not subsequently been cured or waived, will be invalidated.

Withdrawal of Votes. Except as otherwise directed by the Bankruptcy Court after notice and a hearing, any holder of a Claim or Equity Interest (or its authorized representative) in an Impaired Class who has delivered a valid Ballot for the acceptance of the Plan may withdraw such acceptance by delivering a written notice of withdrawal to the Debtor at any time before the Voting Deadline. Any holder of a Claim or Equity Interest (or its authorized representative) in an impaired Class who has delivered a valid Ballot for the rejection of the Plan may withdraw such rejection by delivering a written notice of withdrawal to counsel for the Debtor at any time before the Confirmation Hearing. To be valid, a notice of withdrawal must:

- (a) contain the description of the Claims or Equity Interests to which it relates and the aggregate principal amount or number of shares represented by such Claims or Equity Interests;
- (b) be signed by the Claimholder or Interestholder (or its authorized representative) in the same manner as the Ballot; and
- (c) be received by counsel for the Debtor in a timely manner at the addresses set forth in this Disclosure Statement for the submission of Ballots.

The Debtor has the absolute right to contest the validity of any such withdrawals of Ballots. Unless otherwise directed by this Court, a purported notice of withdrawal of Ballots that is not received in a timely manner by the Debtor will not be effective to withdraw a previously furnished Ballot. If a Claimholder submits a valid notice of withdrawal prior to the Voting Deadline, such holder may submit a new Ballot, and such Ballot will be counted so long as it is received prior to the Voting Deadline and is otherwise submitted in accordance with this Order.

Submission of Ballots. The Debtor will be responsible for receiving, tabulating, and reporting on Ballots cast for or against the Plan. Holders of Claims must submit their Ballot to the following address:

HAYNES AND BOONE, LLP
Attn: Jermaine K. Johnson
1 Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010

11. GENERAL PROVISIONS

The Debtor is authorized to take or refrain from taking any action necessary or appropriate to implement the terms of this Order without seeking further order of the Bankruptcy Court.

Objections to confirmation of the Plan not timely filed and served in the manner set forth in this Order will not be considered and shall be overruled.

The Debtor is authorized to make nonsubstantive changes to the Plan, Disclosure Statement, Ballots, Notice of Non-Voting Status and Confirmation Hearing Notice, without further order, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Plan, Disclosure Statement and any other document contained in the Solicitation Materials before distribution. The Debtor is also authorized to update any financial information in the Disclosure Statement with more current or accurate information to the extent available prior to the distribution of the Solicitation Materials.

ORDERED in the Southern District of Indiana, Indianapolis Division, on _____, 2009.

BASIL H. LORCH III, JUDGE
UNITED STATES BANKRUPTCY COURT

Copies to:
Service List