

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 04-63788
)	
TECHNEGLAS, INC.,)	Chapter 11
)	
Debtor.)	Judge John E. Hoffman, Jr.
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In re:)	Case No. 04-63851*
)	
NIPPON ELECTRIC GLASS OHIO, INC.,*)	Chapter 11
)	
Debtor.)	Judge John E. Hoffman, Jr.
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In re:)	Case No. 04-63847
)	
NIPPON ELECTRIC GLASS AMERICA INC.)	Chapter 11
)	
Debtor.)	Judge John E. Hoffman, Jr.

**MOTION FOR AN ORDER (A) APPROVING DISCLOSURE STATEMENT,
(B) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF
VOTES TO ACCEPT OR REJECT JOINT PLAN OF REORGANIZATION,
(C) APPROVING THE FORM OF BALLOTS AND SOLICITATION MATERIALS,
(D) SCHEDULING HEARING ON CONFIRMATION OF JOINT PLAN OF
REORGANIZATION, AND (E) APPROVING RELATED NOTICE PROCEDURES**

The above-captioned debtors and debtors in possession (the “Debtors”), herby submit this motion (the “Motion”) for an order, attached hereto as Exhibit A, pursuant to sections 105, 1125, and 1126 of title 11 of the United States Code (as amended from time to time, the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure 2002, 3017, and 3018 (as amended from time to time, the “Bankruptcy Rules”), (a) Approving Disclosure Statement, (b) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Joint Plan of Reorganization, (c) Approving the Form of Ballots and Solicitation Materials, (d) Scheduling Hearing on Confirmation of Joint Plan of Reorganization, and (e) Approving Related Notice Procedures. A memorandum in support of this Motion is provided below.

Dated: July 6, 2005

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MEMORANDUM IN SUPPORT

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 157 and § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2).

2. Venue of this proceeding and over this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for relief requested herein are sections 105, 1125, and 1126 of the Bankruptcy Code and Bankruptcy Rules 2002, 3017, and 3018.

BACKGROUND

4. On September 1, 2004, each of the Debtors filed a petition for relief under the Bankruptcy Code and commenced the above-captioned Chapter 11 cases (each a “Chapter 11 Case”). The Debtors continue to operate their respective businesses and manage their respective properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 10, 2004, the United States Trustee appointed an official committee of unsecured creditors (the “Committee”) in the Chapter 11 Case of Techneglas, Inc. (“Techneglas”). No trustee or examiner has been appointed in any of the Debtors’ Chapter 11 Cases.

5. On July 1, 2005, the Debtors filed their Joint Plan of Reorganization of the Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (the “Plan”) and disclosure statement in support of the Plan (the “Disclosure Statement”).

RELIEF REQUESTED

6. By this Motion, the Debtors respectfully request that the Disclosure Statement be approved as providing “adequate information” in accordance with section 1125 of the Bankruptcy Code. The Debtors further request that the Court approve the procedures proposed herein for the solicitation and tabulation of votes to accept or reject the Debtors’ Plan, including the form of ballots, solicitation materials and voting deadline.

I. DISCLOSURE STATEMENT

A. The Disclosure Statement Contains Adequate Information and Should Be Approved

7. Under section 1125 of the Bankruptcy Code, a debtor must provide its creditors and interest holders with “adequate information” regarding the debtor’s proposed plan of reorganization. As described in the Bankruptcy Code:

“[a]dequate information” means information 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. . . .

11 U.S.C. § 1125(a)(1). Thus, a debtor’s disclosure statement must, as a whole, provide information that is “reasonably practicable” to permit an “informed judgment” by creditors and interest holders concerning the debtor’s plan of reorganization. See In re Momentum Mfg. Corp., 25 F.3d 1132, 1136 (2d Cir. 1994); In re Scioto Valley Mortgage, Co., 88 B.R. 168, 170 (Bankr. S.D. Ohio 1988) (“The disclosure statement was intended by Congress to be the primary source of information upon which creditors and shareholders could rely in making an informed judgment about a plan of reorganization); In re Future Energy Corp., 83 B.R. 470, 489 (Bankr. S.D. Ohio 1988) (“Plan proponents are required to transmit adequate information to holders of claims and investors to allow a hypothetical reasonable investor to make an informed judgment about a plan.”).

8. Generally, a disclosure statement must contain “all pertinent information bearing on the success or failure of the proposals in the plan of reorganization,” and “all material information relating to the risks posed to creditors and equity holders under the proposed plan of reorganization.” In re Cardinal Congregate I, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990); see also Scioto Valley, 88 B.R. at 170 (“No simple method exists for determining whether a disclosure statement contains adequate information. A determination as to what constitutes

adequate information in any particular instance must occur on a case-by-case basis under the facts and circumstances presented.”).

9. The legislative history addresses how to interpret this standard:

Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case, such as the cost of preparation of the statements, the need for relative speed in solicitation and confirmation. . . . In reorganization cases, there is frequently great uncertainty. Therefore the need for *flexibility* is greatest.

See H.R. Rep. No. 595, 95th Cong., 1st Sess. 409 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6365 (emphasis added).

10. Courts are vested with wide discretion in determining whether a disclosure statement contains adequate information. See In re CDECO Maritime Constr., Inc., 101 B.R. 499, 500 (Bankr. N.D. Ohio 1989) “[T]he determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”) (quoting In re Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988)). This grant of discretion was intended to permit courts to tailor the disclosures made in connection with a plan of reorganization to facilitate the effective reorganization of debtors in a broad range of businesses and circumstances. See H.R. Rep. 595, at 409; In re Cajun Elec. Power Co-op, Inc., 150 F.3d 503, 518 (5th Cir. 1998) (“The legislative history of § 1125 indicates that, in determining what constitutes ‘adequate information’ with respect to a particular disclosure statement, ‘[b]oth the kind and form of information are left essentially to the judicial discretion of the court’ and that ‘[t]he information required will necessarily be governed by the circumstances of the case.’”) (citing S. Rep. No. 95-989, at 121 (1978), reprinted in U.S.C.C.A.N. 5787, 5907)). Accordingly, the determination of the adequacy of information in a disclosure statement must be made on a case-by-case basis, focusing on the unique facts and circumstances of each case. See, e.g., In re Brotby, 303 B.R. 177, (9th Cir. B.A.P. 2003) (“[T]he determination of what is adequate information is subjective and made on a case by case basis.

This determination is largely within the discretion of the bankruptcy court.”) (citing In re Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988)).

11. The Disclosure Statement filed by the Debtors contains ample information to allow parties in interest to make informed judgments about the Plan. It discloses information regarding: (a) the Debtors, their respective assets and liabilities, and their respective businesses; (b) the general economic conditions preceding the Debtors’ decision to commence the instant chapter 11 proceedings; (c) the prepetition negotiations and agreements among Techneglas and its principal creditor constituencies; (d) the significant events that have occurred in these Chapter 11 Cases since the petition dates; (e) classification and treatment of claims under the Plan; (f) other material terms of the Plan and its implementation; and (g) information concerning the projected financial performance of each of the respective reorganized Debtors. Accordingly, the Debtors’ respectfully submit that the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code and should be approved.

II. SOLICITATION PROCEDURES

A. Approval of Form of Ballots

12. Bankruptcy Rule 3017(d) requires a debtor in possession to mail a form of ballot that substantially conforms to Official Form No. 14 only to “creditors and equity security holders entitled to vote on the plan.” The respective Debtors have amended the Official Form and propose to distribute to creditors entitled to vote on the Plan one or more ballots in the proposed forms attached hereto as Exhibit B and incorporated herein by reference (the “Ballots”). The Ballots are based on Official Form No. 14, but have been modified to address the particular terms of the Plan. The Debtors propose that the appropriate form of Ballot will be distributed to holders of claims in the following classes, as described more fully in the Disclosure Statement, which are the only parties-in-interest entitled to vote to accept or reject the Plan:¹

¹ All references to classes of claims are as set forth in the Disclosure Statement to the extent that the Debtors modify the Disclosure Statement, such modifications shall be made on the Ballots as necessary.

Ballot No. 1	Class 3A Claims Ballot	Union Priority Claims (Techneglas)
Ballot No. 2	Class 4A Claims Ballot	Other Unsecured Claims (Techneglas)
Ballot No. 3	Class 5A Claims Ballot	PBGC Claims (Techneglas)
Ballot No. 4	Class 6A Claims Ballot	NEG Claims (Techneglas)
Ballot No. 5	Class 3B Claims Ballot	Other Unsecured Claims (NEG Ohio)
Ballot No. 6	Class 4B Claims Ballot	PBGC Claims (NEG Ohio)
Ballot No. 7	Class 5B Claims Ballot	NEG Claims (NEG Ohio)
Ballot No. 8	Class 3C Claims Ballot	Other Unsecured Claims (NEG America)
Ballot No. 9	Class 4C Claims Ballot	PBGC Claims (NEG America)
Ballot No. 10	Class 5C Claims Ballot	NEG Claims (NEG America)

(i) Release of NEG and Settlement of NEG Claims in the Chapter 11 Case of Techneglas

13. For certain creditors of Techneglas only, pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan constitutes an application for approval of a compromise and settlement of any and all claims and causes of action that holders of Claims in Classes 4A and 5A may have against NEG and certain affiliated entities (described more fully in the Plan at Section III.E). Pursuant to the Plan and Disclosure Statement, the Debtors request that the following release language be included on the Ballots for holders of Claims in Classes 4A and 5A:

Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan constitutes an application for approval of a compromise and settlement of any and all claims and causes of action of any Third Party Claimant against the Released Parties.²

On the Effective Date, the Third Party Claimants hereby unconditionally and irrevocably release the Released Parties from any and all direct, indirect or derivative claims, obligations, suits, judgments, damages, rights, causes of action, liabilities, claims or rights of

² Capitalized terms used in this release language and not defined in this Motion, are as defined in the Plan.

contribution and indemnification, and all other controversies of every type, kind, nature, description or character whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part upon any act or omission, transaction, event or other occurrence taking place from the beginning of the world to the Effective Date arising from or relating in any way, directly or indirectly, to the Debtors, their assets, operations or liabilities, the Chapter 11 Cases, the Plan, or the Disclosure Statement; provided, however, that the Third Party Claimants shall not be deemed to have released any rights to enforce the terms of the Plan or their rights to distributions thereunder. **BY RETURNING A BALLOT WITHOUT CHECKING THE BOX TO OPT-OUT OF THE OPTIONAL RELEASE OR FAILING TO RETURN A BALLOT, THE THIRD PARTY CLAIMANTS CONSENT TO AND GRANT THIS RELEASE AND ACKNOWLEDGE THAT THEY MAY HAVE CLAIMS OR LOSSES OF WHICH THEY ARE NOT CURRENTLY AWARE, OR THEY MAY HAVE UNDERESTIMATED.** The consideration for the releases was given in part in exchange for the release of such claims.

The Confirmation Order shall specifically provide for the foregoing releases, other than any claim of a Third Party Claimant based upon an express written guarantee by NEG in favor of a Third Party Claimant.

On the Effective Date, the Third Party Claimants shall be permanently enjoined from commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind, asserting any setoff, right of subrogation, contribution, indemnification or recoupment of any kind, directly or indirectly, or proceeding in any manner in any place inconsistent with the releases granted to the Released Parties pursuant to the Plan. The Confirmation Order shall specifically provide for such injunction.

14. The releases and injunctions granted in favor of the Released Parties are integral parts of the Plan and are necessary to confirm the Plan. The NEG Release Consideration constitutes the consideration for the releases from the Third Party Claimants. Because all elements of the NEG Release Consideration will result in distributions to creditors of the Debtors, the entire NEG Release Consideration constitutes the consideration for the releases. In light of the foregoing, the Debtors request that the Court approve the NEG Release Consideration and the Optional Release.

(ii) Notice of Non-Voting Status to Holders of Claims and Interests Deemed to Accept the Plan

15. Bankruptcy Rule 3017(d) provides, in relevant part, that:

If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may

be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation.

Fed. R. Bankr. P. 3017(d).

16. Accordingly, the Debtors propose to send to holders of unimpaired claims and interests in Classes 1A, 2A, 1B, 2B, 6B, 7B, 1C, 2C and 6C a notice of non-voting status, substantially in the form annexed as Exhibit C hereto (the "Notice of Non-Voting Status – Unimpaired Classes"), which identifies the classes designated as unimpaired and provides an explanation of their status.

17. The Debtors submit that such notice satisfies the requirements of Bankruptcy Rule 3017(d).

(iii) Notice of Non-Voting Status to Holders of Claims and Interests Deemed to Reject the Plan

18. As indicated in the Disclosure Statement, Class 7A will not receive any distributions under the Plan and, thus, is conclusively presumed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. Because such class is deemed to have rejected the Plan, the Debtors propose to mail a notice of non-voting status ("Notice of Non-Voting Status – Impaired Classes," and together with the Notice of Non-Voting Status – Unimpaired Classes, the "Notices of Non-Voting Status"), substantially in the form annexed as Exhibit D hereto to the holders of interests in such class.

19. The Debtors submit that the Notices of Non-Voting Status – Impaired Classes satisfy the requirements of the Bankruptcy Code and Bankruptcy Rules. Accordingly, the Debtors request that the Court determine that they are not required to distribute Ballots to (a) any holder of an unimpaired claim or interest that is deemed to accept the Plan, in Classes 1A, 2A, 1B, 2B, 6B, 7B, 1C, 2C, and 6C, and (b) any holder of an impaired claim or interest that is deemed to reject the Plan, in Class 7A unless an order is entered pursuant to Bankruptcy Rule 3018 with regard to such holder's claim or interest.

20. Consistent with sections 1126(f) and (g) of the Bankruptcy Code and Rule 3017(d), packages of solicitation materials for holders of claims against or equity interests in the

Debtors (the “Solicitation Packages”) within a class under the Plan that is deemed to accept or reject the Plan will not include a Ballot. The Solicitation Packages for such holders of claims and interests will only include the appropriate Notice of Non-Voting Status and the Confirmation Hearing Notice.

B. Voting Deadline for the Receipt of Ballots

21. Pursuant to Bankruptcy Rule 3017(c), on or before approval of a disclosure statement, the Court shall fix a time within which the holders of claims or equity security interest may accept or reject a plan. The Debtors anticipate commencing the solicitation period by causing the Solicitation Packages to be mailed no later than five (5) business days after the entry of the Disclosure Statement Order (the “Solicitation Date”). Based on this schedule, the Debtors propose that to be counted as a vote to accept or reject the Plan, each Ballot must be properly executed, completed, and delivered to the addressee thereon, so as to be received no later than a date to be determined by the Court, which will be at least twenty-five (25) days after the Solicitation Date (as may be extended by the Debtors, the “Voting Deadline”). The Debtors request that the Voting Deadline be set as expeditiously as possible in accordance with the Bankruptcy Rules.

22. To ensure that creditors have ample time to vote, the Debtors request that they be permitted to extend the Voting Deadline for all creditors from time to time without further order of the Court by giving notice of such extension to all parties on the Debtors’ creditor matrix and the parties requesting notice pursuant to Bankruptcy Rule 2002 and filing such notice with the Court.

23. The Debtors also propose that any party who submits a Ballot after the initial Voting Deadline shall be deemed to have waived its rights pursuant to Bankruptcy Rule 3018. In addition, the Debtors seek the authority to extend from time to time the Voting Deadline applicable to one or more specific creditors by providing notice to the Techneglas Committee (as applicable), the U.S. Trustee, and those creditors whose deadline is extended.

24. The Debtors submit that this solicitation period is sufficient to allow its creditors to make an informed decision regarding whether to accept or reject the Plan.

C. Approval of Balloting Agents for NEG Ohio and NEG America

25. The Plan designates the following as Balloting Agents for the respective Debtors: For Techneglas, BMC Group, Inc., 1330 East Franklin Avenue, El Segundo, California 90245, (888) 909-0100; for Nippon Electric Glass Ohio, Inc. (“NEG Ohio”), Kenneth R. Cookson, Esq., Kegler, Brown, Hill & Ritter, 54 East State Street, Ste. 1800, Columbus, Ohio 43215; for Nippon Electric Glass America, Inc. (“NEG America”), Christopher B. Wick, Esq., Hahn Loeser & Parks, LLP, 3300 BP Tower, 200 Public Square, Cleveland, Ohio 44114-2301.

26. BMC Group, Inc. has previously been approved by the Court as Balloting Agent for Techneglas. The Debtors request that the Court approve the Balloting Agents designated in the Plan for NEG Ohio and NEG America, and authorize those Debtors to instruct creditors to return the originals of their ballots to the designated Balloting Agents for NEG Ohio and NEG America, notwithstanding Local Bankruptcy Rule 3018-2(a), which provides that originals of ballots are to be filed with the Clerk of the Court and a copy returned to the attorney for the plan proponent.

D. Procedures For Tabulation Of Votes

(i) Tabulation Rules

27. The Debtors propose that each holder of a claim within a class of claims entitled to vote to accept or reject the Plan be entitled to vote the amount of such claim as set forth in the respective Debtors’ schedules (collectively, the “Schedules”), unless such holder has timely filed a proof of claim, in which such holder would be entitled to vote the amount of such claim as set forth in such proof of claim. The foregoing general procedure will be subject to the following exceptions (the “Tabulation Rules”) to be used by the Debtors’ respective Balloting Agents:

- (a) Unless one or more Tabulation Rules set forth below applies and provides otherwise, a claim will be deemed temporarily allowed for purposes of voting on the Plan in an amount equal to either: (i) if no proof of claim has been timely filed on account of such claim, the noncontingent, liquidated and undisputed amount of such claim as set forth in the

respective Debtor's Schedules; or (ii) if a proof of claim has been timely filed on account of such claim, the noncontingent, liquidated and undisputed amount set forth therein;

- (b) If a claim is deemed allowed under the Plan, such claim will be temporarily allowed for voting only purposes in the amount set forth therein;
- (c) If a claim for which a proof of claim has been timely filed and has not been disallowed is listed, marked or otherwise referenced on its face as contingent, unliquidated or disputed, either in whole or in part, the noncontingent, liquidated and undisputed portion, if any, of such claim will be deemed temporarily allowed for voting purposes in the amount asserted, subject to the other Tabulation Rules, and the remaining contingent, unliquidated or disputed portion of such claim will be allowed for voting purposes in the amount of \$1.00;
- (d) If a claim has been allowed pursuant to a stipulation approved by the Court, such claim will be deemed allowed for voting purposes in the amount set forth in such stipulation;
- (e) If a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim will be temporarily allowed for voting purposes in the amount so estimated or allowed by the Court;
- (f) Claims that are either (i) listed in the respective Debtor's Schedules as contingent, unliquidated or disputed, or in the amount of \$0, or (ii) not listed in the Schedules, and on account of which no proof of claim was timely filed and no stipulation allowing the claim has been approved by the Court, will be disallowed for purposes of voting on the Plan;
- (g) If on or before ten (10) days before the Voting Deadline any Debtor has filed and served an objection to or motion to disallow or reclassify a claim, or to allow or estimate the claim in an amount different from the amount asserted in the claim, such claim will be temporarily allowed for voting purposes in the lesser amount and classification identified in such motion;
- (h) If a holder of a claim identifies a claim amount in its Ballot that is less than the amount otherwise calculated in accordance with the Tabulation Rules, the claim will be temporarily allowed for voting purposes in the lesser amount identified on such Ballot;
- (i) Creditors will not be entitled to vote claims to the extent such claims duplicate or have been superceded by other claims filed by or on behalf of such creditors. The applicable Balloting Agent will determine whether a claim is duplicative or superceded in such Balloting Agent's discretion;
- (j) A party shall not be entitled to a vote on the Plan based upon a guarantee or other theory of payment. There shall be allowed only one vote per claim regardless of how many parties may be subject to legal liability; and
- (k) If a claim relates to rejection damages under an executory contract or unexpired lease that has not been rejected as of the Voting Record Deadline, to the extent such claim is for rejection damages, such claim

shall be temporarily disallowed by the Court for voting purposes and, to the extent such claim is solely for rejection damages, such Ballot shall not be counted as having voted for or against the Plan.

28. The Debtors believe that the foregoing proposed Tabulation Rules provide for a fair and equitable voting process.

(ii) Tabulation Procedures

29. The Debtors propose that the following procedures (the “Tabulation Procedures”) be used by the Balloting Agents in tabulating the Ballots as to each respective Debtor:

- (a) Ballots received after the Voting Deadline will not be accepted or counted by any of the Debtors;
- (b) Any Ballot that partially rejects and partially accepts the Plan shall be counted as an acceptance of the Plan;
- (c) Any Ballot which is returned indicating acceptance or rejection of the Plan but which is unsigned shall not be counted;
- (d) If a creditor casts simultaneous duplicative Ballots which are voted inconsistently, such Ballots shall count as one vote accepting the Plan;
- (e) If multiple Ballots are received from or on behalf of an individual holder of a claim with respect to the same claim prior to the Voting Deadline, the last Ballot timely received will be deemed to reflect the intent and to supercede and revoke any prior Ballot with respect to such claim;
- (f) The method of delivery of the Ballots to be sent to the applicable Balloting Agent is at the election and risk of each holder of a claim and (if applicable) Nominee, and will be deemed made only when the original executed Ballot is actually received by the applicable Balloting Agent;
- (g) Delivery of a Ballot by facsimile, e-mail or any other electronic means will not be accepted by any of the Balloting Agents;
- (h) Except where an attorney for a Debtor has been designated as the Balloting Agent for such Debtor, no Ballot sent to any of the Debtors or any of the Debtors’ financial or legal advisors shall be accepted;
- (i) If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, or other person acting in a fiduciary or representative capacity, such person shall be required to indicate such capacity when signing and must submit proper evidence satisfactory to the Debtors to act on behalf of the creditor for whom such party is acting;

- (j) Each of the Debtors, in their sole discretion, subject to any contrary order of the Court, may waive any defect in any Ballot at any time, whether before or after the Voting Deadline, and without notice;
- (k) Any Holder of impaired claims who has delivered a valid Ballot voting on the Plan may withdraw such vote in accordance with applicable law;
- (l) Each of the Debtors expressly reserve the right to amend, at any time, the terms of the Plan (subject to compliance with applicable law);
- (m) Subject to any contrary order of the Court, each of the Debtors reserve the right to reject any and all Ballots not proper in form, the acceptance of which would, in the opinion of the respective Debtor or its counsel not be in accordance with the provisions of the Bankruptcy Code or this Order;
- (n) If no votes to accept or reject the Plan are received with respect to a particular class, such class shall be deemed to have voted to accept the Plan;
- (o) Unless waived by the respective Debtor or as ordered by the Court, any defects or irregularities in connection with the deliveries of the Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived;
- (p) With respect to a Ballot received prior to the Voting Deadline, neither any of the Debtors, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur liabilities for failure to provide such notification;
- (q) Any Ballot that is otherwise properly completed and returned but does not indicate either an acceptance or rejection of the Plan will be counted as having been cast as an acceptance of the Plan;
- (r) Any Ballot that is otherwise properly completed and returned but does not choose to opt-out of granting the Optional Release by checking the appropriate box on the Ballot, shall be deemed to accept the Optional Release; and
- (s) Any Holder of a Claim who fails to submit a Ballot shall be deemed to accept the Optional Release.

30. The Debtors further propose that the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

- (a) any Ballot that is illegible or contains insufficient information to permit the identification of

the claimant; (b) any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan; and (c) any unsigned Ballot.

31. Pursuant to Local Bankruptcy Rule 3018-2(b), each respective Balloting Agent will certify “the amount and number of allowed claims of each class accepting or rejecting the plan and the amount of allowed interests of each class accepting or rejecting the plan” and file such certification with the Court before the Confirmation Hearing.

32. The Debtors submit that the foregoing Tabulation Rules and Tabulation Procedures provide for a fair and equitable voting process in light of the circumstances involved, and accordingly the Debtors seek this Court’s approval of such proposed rules and procedures.

E. Procedures for Temporary Allowance of Claims

33. The Debtors propose that any claimant that seeks to challenge the temporary allowance of its claim for voting purposes based on the foregoing Tabulation Rules and Tabulation Procedures be required to file a motion, pursuant to Bankruptcy Rule 3018(a),³ for an order temporarily allowing its claim in a different amount or classification for purposes of voting to accept or reject the Plan (a “Rule 3018 Motion”). Further, the Debtors propose that any party filing a Rule 3018 Motion be required to serve such motion on each of the affected Debtors and all other Notice Parties so that it is received no later than 4:00 p.m. prevailing Eastern Time on or before ten (10) days before the Voting Deadline. Each of the affected Debtors will then (a) have seven (7) days to file and serve any responses to Rule 3018 Motions; and (b) coordinate with the Clerk of the Court to set a time to adjudicate and resolve all pending Rule 3018 Motions and responses thereto at a hearing scheduled for the same.

34. In accordance with Bankruptcy Rule 3018, the Debtors further propose that any Ballot submitted by a creditor that files a Rule 3018 Motion will be counted solely in accordance

³ Bankruptcy Rule 3018(a) provides that the “court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purposes of accepting or rejecting a plan.”

with the foregoing Tabulation Rules and Tabulation Procedures and other applicable provisions contained herein unless and until the underlying claim is temporarily allowed by the Court for voting purposes in a different amount, after notice and a hearing.

F. Setting a Confirmation Hearing Date

35. Bankruptcy Rule 3017(c) provides:

On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation

Fed. R. Bankr. P. 3017(c).

36. Pursuant to Bankruptcy Rule 3017(c) and in view of the Debtors' proposed solicitation schedule described herein, the Debtors request that a hearing on confirmation of the Plan (the "Confirmation Hearing") be scheduled, subject to the Court's calendar, as expeditiously as possible in accordance with the Bankruptcy Rules. The Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice other than adjournments announced in open court. The proposed timing for the Confirmation Hearing is in compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and will enable the Debtors to pursue confirmation of the Plan in a timely fashion.

G. Approval of Procedures for Notice of the Confirmation Hearing

37. The Debtors propose to serve a copy of a notice substantially in the form attached hereto as Exhibit E and incorporated herein by reference (the "Confirmation Hearing Notice"),⁴ setting forth among other things: (a) the Voting Deadline for the submission of ballots to accept or reject the Plan; (b) the time fixed for filing objections to confirmation of the Plan and the manner in which such objections shall be filed; and (c) the time, date and place of the Confirmation Hearing, on all creditors and equity security holders.

⁴ To the extent that circumstances arise that require modification of the Confirmation Hearing Notice, the Debtors reserve the right to supplement or amend such Confirmation Hearing Notice.

38. In addition, Techneglas will publish the Confirmation Hearing Notice in a current edition of the *Columbus Daily Reporter*, *Toledo Blade*, *Wilkes-Barre Times*, *Wall Street Journal (Global)*, and the *Wall Street Journal (National Edition)* to provide notification to persons who may not otherwise receive notice by mail.

39. The Debtors submit that the foregoing procedures will provide adequate notice of the Confirmation Hearing and, accordingly, request that the Court approve such notice as adequate.

H. Procedures for Filing Objections to the Confirmation of the Plan

40. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Fed. R. Bankr. P. 3020(b)(1). The Confirmation Hearing Notice will provide, and the Debtors request that the Court direct, that objections to confirmation of the Plan (or proposed modifications to the Plan, if any), must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection to the confirmation of the Plan; and (d) be filed with the Court and served on the parties listed below (collectively, the “Notice Parties”), so that they are received no later than 4:00 p.m. prevailing Eastern Time on the date of the Voting Deadline (the “Confirmation Objection Deadline”):

Notice Parties	
<p>David L. Eaton (IL Bar No. 3122303) Marc J. Carmel (IL Bar No. 6272032) KIRKLAND & ELLIS LLP 200 East Randolph Drive Chicago, Illinois 60601 Telephone: (312) 861-2000 Facsimile: (312) 861-2200 Email: mcarmel@kirkland.com</p> <p>Counsel to Techneglas, Inc.</p>	<p>Robert J. Sidman (0017390) Brenda K. Bowers (0046799) VORYS, SATER, SEYMOUR & PEASE LLP 52 East Gay Street PO Box 1008 Columbus, Ohio 43216-1008 Telephone: (614) 464-6400 Facsimile: (614) 719 - 4962 Email: bkbowers@vssp.com</p> <p>Counsel to Techneglas, Inc.</p>
<p>Patricia S. Mar (CA Bar No. 45593) Jeffrey M. Kayes (CA Bar No. 216089) MORRISON & FOERSTER LLP 425 Market Street San Francisco, California 94105-2482 Telephone: (415) 268-7000 Facsimile: (415) 268-7522 Email: pmar@mof.com</p> <p>Counsel to Nippon Electric Glass Ohio, Inc.</p>	<p>Kenneth R. Cookson (0020216) Stephanie P. Union (0071092) KEGLER, BROWN, HILL & RITTER A Legal Professional Association 65 East State Street, Suite 1800 Columbus, Ohio 43215 Telephone: (614) 462-5400 Facsimile: (614) 464-2634 Email: kcookson@keglerbrown.com sunion@keglerbrown.com</p> <p>Counsel to Nippon Electric Glass Ohio, Inc.</p>
<p>Daniel A. DeMarco (0038920) Christopher B. Wick (0073126) HAHN LOESER & PARKS LLP 3300 BP Tower 200 Public Square Cleveland, Ohio 44114-2301 Telephone: (216) 621-0150 Facsimile: (216) 241-2824 Email: dademarco@hahnlaw.com cwick@hahnlaw.com</p> <p>Counsel to Nippon Electric Glass America, Inc.</p>	<p>Stephen M. Proctor (0069331) MASUDA FUNAI EIFERT & MITCHELL, LTD. 1475 East Woodfield Road, Suite 800 Schaumburg, IL 60173-5485 Telephone: (847) 734-8836 Facsimile: (847) 734-1089 Email: sproctor@masudafunai.com</p> <p>Counsel to Nippon Electric Glass America, Inc.</p>

41. The Debtors propose that responses to any such objections must be filed and served on the objector and the Notice Parties so as to be received no later than seven (7) days before the Confirmation Hearing. This proposed timing will afford the Court, the Debtors, and other parties in interest sufficient time to consider any objections and proposed modifications prior to the Confirmation Hearing and possibly expedite the Confirmation Hearing by resolving certain objections prior to the Confirmation Hearing.

I. Establishing a Voting Record Date

42. Pursuant to Bankruptcy Rule 3017(d), for the purposes of soliciting votes in connection with the confirmation of a plan of reorganization, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on

the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the voting record date.

43. In accordance with these rules, the voting record date is typically the date an order approving the disclosure statement is entered. As a result the Debtors propose that the Court establish as the record date (the “Voting Record Date”) the date that this Court enters the Disclosure Statement Order, for purposes of determining the creditors that are entitled to vote on the Plan or, in the case of the classes not entitled to vote, for purposes of determining the creditors and interest holders entitled to receive Notices of Non-Voting Status.

(i) Transferred Claims

44. The Debtors propose that with respect to a transferred claim, the transferee shall be entitled to receive a Solicitation Package and cast a Ballot on account of such claim only if: (a) all actions necessary to effect the transfer of the claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date, or (b) the transferee files before the Voting Record Date (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer. Each transferee shall be treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code and the other procedures set forth in this Motion.

45. In the event a claim is transferred after the Voting Deadline, the transferee of such claim shall also be bound by any election, including the release, made on the Ballot by the holder as of the Voting Record Date of such transferred claim.

J. Solicitation Packages

46. The Debtors propose that in connection with their respective cases, the Solicitation Packages shall be mailed no later than five (5) business days after entry of the Disclosure Statement Order on: (a) all persons or entities that have filed proofs of claim or equity interests on or before the Voting Record Date (or their transferees in accordance with the procedures set forth herein) that have not been otherwise withdrawn or expunged by order of this

Court; (b) all persons or entities listed in the Schedules whose claims were not marked as unliquidated, disputed and contingent (or their transferees in accordance with the procedures set forth herein); and (c) all parties in interest that have filed requests for notice in accordance with Bankruptcy Rule 2002 in the respective Debtor's Chapter 11 case on or before the Voting Record Date.

47. Each Solicitation Package shall contain, at a minimum, the following: (a) a copy of the Confirmation Hearing Notice; (b) the Disclosure Statement and the Plan; (c) a copy of the Disclosure Statement Order; and (d) for creditors, either a Ballot and a return envelope or the appropriate Notice of Non-Voting Status; provided, however, that the Solicitation Packages for such holders of claims and interests will only include the appropriate Notice of Non-Voting Status and the Confirmation Hearing Notice.

NO PRIOR REQUEST

48. No prior request for the relief sought herein has been made by the Debtors to this or any other Court.

CONCLUSION

Given the foregoing, the Debtors respectfully request that the Court enter an order, substantially in the form of the order attached hereto as Exhibit A, approving (a) the Debtors' Disclosure Statement; (b) the Form of Ballots and Solicitation Materials, Voting Deadline and Solicitation Procedures, including approval of (i) the Tabulation Rules and Tabulation Procedures, (ii) forms of Ballots for submitting votes on the Plan, (iii) the Voting Deadline for submitting Ballots for voting purposes, (iv) the contents of the proposed Solicitation Packages to be distributed to creditors and other parties in interest, and (v) the proposed Record Date for purposes of voting on the Plan; (c) scheduling hearing on Confirmation of the Plan; (d) approving related notice procedures; and (e) any other relief that the Court deems just and proper.

Dated: July 6, 2005

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