

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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In re: : Case No. 06-51848
: (Jointly Administered)
CEP HOLDINGS, LLC, et al.,¹ :
: Chapter 11
Debtors. :
: Honorable Marilyn Shea-Stonum
: :
: Hearing Date: 3/6/07 at 10:00 a.m.
: Objection Deadline: 3/2/07 at 4:00 p.m.
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**JOINT MOTION OF DEBTORS AND DEBTORS IN
POSSESSION AND THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, PURSUANT TO SECTIONS 502, 1125, 1126 AND
1128 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES
2002, 3003, 3016, 3017, 3018 AND 3020, FOR ENTRY OF AN ORDER: (A)
APPROVING PROPOSED DISCLOSURE STATEMENT; (B) ESTABLISHING
PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES
TO ACCEPT OR REJECT PROPOSED JOINT PLAN OF LIQUIDATION;
AND (C) SCHEDULING CERTAIN DATES IN CONNECTION THEREWITH**

CEP Holdings, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**” or “**CEP**”) and the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) in the above-captioned Chapter 11 cases (the “**Cases**”), hereby move (the “**Motion**”), pursuant to sections 502, 1125, 1126 and 1128 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 3003, 3016, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order: (i) approving the Disclosure Statement (as such term is defined below); (ii) establishing procedures for the solicitation and tabulation of votes to accept or reject the Plan (as such term is defined below); and (iii) scheduling a hearing on the approval of the Disclosure Statement and on the

¹ The Debtors are: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

confirmation of the Plan and approving related notice procedures. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief requested herein are sections 502, 1125, 1126 and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3016, 3017, 3018 and 3020.

BACKGROUND

4. On September 20, 2006 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to an order entered by the Court on September 26, 2006, the Cases are being jointly administered for procedural purposes only.

5. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On September 28, 2006, the United States Trustee (the “**U.S. Trustee**”) appointed the Creditors’ Committee. No trustee or examiner has been appointed.

6. On the Petition Date, the Debtors filed the *Application of Debtors and Debtors in Possession for Entry of an Order Pursuant to 28 U.S.C. § 156(c) and Bankruptcy Rule 2002 Authorizing Employment and Retention of BMC Group, Inc. as Claims, Noticing and Balloting Agent* (Docket No. 19) (the “**BMC Application**”). Pursuant to the BMC Application, the Debtors sought to retain BMC Group, Inc. (“**BMC**”) as claims, noticing and balloting agent in these Cases.

7. On October 13, 2006, upon consideration of the BMC Application, the Court entered the *Order Pursuant to 28 U.S.C. § 156(c) and Federal Rule of Bankruptcy Procedure 2002 Authorizing Debtors to Employ BMC Group, Inc. as Claims, Noticing and Balloting Agent* (Docket No. 133) (the “**BMC Order**”). Pursuant to the BMC Order, BMC is authorized to receive, maintain, record and otherwise administer the proofs of claim filed in these Cases and perform such other administrative matters, including serving at the Debtors’ request as balloting agent under any plan of reorganization filed in these Cases. BMC Order at ¶ 2.

8. On September 28, 2006, the Court entered the *General Order Number One RE: Establishment of (1) Status Conferences and Hearing Dates, (2) Certain Case Management Procedures and (3) General Background Information* (Docket No. 88) (the “**Case Management Order**”).

9. On October 30, 2006, the Debtors filed their *Schedules of Assets and Liabilities* (the “**Schedules**”).

RELIEF REQUESTED

10. By this Motion, the Debtors and the Creditors’ Committee, pursuant to sections 502, 1125, 1126 and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3016, 3017, 3018 and 3020, seek the entry of an order: (i) approving the *Disclosure Statement to Accompany Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors Dated February 5, 2007* (Docket No. 331) (as it may be amended, the “**Disclosure Statement**”); (ii) establishing procedures for the solicitation and tabulation of votes to accept or reject the *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of*

Unsecured Creditors (Docket No. 330) (as it may be amended, the “**Plan**”),² including the approval of (a) the rules for tabulation of votes on the Plan, (b) the forms of ballots for submitting votes on the Plan, (c) the deadline for submission of ballots, (d) the contents of the proposed solicitation package to be distributed to creditors and other parties in interest in connection with the solicitation of votes on the Plan (collectively, and as described more fully in paragraph 34 below, the “**Solicitation Package**”), (e) the proposed record date for Plan voting and (f) certain related relief; and (iii) scheduling a hearing on the approval of the Disclosure Statement (the “**Disclosure Statement Hearing**”) and on the confirmation of the Plan (the “**Confirmation Hearing**”) and approving related notice procedures.

BASIS FOR RELIEF REQUESTED

Request for Approval of the Disclosure Statement

11. The Debtors and the Creditors’ Committee request that the Disclosure Statement be approved as providing “adequate information” in accordance with section 1125 of the Bankruptcy Code. For the reasons described below, the Debtors and the Creditors’ Committee submit that such approval is warranted and appropriate.

A. The Disclosure Statement Contains Adequate Information

12. Under section 1125 of the Bankruptcy Code, a plan proponent must provide the creditors and interest holders with “adequate information” regarding the proposed plan:

“[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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan

² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Plan.

11 U.S.C. § 1125(a)(1). Thus, a disclosure statement must, as a whole, provide “adequate information so that an informed determination can be made whether to accept or reject a reorganization plan.” *In re 266 Washington Assocs.*, 141 B.R. 275, 288 (Bankr. E.D.N.Y. 1992).

13. The Court has broad discretion in determining whether a disclosure statement contains adequate information. *See In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990) (“Congress left vague the standard for evaluating what constitutes adequate information so as to permit a case-by-case determination based on the prevailing facts and circumstances.”); *accord Mabey v. Sw. Elec. Power Co. (In re Cajun Elec. Power Coop.)*, 150 F.3d 503, 518 (5th Cir. 1998), *cert. denied*, 119 S. Ct. 2019 (1999); *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The 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.”); *Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a) . . .”). This particular point is underscored in the legislative history of section 1125 of the Bankruptcy Code:

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 statements, the need for relative speed in solicitation and confirmation

H.R. Rep. No. 595, at 408-09 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6364-65. 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., Cardinal Congregate I*, 121 B.R. at 765; *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988).

14. More specifically, the Disclosure Statement contains information that is relevant and material to the decision of a creditor whether to vote to accept or reject the Plan. Among other things, the Disclosure Statement contains information with respect to: (a) the history of the Debtors; (b) the Debtors' capital structure prior to the Petition Date; (c) the events preceding the Debtors' Chapter 11 filings; (d) the Debtors' prepetition restructuring efforts; (e) the commencement of the Cases; (f) events during the Cases; (g) the terms of the Plan; (h) the legal effects of the Plan; (i) the classification and treatment of Claims and Equity Interests under the Plan; (j) the provisions governing distributions under the Plan; (k) the means for implementing the Plan; (l) the contemplated administration of the Debtors' estates following the confirmation of the Plan by the Trustee; (m) a description of causes of action that can be maintained by the Trustee under the Plan; (n) alternatives to the confirmation of the Plan; (o) certain risk factors to consider that may affect the Plan; (p) voting procedures and confirmation requirements for the Plan; and (q) the Federal income tax consequences of the Plan.

15. The Debtors and the Creditors' Committee respectfully submit that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code. The Debtors and the Creditors' Committee will demonstrate at the Disclosure Statement Hearing that the Disclosure Statement addresses the information set forth above in a manner that provides holders of impaired claims and equity interests that are entitled to vote to accept or reject the Plan with adequate information within the meaning of section 1125 of the Bankruptcy Code and therefore should be approved.

B. Notice of the Disclosure Statement Hearing

16. Bankruptcy Rule 3017(a) provides as follows:

[A]fter a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 25 days' notice to the debtor, creditors, equity security holders and other parties in interest as provided

in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party in interest who requests in writing a copy of the statement or plan.

Fed. R. Bankr. P. 3017(a). In addition, Bankruptcy Rule 2002(b) requires notice by mail to all creditors and indenture trustees of the time set for filing objections to, and the hearing to consider approval of, a disclosure statement. Bankruptcy Rule 2002(d) requires that equity security holders be given notice of the foregoing in the manner and form directed by the Court.

17. In accordance with these requirements, on or before February 8, 2007, the Debtors intend to cause a notice of the Disclosure Statement Hearing, in the form attached hereto as **Exhibit A** and incorporated herein by reference (the “**Disclosure Statement Notice**”), to be served by first class mail, postage prepaid, on the following parties (collectively, the “**Disclosure Statement Notice Parties**”): (a) all creditors or potential creditors identified in the Debtors’ Schedules; (b) all parties that have filed requests for notice in these Cases pursuant to Bankruptcy Rule 2002; (c) all persons or entities that have filed proofs of claim on or before the date of the Disclosure Statement Notice; (d) all persons or entities on the lists of equity security or interest holders filed by the Debtors; (e) the Creditors’ Committee; (f) Wachovia Capital Finance Corporation (Central); (g) the U.S. Trustee; (h) the Securities and Exchange Commission; and (i) other parties required under Bankruptcy Rules 2002 and 3017. Among other things, the Disclosure Statement Notice identifies the date, time and place of the Disclosure Statement Hearing, how to obtain copies of the Plan and Disclosure Statement and the deadline and procedures for asserting objections to the approval of the Disclosure Statement.³

³ In particular, the Disclosure Statement Notice provides that objections or proposed modifications to the Disclosure Statement, if any, must: (a) be in writing; (b) state the name and address of the objecting party and the

Additionally, as set forth in the Disclosure Statement Notice, the Debtors will make copies of the Plan and Disclosure Statement available free of charge at the website maintained by BMC — <http://www.bmcgroup.com/cep>.

18. The Debtors and the Creditors' Committee submit that the foregoing procedures provide adequate notice of the Disclosure Statement Hearing and, accordingly, request that the Court approve such notice as sufficient and appropriate and in compliance with the requirements of the Bankruptcy Code and the Bankruptcy Rules.

Procedures for Tabulation of Votes to Accept or Reject the Plan

A. Approval of Form of Ballots

19. Bankruptcy Rule 3017(d) requires the Debtors to mail a form ballot that substantially conforms with Official Form No. 14 to “creditors and equity security holders entitled to vote on the plan.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(c) provides that “[a]n acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form.” Fed. R. Bankr. P. 3018(c).

20. The Debtors propose to distribute to creditors entitled to vote on the Plan one or more ballots in the forms attached hereto collectively as **Exhibit B** and incorporated herein by reference (collectively, including the instructions set forth therein (the “**Instructions**”), the “**Ballots**”). The Ballots are based on Official Form No. 14, but have been modified to address the particular terms of the Plan and the Debtors' Cases. The Debtors and the Creditors' Committee propose that the appropriate forms of Ballot be distributed to the holders of claims in

nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection or proposed modification and provide the specific language of any proposed modification, where possible; and (d) be filed with the Court and served so that they are received by counsel to the Debtors identified below and the other parties listed on the General Service List in the Cases no later than 4:00 p.m., Eastern Time, on March 2, 2007.

Classes 1 and 4 under the Plan, which are the only classes that are entitled to vote on the Plan. Classes 2 and 3 under the Plan are unimpaired and, therefore, are conclusively presumed to accept the Plan in accordance with section 1126(f) of the Bankruptcy Code. Holders of claims and interests in Class 5 do not retain or receive any property under the Plan and, therefore, are deemed to reject the Plan in accordance with section 1126(g) of the Bankruptcy Code. For these reasons, no Ballots will be sent to creditors in these Classes.

B. Voting Deadline for Receipt of Ballots

21. Bankruptcy Rule 3017(c) provides that, “[o]n 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” Fed. R. Bankr. P. 3017(c). The Debtors anticipate commencing the Plan solicitation period by mailing Ballots and other approved solicitation materials, including the Solicitation Packages, no later than 7 days after the entry of an order approving the Disclosure Statement. Based on this schedule, the Debtors propose that, to be counted as votes to accept or reject the Plan, all Ballots must be properly executed, completed and delivered to BMC, the Debtors’ solicitation and tabulation agent, by either (a) mail in the return envelope provided with each Ballot, (b) overnight courier or (c) personal delivery so that, in each case, such Ballots are received by BMC no later than 5:00 p.m., Eastern Time, on a date established by the Debtors that is at least 30 days after the commencement of the solicitation period (the “**Voting Deadline**”). The Debtors and the Creditors’ Committee submit that a 30-day solicitation period provides sufficient time for creditors to make informed decisions to accept or reject the Plan and submit timely Ballots.

C. Procedures for Vote Tabulation

22. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, 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 purpose of accepting or rejecting the Plan.” Fed. R. Bankr. P. 3017(c).

23. Because the Plan calls for a substantive consolidation of the Debtors for purposes of voting on the Plan and distributions under the Plan, the Debtors and the Creditors’ Committee propose that the solicitation and balloting on the Plan be performed on a consolidated basis.

24. Solely for the purpose of voting to accept or reject the Plan — and not for the purpose of the allowance of, or distribution on account of, a claim and without prejudice to the rights of the Debtors and the Creditors’ Committee in any other context — the Debtors and the Creditors’ Committee propose that each claim within a class of claims entitled to vote to accept or reject the Plan be temporarily allowed in accordance with the following rules (collectively, the “**Tabulation Rules**”).

- a. Unless one or more of the Tabulation Rules set forth below applies and provides otherwise, a claim will be deemed temporarily allowed for voting purposes in an amount equal to: (i) the noncontingent, liquidated and undisputed amount of such claim, as set forth in the Schedules; or (ii) if a proof of claim has been timely filed in respect of such claim, the noncontingent, liquidated and undisputed amount set forth in such proof of claim.
- b. If a claim is deemed allowed in accordance with the Plan, such claim will be temporarily allowed for voting purposes in the deemed allowed amount set forth in the Plan.

- c. If a claim for which a proof of claim has been timely filed and has not been disallowed is listed or marked or otherwise referenced on its face as contingent, unliquidated or disputed, either in whole or in part, only the noncontingent, liquidated and undisputed portion, if any, of such claim will be deemed temporarily allowed for voting purposes, subject to the other Tabulation Rules, and the remaining portion of such claim will be disallowed for voting purposes.
- d. If a claim for which a proof of claim has been timely filed is marked as a priority claim, either in whole or in part, but is listed in the Schedules as a nonpriority claim or as a priority claim only in part, such claim will be temporarily allowed for voting purposes as a nonpriority claim in an amount equal to the lesser of (i) the entire amount of such claim as set forth in the proof of claim or (ii) the nonpriority claim set forth in the Schedules, provided that such claim is not listed in the Schedules or marked on the proof of claim as contingent, unliquidated or disputed.
- e. If a claim has been allowed pursuant to a stipulation approved by the Court, such claim will be deemed temporarily allowed for voting purposes in the amount set forth in the stipulation.
- f. 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.
- g. With respect to a claim as to which (i) the claim is (A) listed in the Schedules as contingent, unliquidated or disputed or in a zero amount or (B) not listed in the Schedules and (ii) a proof of claim was not timely filed and no stipulation allowing the claim has been approved by the Court, such claim will be disallowed for voting purposes.
- h. If the Debtors have filed and served an objection to a claim on or before the date that is 10 days after the date of service of the Confirmation Hearing Notice (as such term is defined below), such claim will be disallowed for voting purposes in accordance with the relief sought in the objection, unless the objection only seeks disallowance of part of such claim, in which event only the amount subject to the objection will be disallowed for voting purposes.
- i. If a claim holder identifies a claim amount on 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.

25. The Debtors and the Creditors' Committee believe that the Tabulation Rules will establish a fair and equitable voting process. Nevertheless, if any claimant seeks to challenge the

allowance of its claim for voting purposes in accordance with the Tabulation Rules, the Debtors propose that the claimant be required to file a motion, pursuant to Bankruptcy Rule 3018(a), 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**”) and serve the motion on the Debtors so that it is received no later than 10 days after the later of (a) the date of service of the Confirmation Hearing Notice and (b) the date of service of a notice of an objection, if any, to the underlying claim. The Debtors shall have 7 days to file and serve any responses to Rule 3018 Motions. In accordance with Bankruptcy Rule 3018, the Debtors and the Creditors’ Committee propose that any Ballot submitted by a creditor that files a Rule 3018 Motion will be counted solely in accordance with the Debtors’ and the Creditors’ Committee proposed Tabulation Rules and the 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. The Debtors shall coordinate with the Court to adjudicate and resolve all pending Rule 3018 Motions and any responses thereto in a timely fashion and, to the extent possible, at a single court hearing in advance of the Confirmation Hearing.

26. In tabulating the Ballots, the Debtors and the Creditors’ Committee request that the following additional procedures be utilized: (a) if a creditor casts more than one Ballot voting the same Claim before the Voting Deadline, the latest dated Ballot will be deemed to reflect the voter’s intent and thus will supersede any prior Ballots; (b) creditors will be required to vote all of their claims within a particular class under the Plan either to accept or reject the Plan and may not split their votes; thus, a Ballot (or a group of Ballots within a Plan class received from a single creditor) that partially rejects and partially accepts the Plan will not be counted; and (c) for the purposes of determining whether the numerosity and claim amount

requirements of sections 1126(c) and 1126(d) of the Bankruptcy Code have been satisfied, the Tabulation Agent will tabulate only those Ballots received by the Voting Deadline. In addition, the Debtors expressly reserve their rights, pursuant to section 1126(e) of the Bankruptcy Code, to request that the Court designate any Ballot or Ballots as not being cast in good faith.

***Confirmation Hearing and Notice, Record Date
and Procedures for Distribution of Solicitation Packages***

A. The Confirmation Hearing

27. 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 the date for the hearing on confirmation.” Fed. R. Bankr. P. 3017(c).

28. In accordance with Bankruptcy Rule 3017(c), the Debtors and the Creditors’ Committee request that the Confirmation Hearing be scheduled, subject to Court availability in the Court’s calendar, approximately 45 days after the Solicitation Package is distributed to voting creditors.⁴ In accordance with Bankruptcy Rule 3020,⁵ the Debtors and the Creditors’ Committee further propose that objections, if any, to confirmation of the Plan 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

⁴ As stated above, the Debtors intend to distribute the Solicitation Packages no later than 7 days after the entry of an order approving the Disclosure Statement.

⁵ Bankruptcy Rule 3020(b)(1) provides:

An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and any other entity designated by the court, within a time fixed by the court. Unless the case is a chapter 9 municipality case, a copy of every objection to confirmation shall be transmitted by the objecting party to the United States trustee within the time fixed for filing objections. An objection to confirmation is governed by Rule 9014.

Fed. R. Bankr. P. 3020.

confirmation of the Plan; and (d) be filed with the Court and served on (i) counsel to the Debtors; (ii) counsel to the Creditors' Committee; and (iii) the U.S. Trustee (collectively, the "**Interested Parties**") so that they are received no later than 4:00 p.m., Eastern Time, on the same date as the Voting Deadline (the "**Confirmation Objection Deadline**").⁶ The Debtors and the Creditors' Committee further propose that any reply to any such objections must be filed and served on the Interested Parties and any party that files an objection to the Plan within 2 days prior to the Confirmation Hearing.

29. Bankruptcy Rule 2002(b) requires at least 25 days' notice by mail to all creditors and indenture trustees of the time for filing objections to confirmation of a Chapter 11 plan and the hearing to consider confirmation of a Chapter 11 plan. Bankruptcy Rule 2002(d) requires that equity security and interest holders be given notice of these matters in the manner and form directed by the Court. In accordance with Bankruptcy Rules 2002 and 3017(d), the Debtors propose to serve on all creditors and equity security and interest holders, as part of the Solicitation Package at the commencement of the 30-day Plan solicitation period, a copy of a notice substantially in the form attached hereto as **Exhibit C** (the "**Confirmation Hearing Notice**") setting forth, among other things: (a) the Voting Deadline for the submission of Ballots to accept or reject the Plan; (b) the Tabulation Rules; (c) the deadline for filing Rule 3018 Motions; (d) the Confirmation Objection Deadline; and (e) the time, date and place of the Confirmation Hearing.

⁶ As set forth above, the Voting Deadline will be a date established by the Debtors that is at least 30 days after the commencement of the solicitation period. The Debtors intend to distribute the Solicitation Packages no later than 7 days after the entry of an order approving the Disclosure Statement.

B. The Record Date

30. Bankruptcy Rule 3017(d) provides that the “date [on which an] order approving the disclosure statement is entered,” or such date established by the court, is the record date for determining the “holders of stock, bonds, debentures, notes, and other securities” entitled to receive the materials specified in Bankruptcy Rule 3017(d), including ballots for voting on a plan of reorganization.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding the determination of the record date for voting purposes. Fed. R. Bankr. P. 3018(a) (“[A]n equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing.”).

31. The Debtors and the Creditors’ Committee request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) to establish the date that the Court enters an order approving the Disclosure Statement as the record date for purposes of determining which creditors and interest holders are entitled to receive Solicitation Packages and, as applicable, vote on the Plan (the “**Record Date**”). The establishment of the Record Date is for voting purposes only and will have no preclusive effect with regard to which claimants are entitled to receive distributions under the Plan.

32. With respect to any transferred claim, the Debtors and the Creditors’ Committee further propose that the transferee will be entitled to receive a Solicitation Package and cast a Ballot on account of the transferred 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 Record Date; or (b) the transferee files, no later than the 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 will be treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code and the other voting and solicitation procedures set forth herein.

C. The Solicitation Package

33. Bankruptcy Rule 3017(d) identifies the materials that must be provided to holders of claims and equity interests for purposes of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan. Bankruptcy Rule 3017(d) provides:

Upon approval of a disclosure statement, — except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders — the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.

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

34. The Solicitation Package, which will include the materials required to be provided to the holders of claims and equity interests under Bankruptcy Rule 3017(d), will be mailed to such parties after the Court has approved the contents of the Disclosure Statement as containing adequate information, as required by section 1125 of the Bankruptcy Code. Specifically, the

Debtors propose to mail or cause to be mailed Solicitation Packages containing copies of: (a) the Confirmation Hearing Notice; (b) the Disclosure Statement (together with the exhibits thereto, that have been filed with the Court before the date of the mailing); (c) the Plan (together with the exhibits thereto, that have been filed with the Court before the date of the mailing), as an exhibit to the Disclosure Statement; (d) letters from the Debtors and the Creditors' Committee recommending acceptance of the Plan;⁷ and (e) the Solicitation Packages sent to holders of claims in classes entitled to vote to accept or reject the Plan, an appropriate form of Ballot, a Ballot return envelope and such other materials as the Court may direct. Consistent with sections 1126(f) and 1126(g) of the Bankruptcy Code and Bankruptcy Rule 3017(d), Solicitation Packages for holders of claims against or interests in the Debtors in a class under the Plan that is deemed to accept or reject the Plan under sections 1126(f) and 1126(g) of the Bankruptcy Code will not include a Ballot.

35. Except as described below, Solicitation Packages will be mailed no later than 7 days after the entry of an order approving the Disclosure Statement to: (a) all persons or entities that have filed proofs of claim or equity interests on or before the Record Date (or their transferees in accordance with the procedures set forth above); (b) all persons or entities listed in the Schedules as holding liquidated, noncontingent, undisputed claims as of the Record Date (or their transferees in accordance with the procedures set forth above); (c) all other known holders of claims or equity interests against the Debtors, if any, as of the Record Date; (d) all governmental units identified in the Schedules as creditors or potential creditors; (e) all non-Debtor parties to executory contracts and unexpired leases identified in the Schedules or any

⁷ The Debtors and the Creditors' Committee intend to file copies of these letters with the Court prior to the Disclosure Statement Hearing.

motion filed with the Court regarding the Debtors' assumption, assumption and assignment or rejection of executory contracts or unexpired leases; (f) all parties in interest that have filed requests for notice in accordance with Bankruptcy Rule 2002 in the Debtors' Cases on or before the Record Date; (g) the U.S. Trustee; (h) the Securities and Exchange Commission and (i) all other parties identified on the General Service List established by the Case Management Order. Except as otherwise provided above, entities identified in the Schedules as holding contingent, unliquidated or disputed claims that did not file a timely proof of claim will be served only with a copy of the Confirmation Hearing Notice.

36. The Debtors anticipate that a number of Disclosure Statement Notices will be returned by the United States Postal Service as undeliverable as a result of incomplete or inaccurate addresses (collectively, the "**Undeliverable Addresses**"). The Debtors and the Creditors' Committee believe that it would be costly and wasteful to mail Solicitation Packages to the Undeliverable Addresses. Therefore, the Debtors and the Creditors' Committee request that if the Debtors and the Creditors' Committee, in their sole discretion, deem it appropriate not to attempt to obtain accurate addresses for those entities for which the Debtors only have Undeliverable Addresses, based on returned mail in connection with the mailing of the Disclosure Statement Notice or earlier mailings in these Cases, that they be excused from mailing Solicitation Packages to such entities, unless the Debtors are provided with accurate addresses for such entities, in writing, on or before the Record Date.

37. The Debtors and the Creditors' Committee submit that the foregoing procedures for providing notice of the Confirmation Hearing, the Confirmation Objection Deadline and related matters fully comply with Bankruptcy Rules 2002 and 3017. Accordingly, the Debtors

and the Creditors' Committee request that the Court approve such procedures as appropriate and in compliance with the requirements of the Bankruptcy Code and the Bankruptcy Rules.

NOTICE

38. Notice of the Motion has been given to the parties listed on the Core Group and the 2002 Service List maintained by the Debtors.

39. No prior request for the relief sought in this Motion has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtors and the Creditors' Committee respectfully request that the Court (a) enter an order substantially in the form attached hereto as **Exhibit D**, granting the relief requested herein; and (b) grant such other and further relief to the Debtors and the Creditors' Committee as the Court may deem proper.

Dated: February 5, 2007
Cleveland, OH

CEP HOLDINGS, LLC, et al.,
Debtors and Debtors-in-Possession

By: /s/ Joseph F. Hutchinson, Jr.
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