

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	:	Chapter 11
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	:	Case No. 11-13511 (KJC)
Debtors. <sup>1</sup>	:	:	Jointly Administered
	:	:	
	X		<b>Hrg. Date: July 9, 2012 at 11:00 a.m. (Eastern)</b> <b>Objs. Due: July 2, 2012 at 4:00 p.m. (Eastern)</b>

**DEBTORS' MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105, 502, 1125, 1126 AND 1128, FED. R. BANKR. P. 2002, 3003, 3017, 3018, 3020 AND 9007, DEL. BANKR. L.R. 3017-1 (I) APPROVING PROPOSED DISCLOSURE STATEMENT; (II) APPROVING KEY DATES AND DEADLINES RELATED TO BALLOT SOLICITATION AND TABULATION PROCEDURES, FORMS OF BALLOTS, AND MANNER OF NOTICE; AND (III) FIXING DATE, TIME AND PLACE FOR CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS THERETO**

Syms Corp. ("Syms"), Filene's Basement, LLC ("Filene's"), Syms Clothing, Inc. ("Clothing") and Syms Advertising, Inc. ("Advertising" and together with Syms, Filene's and Clothing, the "Debtors"), hereby move this Court (the "Motion") for entry of an order pursuant to sections 105(a), 502, 1125, 1126 and 1128 of title 11, United States Code (the "Bankruptcy Code"), Rules 2002, 3003, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3017-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"): (i) approving the form and content of the proposed Disclosure Statement (defined below), a copy of which was filed with the Court on May 24, 2012 [D.I. 1364]; (ii) approving the

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.



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Ballot Solicitation and Tabulation Procedures, key dates and deadlines related thereto, the forms of ballots, and the manner of notice; and (iii) fixing the date, time and place for the confirmation hearing and deadline for filing objections to the Plan (defined below). In support of the Motion, the Debtors represent as follows:

### **JURISDICTION**

1. The Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b) and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

#### **A) The Chapter 11 Filings**

2. On November 2, 2011 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

3. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases. On November 8, 2011, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Creditors’ Committee”) in these chapter 11 cases pursuant to Bankruptcy Code section 1102. On November 15, 2011, the Office of the United States Trustee appointed an Official Committee of Equity Security Holders of Syms Corp. (the “Equity Committee” and, together with the Creditors’ Committee, the “Committees”) in these chapter 11 cases pursuant to Bankruptcy Code section 1102.

**B) Factual Background**

4. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Declaration of Gary P. Binkoski in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings, [D.I. 3], fully incorporated herein by reference.

**C) Bar Date**

5. On January 18, 2012, the Court entered an order [D.I. 674] establishing March 1, 2012 at 5:00 p.m. (Eastern) (the "General Bar Date") as the deadline for filing proofs of claim against the Debtors. The bar date for Governmental Units (as defined in the Bankruptcy Code) was May 4, 2012 at 5:00 p.m. (Eastern) (the "Governmental Bar Date," and together with the General Bar Date, the "Bar Date").

**D) Filing of Disclosure Statement and Plan**

6. On May 24, 2012 the Debtors filed the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders (collectively, and as may be subsequently amended, supplemented, or modified, the "Plan") [D.I. 1363]. Along with the Plan, the Debtors have filed the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries (collectively, and as may be subsequently amended, supplemented, or modified, the "Disclosure Statement") [D.I. 1364], and certain other documents that implement the terms of the Plan.

**E) Overview of the Plan<sup>2</sup>**

7. The Plan, while proposed jointly, constitutes two separate plans, one for Syms and one for Filene's. The Debtors do not believe that Clothing or Advertising have any assets or liabilities. Accordingly, the Debtors have not proposed a separate plan for either of these Debtors and have provided in the Plan that they shall be merged into Reorganized Syms.

8. As discussed in the Disclosure Statement, the Plan embodies a comprehensive compromise and settlement, pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, of certain matters related to the historical operation of the Debtors' businesses, including (i) the treatment of intercompany claims, (ii) the disposition of the property of the Debtors' estates, (iii) any possible claims or causes of action that the Debtors' estates should be substantively consolidated, (iv) the disposition of any claims or causes of action of the Debtors or their estates and (v) any claims or causes of action between and among the Equity Committee and the members of the Equity Committee and their affiliates on the one hand, and the Majority Shareholder and current and former officers, directors, managers and professionals of the Debtors, on the other (the "Plan Settlement").

9. The classification and treatment of certain Claims against and Interests in the Debtors reflect the Plan Settlement. The chart in section F below, summarizes the classification of the claims and interests in the Debtors. As part of the Plan Settlement, the Debtors have agreed that there shall be no recovery on account of any intercompany claim or superpriority intercompany claim and on the Effective Date, all Intercompany Claims and superpriority intercompany claims shall be deemed cancelled and extinguished. Under the Plan,

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<sup>2</sup> The Plan is Exhibit A to the Disclosure Statement. The summary of the Plan contained in this Motion is qualified in its entirety by the specific provisions of the Plan.

Holders of claims in Syms Classes 1, 2 and 3 and Filene's Classes 1, 2 and 3 will be paid the full value of their allowed claims on the business day the Plan becomes effective (the "Effective Date"). Holders of claims in Syms Class 4 and Filene's Class 4 will be paid the full value of their allowed claims. Holders of claims in Filene's Class 5 will be paid 75% of the value of their allowed claims (without interest). Holders of interests in Syms Class 6 will retain their equity interest in Syms, subject to the Share Purchase Transaction described in the Plan.

**F) Voting Classes**

10. Under section 1126 of the Bankruptcy Code, not all holders of claims against and equity interests in a debtor are entitled to vote on a chapter 11 plan. As shown in the table below, the Debtors only intend to solicit votes to accept or reject the Plan from holders of claims in Syms Class 4 and interests in Syms Class 6, and holders of claims in Filene's Classes 4 and 5 (collectively, the "Voting Classes"). The holders of Claims and Interests in the Voting Classes are impaired under section 1124 of the Bankruptcy Code and therefore have the right to vote to accept or reject the Plan.

11. The Debtors are not soliciting votes from holders of claims in Syms Classes 1, 2 and 3 and Filene's Classes 1, 2 and 3 because those classes are conclusively presumed to have accepted the Plan. The Debtors are also not soliciting votes from holders of claims and interests in Syms Class 5 and Filene's Classes 6 and 7, as holders of claims and interests in those classes will receive no recovery under the Plan. Filene's holds all the claims in Syms Class 5, Syms holds all the claims in Filene's Class 6 and Syms holds all the interests in Filene's Class 7. Those classes are presumed to accept the Plan, because Syms and Filene's are proponents of the Plan (Syms Classes 1, 2, 3 and 5 and Filene's Classes 1, 2, 3, 6 and 7 are collectively referred to as the "Non-Voting Classes").

12. For purposes of voting on the Plan and receiving distributions under the Plan, votes will be tabulated separately for each of Syms and Filene's. The following table provides a summary of the status and voting rights of each class (and therefore of each holder within such class) under the Plan.

<b>Class</b>	<b>Claim/Interest</b>	<b>Status</b>	<b>Voting Rights</b>
Syms Class 1	Secured Claims	Unimpaired	Deemed to Accept
Syms Class 2	Non-Tax Priority Claims	Unimpaired	Deemed to Accept
Syms Class 3	Convenience Claims	Unimpaired	Deemed to Accept
Syms Class 4	General Unsecured Claims	Impaired	Voting Class
Syms Class 5	Intercompany Claims	Impaired	Deemed to Accept
Syms Class 6	Interests in Syms	Impaired	Voting Class

Filene's Class 1	Secured Claims	Unimpaired	Deemed to Accept
Filene's Class 2	Non-Tax Priority Claims	Unimpaired	Deemed to Accept
Filene's Class 3	Convenience Claims	Unimpaired	Deemed to Accept
Filene's Class 4	General Unsecured (Short-Term) Claims	Impaired	Voting Class
Filene's Class 5	General Unsecured (Long-Term) Claims	Impaired	Voting Class
Filene's Class 6	Intercompany Claims	Impaired	Deemed to Accept
Filene's Class 7	Interests in Filene's	Impaired	Deemed to Accept

### **RELIEF REQUESTED**

13. By this Motion, pursuant to sections 105(a), 502, 1125, 1126 and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3003, 3017, 3018, 3020 and 9007 and Local Rule 3017-1, the Debtors seek entry of an order substantially in the form of the order annexed to this Motion as Exhibit A (the "Disclosure Statement and Solicitation Procedures Order"): (i) approving the form and content of the Disclosure Statement, (ii) approving the Ballot Solicitation and Tabulation Procedures and certain key dates and deadlines related thereto, a copy of which is annexed to this Motion as Exhibit B (the "Solicitation Procedures"), the forms of ballots, and manner of notice; and (iii) fixing the date, time and place for the confirmation hearing and

deadline for filing objections to the Plan. The Debtors propose the following solicitation schedule:

<b><u>DATE</u></b>	<b><u>EVENT</u></b>
July 9, 2012 11:00 a.m. (Eastern)	Disclosure Statement Hearing
July 13, 2012	Voting Record Date
July 20, 2012	Deadline to distribute Solicitation Packages, Deadline to serve Cure Notices
July 23, 2012	Deadline for publication of Confirmation Hearing Notice
August 10, 2012	Rule 3018(a) Motion Deadline
August 13, 2012	Plan Exhibit filing deadline
August 21, 2012	Confirmation Objection Deadline; Assumed Contract Cure Amount Objections Deadline
August TBD [21-24], 2012 (depending on availability of a hearing date)	Rule 3018(a) Motion Hearing Date
August 23, 2012	Voting Deadline
August 28, 2012	Deadline for filing ballot tabulation report
August 29, 2012 at 10:00 a.m. (Eastern)	Confirmation Hearing

## **BASIS FOR RELIEF**

### **I. APPROVAL OF DISCLOSURE STATEMENT**

14. Pursuant to section 1125 of the Bankruptcy Code, a plan proponent must provide holders of impaired claims and equity interests with “adequate information” regarding a debtor’s proposed plan of reorganization. In that regard, section 1125(a)(1) of the Bankruptcy Code defines “adequate information” as:

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 such a hypothetical investor of the relevant class to make an informed judgment about the plan. . . .

11 U.S.C. § 1125(a)(1). Thus, a disclosure statement must, as a whole, provide information that is “reasonably practicable” to permit an “informed judgment” by impaired creditors or shareholders entitled to vote on the plan of reorganization. See In re Zenith Electronics Corp., 241 B.R. 92, 99-100 (Bankr. D. Del. 1999); In re Dakota Rail, Inc., 104 B.R. 138, 142 (Bankr. D. Minn. 1989); 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”).

15. In examining the adequacy of the information contained in a disclosure statement, the Court has broad discretion. See Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.), 844 F.2d 1142, 1157 (5th Cir.), cert. denied, 488 U.S. 926 (1988); In re River Village Assocs., 181 B.R. 795, 804 (E.D. Pa. 1995); Ionosphere Clubs, Inc. v. Shugrue (In re Ionosphere Clubs, Inc.), 179 B.R. 24, 29 (S.D.N.Y. 1995); see also Dakota Rail, 104 B.R. at 143 (court has “wide discretion to determine . . . whether a disclosure statement contains adequate information without burdensome, unnecessary and cumbersome detail”). This grant of discretion was intended to facilitate the effective reorganization of a debtor in the broad range of businesses in which chapter 11 debtors engage, and the broad range of circumstances in respect of debtors and their chapter 11 cases. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 408-09 (1977). “In reorganization cases, there is frequently great uncertainty. Therefore, the need for flexibility is greatest.” Id. at 409. Accordingly, the determination of whether a disclosure



statement contains adequate information is to be made on a case by case basis, focusing on the unique facts and circumstances of each case.

16. Courts have discretion to consider many different factors in determining whether a disclosure statement contains adequate information, but courts generally focus on whether the disclosure statement contains the following types of information: (i) a summary of the plan, including any plan settlement and its effect on distributions to holders of claims against and interests in the debtors, (ii) a discussion of events leading to the debtors' chapter 11 cases, (iii) an estimation of allowed administrative claims, including claims for compensation and reimbursement of expenses by professionals retained in the debtors' chapter 11 cases, (iv) a description and estimate, as applicable, of the claims against and the interests in the debtors, (v) a description of the risks associated with the plan, (vi) a description of the administration of the debtors' estates following confirmation of the plan, (vii) a description of the future business of the reorganized debtor; (viii) a description of the tax consequences of the plan, (ix) a liquidation analysis of the debtors, (x) pro forma financial projections for the reorganized debtors,<sup>3</sup> (xi) the sources of the information contained in the disclosure statement, (xii) a disclaimer stating that no person may give any information or make any representation about the plan other than the information contained in the disclosure statement, (xiii) a discussion of the debtors' performance while in chapter 11 and (xiv) information regarding the future management of the reorganized debtor. See In re Scioto Valley Mortgage Co., 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (articulating significant factors for a court to consider in assessing whether a disclosure statement provides adequate information).

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<sup>3</sup> A liquidation analysis and the pro forma financial projections for Reorganized Syms will be filed in advance of the hearing on approval of the Disclosure Statement.

17. The Disclosure Statement contains the information and discussions noted in the preceding paragraph. Accordingly, the Debtors submit that the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code and should be approved.

18. The Debtors further request that the Court authorize them to (i) make non-material changes to the Disclosure Statement, Plan, and related documents (including the appendices and exhibits thereto) and (ii) revise the Disclosure Statement and related documents (including the appendices or exhibits thereto) to add further disclosure concerning events occurring at or after the Disclosure Statement Hearing, before distributing it in accordance with the terms of the proposed Disclosure Statement and Solicitation Procedures Order. If so permitted, the Debtors would file copies with the Court of any changed pages blacklined to show the changes.

## **II. ESTABLISHMENT OF CURE PROCEDURES FOR EXECUTORY CONTRACTS OR UNEXPIRED LEASES TO BE ASSUMED OR ASSUMED AND ASSIGNED PURSUANT TO THE PLAN**

19. Under the Article VIII of the Plan, the Debtors seek authority to assume certain executory contracts and unexpired leases as of the Effective Date, pursuant to Bankruptcy Code section 365. In order that the cure requirements be known prior to the Effective Date, the Debtors seek authority to implement the following procedures:

- (a) No later than July 20, 2012 the Debtors will serve on each party to an executory contract or unexpired lease that may be assumed under the Plan (the "Assumed Contracts") a notice (in the form attached hereto as Exhibit C, the "Cure Notice") setting forth the amount necessary to cure any defaults of any of the Debtors under such Assumed Contract according to the Debtors' books and records (the "Cure Amount"). The Cure Notice will notify each Assumed Contract counterparty that the Assumed Contract will be assumed by the Debtors as of the Effective Date subject to payment of the Cure Amount, if any.

- (b) The Cure Notice will state that any objection to assumption of the Assumed Contract and the Cure Amount (a "Cure Amount Objection") must be filed on or before August 21, 2012. The Cure Notice will also state that any Cure Amount Objection must state with specificity what Cure Amount the Assumed Contract counterparty believes is required and include invoices and other appropriate documentation in support thereof.
- (c) Disputes regarding Cure Amounts or the assumption and reinstatement of an executory contract or unexpired lease under the Plan will be resolved either consensually by the parties or by the Bankruptcy Court at the Confirmation Hearing (or at such later hearing as the Debtors schedule). A Cure Amount Objection should not be treated by the Court as an objection to confirmation of the Plan.
- (d) If no Cure Amount Objection is timely received, the counterparty to the Assumed Contract will be deemed to have consented to the Cure Amount and the assumption of the Assumed Contract (subject to the occurrence of the Effective Date), and the Cure Amount set forth in the Cure Notice will be controlling, and the counterparty party to such Assumed Contract shall be forever barred from objecting to the assumption of the contract or lease and from asserting, collecting, or seeking to collect any additional amounts relating thereto against the Debtors or Reorganized Syms. Any Cure Amounts to which no Cure Amount Objection is timely received, and disputed Cure Amounts which are resolved by agreement or by the Bankruptcy Court at the Confirmation Hearing (or at any later hearing), shall be paid in accordance with the Plan.
- (e) The Debtors may designate any Assumed Contract for rejection at any time prior to the payment of the Cure Amount.

20. The Debtors reserve their right, to remove from or add to the Exhibits to the Plan any contract or lease prior to the Effective Date by filing notice of such removal or addition with the Bankruptcy Court prior to the Effective Date.

### **III. ESTABLISHMENT OF KEY DATES AND OTHER PROCEDURES<sup>4</sup>**

#### **A) The Voting Record Date**

21. Bankruptcy Rule 3017(d) 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 the "holders of stock, bonds, debentures, notes and other securities" entitled to receive ballots and the materials necessary for voting on the plan as specified in Bankruptcy Rule 3017(d). Absent a court order providing otherwise, Bankruptcy Rule 3018(a) sets a record date based on when the Clerk of the Court enters an order approving the Disclosure Statement.

22. However, the Voting Agent (as defined below in Section V.A below) in these cases needs advance notice to enable those responsible for assembling ownership lists of the publicly-traded equity securities and other claims to prepare such lists as of a date certain. Accurate lists often cannot be prepared retroactively as to ownership on a prior date. Accordingly, the Debtors request that this Court exercise its authority under the Bankruptcy Rules to establish July 13, 2012 as the voting record date (the "Voting Record Date") for the purpose of determining (a) creditors and interest holders entitled to receive Solicitation Packages (as defined below) and (b) creditors and interest holders entitled to vote to accept or reject the Plan, notwithstanding anything else to the contrary in the Bankruptcy Rules.

23. For clarity, and to ensure that there is no confusion as a result of "last-minute" claims trading activity, the Debtors request that the Court order that the proper holder of

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<sup>4</sup> Some of the key features of the Solicitation Procedures are described below. The description of the Solicitation Procedures set forth herein is intended only as a summary. Nothing in the following summary is intended to modify the Solicitation Procedures, and reference should be made to the Solicitation Procedures at Exhibit B hereto for the precise terms thereof, which control in the event of any inconsistency between this summary and the Solicitation Procedures.

a docketed proof of claim or scheduled claim be determined by reference to the Voting Agent's (as defined below) claims register as may be modified by any properly completed claims transfers in accordance with the Bankruptcy Rules and reflected on the Court's official docket (ECF) at 11:59 p.m. (prevailing Eastern time) on the Voting Record Date. Only those registered holders of claims as reflected on the docket together with the Voting Agent's database on the Voting Record Date shall be entitled to vote. The holders of any claims filed after the Voting Record Date or transferees of claims where the effective date of such transfer is after the Voting Record Date will not be entitled to vote on the Plan.

**B) Approval of Voting Deadline**

24. Bankruptcy Rule 3017(c) requires the Court to fix a time within which holders of claims may vote to accept or reject the Plan. The Debtors request that the Court establish **August 23, 2012** at 5:00 p.m. (prevailing Pacific time) (the "Voting Deadline") as the deadline by which ballots for accepting or rejecting the Plan must be received by the Voting Agent if they are to be counted.

**C) Procedures for Temporary Allowance of Claims Pursuant to Rule 3018 for Voting Purposes**

25. Any creditors whose claims against the Debtors are (a) scheduled by the Debtors, docketed by the Voting Agent or otherwise deemed to be contingent, unliquidated, or disputed, or (b) remain subject to an objection as of the Voting Record Date are not entitled to vote on the Plan. Bankruptcy Rule 3018(a) provides in relevant part that "notwithstanding objection to a claim or interest, 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 a plan."

26. If any creditor seeks to challenge the disallowance of its claim for voting purposes, the Debtors request that the Court direct such creditor to serve on the Debtors, and file with the Court, a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such Claim in a different amount only for purposes of voting to accept or reject the Plan (a "Rule 3018(a) Motion") on or before **August 10, 2012** at 4:00 p.m. (prevailing Eastern time) (the "Rule 3018(a) Motion Deadline"). The Debtors further request that the Bankruptcy Court direct that Rule 3018(a) Motions: (a) be made in writing, (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, (c) set forth the name of the party asserting the Rule 3018(a) Motion, (d) state with particularity the legal and factual bases for the Rule 3018(a) Motion, and (e) be filed with the Bankruptcy Court and served so as to be RECEIVED by the Notice Parties (as defined below) no later than the Rule 3018(a) Motion Deadline.

27. The Debtors propose that any party timely filing and serving a Rule 3018(a) Motion will be provided a ballot and will be permitted to cast a provisional vote to accept or reject the Plan prior to the Voting Deadline. The Debtors request that the Court schedule a hearing the week of August 21-24, 2012 as the hearing date on the Rule 3018(a) Motions (the "Rule 3018(a) Motion Hearing Date") In the event that the Debtors and such party are unable to resolve any issues raised by the Rule 3018(a) Motion prior to the Rule 3018(a) Motion Hearing Date, the Debtors may object to the Rule 3018(a) Motion at the Rule 3018(a) Motion Hearing Date (without filing a written objection). The Court may then determine whether the provisional ballot should be counted as a vote on the Plan. Such a procedure will help ensure an efficient tabulation of ballots to be completed accurately by the Confirmation Hearing.

**IV. APPROVAL OF CONFIRMATION HEARING DATE, FORM AND MANNER OF NOTICE OF THE CONFIRMATION HEARING AND DEADLINE AND PROCEDURES FOR FILING PLAN OBJECTIONS AND REPLIES**

**A) Confirmation Hearing Date and Time**

28. Pursuant to Bankruptcy Rules 2002(b), 3017(c) and 3020(b)(2), the Debtors request that the Court set August 29, 2012, at 10:00 a.m. (prevailing Eastern time) as the date and time for commencement of the hearing on confirmation of the Plan (the "Confirmation Hearing"). The Debtors also request that the Court permit the Debtors to continue the Confirmation Hearing by announcing such continuance in open court, in an agenda for such hearing, or by filing notice of the continuance.

**B) Deadline and Procedures for Filing Confirmation Objections**

29. Bankruptcy Rule 3020(b)(1) provides that 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). Therefore the Debtors request that the Court direct that, notwithstanding anything in the Bankruptcy Rules to the contrary, objections or responses, if any, to confirmation of the Plan ("Confirmation Objections") must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) state the name and address of the objecting or responding party and the nature and amount of any claim or interest asserted by such party against or in the Debtors, their estates, or their property; (d) state with particularity the basis and nature of any objection or response and the legal and factual bases therefor; (e) reference with specificity the provisions of the Plan to which objection or response is made, including proposed language to be added to the Plan or existing language in the Plan to be modified or deleted to resolve such objection or response; (f) be filed, together with proof of service, with the Bankruptcy Court by 4:00 p.m. on August 21, 2012 (the "Confirmation Objection Deadline"); and (g) be served by the Confirmation Objection Deadline upon the following parties (collectively, the "Notice Parties"):

The Debtors

Syms Corp. and Filene's Basement LLC  
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Secaucus, NJ 07904  
Attn: Laura Brandt, Esq.

Counsel for the Debtors

Skadden, Arps, Slate, Meagher & Flom LLP  
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Wilmington, DE 19899  
Attn: Mark S. Chehi, Esq.

- and -

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Attn: Mark A. McDermott, Esq.

U.S. Trustee

The Office of the United States Trustee  
J. Caleb Boggs Federal Building  
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Attn: David Klauder, Esq.

Counsel for the Creditors' Committee

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Attn: Janine M. Cerbone, Esq.

- and -

Richards, Layton & Finger, P.A.  
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Counsel for the Equity Committee

Munger, Tolles & Olson LLP  
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Attn: Thomas B. Walper, Esq.  
Attn: Seth Goldman, Esq.

- and -

Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
Attn: Robert J. Dehney, Esq.

**C) Replies to Confirmation Objections**

30. The Debtors also request that the Court set August 27, 2012, at 4:00 p.m. (prevailing Eastern Time) as the deadline by which parties-in-interest can file replies or an omnibus reply to any Confirmation Objections that may be filed.

**D) Form of Confirmation Hearing Notice**

31. The form of notice that the Debtors propose to utilize to provide notice of the Confirmation Hearing to creditors and parties-in-interest ("Confirmation Hearing Notice") is attached hereto as Exhibit D. The Confirmation Hearing Notice provides, among other details, the following: (a) the date of the Confirmation Hearing, (b) the Confirmation Objection Deadline, (c) the Voting Deadline, (d) the Voting Record Date, (e) the Rule 3018(a) Motion Deadline, and (f) information relating to releases and injunctions. The Debtors request that the form of Confirmation Hearing Notice be approved.

**E) Notice of Confirmation Hearing by Publication**

32. Bankruptcy Rule 2002(l) provides that "[t]he court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the

notice." Fed. R. Bankr. P. 2002(l). In addition to including the Confirmation Hearing Notice in the Solicitation Packages, the Debtors will cause the Confirmation Hearing Notice to be published once in: (i) the national edition of USA Today, (ii) the Boston Globe and (iii) Women's Wear Daily (trade publication) on or about July 23, 2012 or as soon thereafter as practicable. The version of the Confirmation Hearing Notice published pursuant to this paragraph may be modified to conserve space and minimize cost to the estate. At a minimum, it will contain the information set forth in the preceding paragraph. The Debtors believe that publication of the Confirmation Hearing Notice will provide sufficient notice to persons who do not otherwise receive the Confirmation Hearing Notice by mail.

33. The Debtors believe that the service and publication of the Confirmation Hearing Notice as described above will provide sufficient notice of the Debtors' chapter 11 cases of the Confirmation Hearing and the form and manner of and deadline for objections to confirmation of the Plan. Parties-in-interest and creditors and equity security holders will receive at least 28 days' notice of the Confirmation Objection Deadline and 30 days' notice of the Confirmation Hearing; such notice periods satisfy Bankruptcy Rule 2002.

## **V. APPROVAL OF THE SOLICITATION PROCEDURES<sup>5</sup>**

34. Establishing the procedures described below and set forth in the Solicitation Procedures is necessary to avoid any confusion resulting from incomplete or inconsistently executed Ballots and will simplify the voting and tabulation process. The proposed Solicitation Procedures embody an orderly and logical method for soliciting and tabulating the Ballots of those parties entitled to vote as is contemplated by the Bankruptcy Code

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<sup>5</sup> Nothing in the following summary is intended to modify the Solicitation Procedures, and reference should be made to the Solicitation Procedures at Exhibit B hereto for the precise terms thereof, which control in the event of any inconsistency between this summary and the Solicitation Procedures.

and the Bankruptcy Rules. The relief requested herein is commonly granted in this District. See In re Pacific Energy Resources Ltd., Case No. 09-10785 (KJC) (D. Del. Aug. 27, 2010); In re Tribune Co., Case No. 08-13141 (KJC) (D. Del. June 7, 2010); In re Gottschalks Inc., Case No. 09-10157 (KJC) (D. Del. Jan 20, 2010); In re Spansion Inc., Case No. 09-10690 (KJC) (D. Del. Dec. 18, 2009). Accordingly, the Debtors request that the Court approve the Solicitation Procedures.

**A) Duties of the Voting Agent**

35. On November 4, 2011, the Court entered an order authorizing the Debtors' retention of Kurtzman Carson Consultants LLC. [D.I. 69] (the "Voting Agent"). Consistent with the Voting Agent's retention in these cases, the Debtors propose to have the Voting Agent assist the Debtors in connection with Plan solicitation. The Debtors propose to have the Voting Agent assist in, among other tasks, serving the Solicitation Packages and related notices, including the Confirmation Hearing Notice, receiving and tabulating ballots cast on the Plan, certifying to the Court the results of the balloting, and responding to inquiries from creditors relating to the Plan, the Disclosure Statement, the ballots, and matters related thereto. The Debtors request that the Court confirm the authority of the Voting Agent to perform such services.

**B) Mailing Deadlines**

36. The Debtors propose that the Court establish July 20, 2012 (the "Mailing Deadline"), as the date by which the Debtors must have caused the Voting Agent to mail the Solicitation Packages to the parties set forth herein; each of the Solicitation Packages will include the Confirmation Hearing Notice.

**C) Summary of Solicitation Packages**

37. Creditors, interest holders, and parties-in-interest in these chapter 11 cases will receive different notices and other documents (the "Solicitation Packages") depending on

their relationship to the Debtors and whether they are entitled to vote on the Plan. The Solicitation Procedures specify in detail the different documents which may constitute the different Solicitation Packages and the parties the Debtors propose to receive each Solicitation Package. Solicitation Packages for Voting Creditors will include:

- (a) the Confirmation Hearing Notice;
- (b) a CD-Rom containing the Disclosure Statement, Plan, and the Disclosure Statement and Solicitation Procedures Order approving this Motion and the Solicitation Procedures;
- (c) solicitation letters prepared by each of the Creditors' Committee and Equity Committee, if any; and
- (d) the appropriate ballot for their class.<sup>6</sup>

38. Ballots. The Debtors request the Court's approval of the form of the ballots to be utilized in soliciting votes on the Plan, in substantially the form of Exhibits E-1, E-2, E-3, E-4, E-5 and E-6 attached to the proposed Disclosure Statement and Solicitation Procedures Order.

39. The Debtors submit that the forms of Ballots comply with Bankruptcy Rule 3018(c) and are based substantially on Official Form No. 14. The Debtors have, however, modified the forms of Ballots to meet the particular requirements of each of these chapter 11 cases and their respective Plans. The proposed form of Ballots, and the class to which each relates, are as follows:

<u>Exhibit E-1</u>	Ballot for Holders of Filene's Unsecured (Short-Term) Claims (Filene's Class 4)
<u>Exhibit E-2</u>	Ballot for Filene's General Unsecured (Long-Term) Claims (Filene's Class 5)
<u>Exhibit E-3</u>	Ballot for Syms General Unsecured Claims (Syms Class 4)

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<sup>6</sup> The Debtors reserve the right to serve printed versions of the Disclosure Statement, Plan, and/or Solicitation Procedures Order in the event they determine such service is more cost-effective.

<u>Exhibit E-4</u>	Ballot for Record Owners of Interests in Syms (Syms Class 6)
<u>Exhibit E-5</u>	Ballot for Beneficial Owner of Interests in Syms (Syms Class 6)
<u>Exhibit E-6</u>	Master Ballot for Nominee for Holders of Interests in Syms (Syms Class 6)

40. Article XI.F of the Plan contains certain third-party releases, exculpation and injunction language (collectively, the "Third Party Releases"). Holders of Claims and Interests entitled to vote and receiving a ballot will have the option to "opt-in" or "opt-out" of the Third Party Releases set forth in Article XI.F of the Plan by marking the appropriate box on their ballot.

**D) Transmittal of Non-Voting Solicitation Packages to Certain Claim and Interest Holders**

41. Unimpaired Accepting Claims. Under the Plan, the holders of allowed claims against the Debtors in Syms Classes 1, 2 and 3 and Filene's Classes 1, 2 and 3 are proposed to be unimpaired, as defined in Bankruptcy Code section 1124 (collectively, the "Unimpaired Creditors"). Pursuant to Bankruptcy Code section 1126(f), the Unimpaired Creditors are conclusively presumed to have accepted the Plan and are not entitled to vote on the Plan.

42. Accordingly the Debtors propose to cause the Voting Agent to serve on or before the Mailing Deadline by first-class, postage prepaid mail to the Unimpaired Creditors only a Confirmation Hearing Notice modified to include notice of such Unimpaired Creditors' non-voting status, substantially in the form attached as Exhibit F to the proposed Disclosure Statement and Solicitation Procedures Order.<sup>7</sup>

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<sup>7</sup> Such notice will also be served upon unclassified, unimpaired creditors under the Plan.

43. Contingent, Unliquidated, or Disputed Claims. The Debtors will not solicit the votes of creditors whose claims are (a) listed on the Schedules as having a claim or a portion of a claim which is disputed, unliquidated, or contingent; (b) listed on the Schedules in a zero dollar amount or unknown in amount; (c) docketed by the Voting Agent or otherwise deemed to be disputed, unliquidated, or contingent; or (d) subject to an objection by the Debtors on or prior to the Voting Record Date. Such treatment is consistent with the Bar Date Order and Bankruptcy Rule 3003(c)(2).<sup>8</sup>

44. Consistent with this treatment, the Debtors propose to distribute to such holders of claims only a Confirmation Hearing Notice modified to include notice of such creditors' non-voting status, substantially in the form attached to the proposed Disclosure Statement and Solicitation Procedures Order as Exhibit G (the "CUD Notice"). The CUD Notice, in addition to the information contained in the Confirmation Hearing Notice, will inform such claimholders (a) that their claim is being treated as contingent, unliquidated, or disputed and (b) that they are not entitled to vote on the Plan in connection with such contingent, unliquidated, or disputed claim. Such claimholders will be advised that they may file a Rule 3018(a) Motion in accordance with the above procedures if they desire to vote on the Plan.

45. Intercompany Claims. Pursuant to Bankruptcy Code section 105(a), each Debtor will be deemed to have received all notices required under the Disclosure Statement and Solicitation Procedures Order without actually delivering such notices.

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<sup>8</sup> Bankruptcy Rule 3003(c)(2) provides in relevant part that "[a]ny creditor . . . whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated . . . who fails to [timely file a proof of claim] shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution."

**E) Special Notice Provisions for Holders of Interests in Syms**

46. Transmittal to Record Holders. Because of the complexity and difficulty associated with reaching beneficial owners of publicly-traded securities, many of which hold Syms shares in brokerage accounts and through several layers of ownership, the Debtors propose that appropriate solicitation materials be sent in a manner customary in the securities industry so as to maximize the likelihood that beneficial owners of the Syms shares will timely receive the materials. Thus the Debtors propose to transmit Solicitation Packages to holders of Syms shares by mailing or delivering the Solicitation Packages no later than the Mailing Deadline to (i) each registered holder of Syms shares as of the Voting Record Date (collectively, the "Record Owners") and (ii) each bank or brokerage firm, or the agent therefor identified by the Debtors or the Voting Agent as an entity through which beneficial owners (the "Beneficial Owners") hold the Syms shares (collectively, the "Nominees"). In addition, master ballots would be distributed to the Nominees after the initial distribution of Solicitation Packages, in accordance with customary procedures in the publicly traded securities industry.

47. Lists of Record Holders. To facilitate the mailing described in the immediately preceding paragraph, the Debtors request that the Court order any transfer agents, to provide the Voting Agent, by the date of entry of the Disclosure Statement and Solicitation Procedures Order, with an electronic file, in a format acceptable to the Voting Agent, containing the names, addresses, and holdings of the respective Record Owners and Nominees of the Syms shares as of the Voting Record Date or, if unable to provide an acceptable electronic file, two sets of pressure-sensitive labels and a list containing the same information.

48. Dissemination to Beneficial Owners. Even after the mailings described above, additional steps are necessary to ensure that the Beneficial Owners of the Syms shares timely receive Solicitation Packages. Thus the Debtors propose that the Court order that the

Nominees (or their agents), through which Beneficial Owners hold the Syms shares as of the Voting Record Date, to distribute the Solicitation Packages to the respective Beneficial Owners within three (3) days of their receipt of the Solicitation Packages.

49. Voting by Beneficial Owners. Syms Class 6 consists of the holders of publicly traded Syms shares who are entitled to vote on the Plan and thus requires the Nominees to facilitate the solicitation process. The Debtors request that the Court authorize the Nominees to obtain the votes of Beneficial Owners and order these entities to use the procedure set forth below. The Nominees shall forward the Solicitation Package to the Beneficial Owners of the Syms shares for voting; the package would have to include a beneficial owner ballot as set forth above (the "Beneficial Owner Ballot") and a return envelope provided by and addressed to the Nominees. The Nominees must summarize the individual votes of their Beneficial Owners from the Beneficial Owner Ballots on a master ballot in substantially the form attached as Exhibit E-6 (a "Master Ballot"). The Nominees would then return the Master Ballot to the Voting Agent.

50. The Debtors submit that this procedure adequately recognizes the complex structure of the securities industry and enables the Debtors to timely transmit materials to the Record Owners and Beneficial Owners of the Syms shares.

51. The Debtors request that the Court authorize them to reimburse the Nominees for their reasonable, actual, and necessary out-of-pocket expenses incurred in performing the tasks described above upon written request by such entities (subject to the Court's retaining jurisdiction to resolve any disputes over any request for such reimbursement).

**F) When No Notice or Transmittal Necessary**

52. The Debtors propose that no Solicitation Packages or other notices need to be transmitted to (a) holders of claims that have already been paid in full or that are authorized to be paid in full in the ordinary course of business pursuant to orders entered by this Court or (b)



any person to whom the Debtors mailed a notice of the meeting of creditors under Bankruptcy Code section 341 or a notice of the Bar Date and such notice was returned marked "undeliverable" or "moved - no forwarding address" or for a similar reason, unless the Debtors have been informed in writing by such person of that person's new address.

## **VI. PROCEDURES FOR VOTE TABULATION**

### **A) Voting Amounts**

53. Bankruptcy Code section 1126 provides the guidelines for acceptance of a plan. Specifically, 1126(c) 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.

54. 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 in any other context, the Debtors propose that each claim within a class of claims entitled to vote to accept or reject the Plan be temporarily allowed in an amount equal to the amount of such claim as scheduled by the Debtors or docketed by the court-appointed claims agent and set forth by the Debtors on the applicable Ballot delivered by the Debtors to such party; provided that the Debtors reserve the right to object to the amount of any claim set forth for voting purposes on a ballot.

### **B) Votes Counted**

55. The Debtors propose that any Ballot that is timely received from a party entitled to vote and contains sufficient information to permit the identification of the claimant

and is cast as an acceptance or rejection of the Plan will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan.

**C) Votes Not Counted**

56. 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 received after the Voting Deadline, if the Debtors have not provided an extension of the time to file such ballot;
- (b) any ballot that is illegible or contains insufficient information to permit the identification of the claimant;
- (c) 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;
- (d) any ballot cast for a claim that is subject to a pending claim objection filed with the Court or is otherwise classified as unliquidated, contingent, or disputed and for which no Rule 3018(a) Motion has been filed by the 3018(a) Motion Deadline and either agreed to by the Debtors or determined in favor of the movant by the Court at the Confirmation Hearing;
- (e) any unsigned ballot;
- (f) ballots timely received that are cast in a manner that neither indicate an acceptance or rejection of the Plan or that indicates both an acceptance and rejection of the Plan; or
- (g) any ballot submitted by email or facsimile transmission.

**D) Changing Votes**

57. Notwithstanding Bankruptcy Rule 3018(a), whenever two or more ballots are cast voting the same claim prior to the Voting Deadline, the last ballot received prior to the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior Ballots, without prejudice to the Debtors' right to object to the validity of any Ballot on any basis permitted by law, including under Bankruptcy Rule 3018(a) and, if such objection is sustained, to count the most recently cast surviving ballot for all purposes. This procedure of counting the

last ballot is consistent with practice under various state and federal corporate and securities laws. Moreover, it will spare the Court and the Debtors the time and expense of responding to motions brought pursuant to Bankruptcy Rule 3018(a) attempting to show cause for changing votes.

**E) No Vote Splitting; Effect**

58. The Debtors propose that the Court clarify that claim splitting is not permitted (except as it may relate to the procedures with respect to Master Ballots) and order that creditors and interest holders who vote must vote all their claims or interests within a particular class to either accept or reject the Plan.

**F) Withdrawal of Ballots**

59. The Debtors further request that parties who have delivered a valid ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. To be valid, a notice of withdrawal must (i) contain the description of the Claims or Interests to which it relates and the aggregate principal amount represented by such Claims or the number of Syms shares voted, (ii) be signed by the withdrawing party in the same manner as the ballot being withdrawn, and (iii) contain a certification that the withdrawing party owns or is the proper agent for the Claims or Interests and possesses the right to withdraw the vote sought to be withdrawn. The Debtors intend to consult with the Voting Agent to determine whether any withdrawals of ballots were received and whether the requisite acceptances of the Plan have been received. The Debtors expressly reserve the absolute right to contest the validity of any such withdrawals of ballots. Unless otherwise directed by the Court, a purported notice of withdrawal of ballots which is not received in a timely manner by the Voting Agent will not be effective to withdraw a previously cast ballot.

**G) Counting Ballots from Beneficial Holders**

60. The Debtors propose the following procedures for tabulating votes cast by holders of Interests in Syms.

61. First, Nominees using the Master Ballot voting process shall be required to retain for inspection by the Court the Beneficial Owner Ballots cast by Beneficial Owners for one year following the Voting Deadline.

62. Second, the Debtors propose that (i) votes cast by Beneficial Owners holding Syms shares through Nominees and transmitted by means of a Master Ballot be applied against the positions held by the Nominees with respect to the Syms shares and (ii) votes submitted by a Nominee on a Master Ballot not be counted to the extent they are in excess of the position maintained by the respective Nominee in the Syms shares on the Voting Record Date.

63. Third, to the extent that conflicting votes or overvotes are submitted on a timely received Master Ballot, the Voting Agent shall attempt to resolve the conflict or overvote before the preparation of the vote certification.

64. Fourth, to the extent that overvotes on a timely received Master Ballot are not reconcilable before the preparation of the vote certification, the Voting Agent shall count votes in respect of the Master Ballot in the same proportion as the votes to accept and reject the Plan submitted on the Master Ballot that contained the overvote, but only to the extent of the applicable Nominees' position on the Voting Record Date in the Syms shares.

65. Fifth, because Nominees generally are voting on behalf of the Beneficial Owners, Nominees should be authorized to complete multiple Master Ballots, and the votes reflected by the multiple Master Ballots should be counted except to the extent that they are duplicative of other Master Ballots. If two or more duplicative Master Ballots submitted are inconsistent in whole or in part, the latest Master Ballot received before the Voting Deadline, to

the extent of such inconsistency, should supersede and revoke any prior Master Ballot, subject to the Debtors' right to object to the validity of the second Master Ballot on any basis permitted by law, including under Bankruptcy Rule 3018(a).

**H)      Reservation of Rights Regarding Ballot Acceptance**

66.      The Debtors reserve their rights to accept any Ballots even if not in compliance with the procedures set forth herein, in their sole discretion.

**VII.    COPIES AND REVIEW OF DOCUMENTS**

67.      To accommodate parties-in-interest who wish to review the complete Plan and the Disclosure Statement, including after the Exhibit Filing Date (as defined below) any omitted exhibits to the Plan, imaged copies of such documents are publicly available on the Internet at the Bankruptcy Court's website, <http://www.deb.uscourts.gov>, (registration is required) or at the Voting Agent's website, [www.kccllc.net/fileenes](http://www.kccllc.net/fileenes) (free of charge). Copies of the Plan and the Disclosure Statement (including all exhibits and/or appendices thereto) also may be obtained by first-class mail from the Voting Agent at Kurtzman Carson Consultants LLC, Re: Syms Corp., et. al., 2335 Alaska Avenue, El Segundo, CA 90245, Attn: Voting Dept. (the "Voting Agent"), Telephone: (877) 606-7510. Copies of the Plan and the Disclosure Statement (including all exhibits and/or appendices thereto) may also be reviewed during regular business hours (8:00 a.m. to 4:00 p.m. weekdays, except legal holidays) at the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

68.      The Debtors will file all exhibits to the Plan that are not otherwise already attached to the Plan (as filed with the Court) on or before August 13, 2012 (the "Exhibit Filing Date"). Copies of exhibits to the Plan will be available in accordance with the procedures set forth herein.

69. The Debtors request that the Court approve the above-described solicitation procedures as good and sufficient in accordance with the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules.

#### **NOTICE OF MOTION**

70. **Notice of Disclosure Statement Hearing.** On May 24, 2012, the Debtors filed copies of the Plan and Disclosure Statement. On June 11, 2012, the Court set July 9, 2012 at 11:00 a.m. (Eastern), as the date for the Disclosure Statement Hearing. On June 12, 2012, the Debtors served notice of the Disclosure Statement Hearing and the objection deadline regarding the Disclosure Statement [D.I. 1482]. As of the Date of the Disclosure Statement Hearing, the Plan and Disclosure Statement will have been on file for 46 days. Pursuant to Bankruptcy Rules 2002, 3017 and 9006, the Debtors submit that the notice provided with respect to the Disclosure Statement Hearing and the deadline to file objections relating thereto constitutes adequate notice under the circumstances and no other or further notice is necessary. The Debtors request that the Court make such a finding in the Disclosure Statement and Solicitation Procedures Order.

71. **Notice of Solicitation Procedures Motion.** Notice of this Motion will be given to: (i) the United States Trustee for the District of Delaware; (ii) counsel to the Creditors' Committee; (iii) counsel to the Equity Committee; and (iv) all parties who have filed notices of appearance and requests for service of papers pursuant to Bankruptcy Rule 2002. The Debtors submit that under the circumstances no other or further notice is necessary.

#### **NO PRIOR NOTICE**

72. No previous request for the relief sought in this Motion has been made to this Court or any other court.

73. WHEREFORE, the Debtors request entry of the Disclosure Statement and Solicitation Procedures Order granting the relief sought herein and such other and further relief as is just.

Dated: Wilmington, Delaware  
June 22, 2012

/s/ Jason M. Liberi  
Mark S. Chehi (ID No. 2855)  
Jason M. Liberi (ID No. 4425)  
Skadden, Arps, Slate, Meagher & Flom LLP  
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- and -

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(212) 735-3000  
(212) 735-2000

Counsel for Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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	:	
In re:	:	Chapter 11
	:	
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors. <sup>1</sup>	:	Jointly Administered
	:	
	:	Hrg. Date: July 9, 2012 at 11:00 a.m. (Eastern)
-----	X	Objs. Due: July 2, 2012 at 4:00 p.m. (Eastern)

**NOTICE OF DEBTORS' MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105, 502, 1125, 1126 AND 1128, FED. R. BANKR. P. 2002, 3003, 3017, 3018, 3020 AND 9007, DEL. BANKR. L.R. 3017-1 (I) APPROVING PROPOSED DISCLOSURE STATEMENT; (II) APPROVING KEY DATES AND DEADLINES RELATED TO BALLOT SOLICITATION AND TABULATION PROCEDURES, FORMS OF BALLOTS, AND MANNER OF NOTICE; AND (III) FIXING DATE, TIME AND PLACE FOR CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS THERETO**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed today the attached Debtors' Motion For An Order Under 11 U.S.C. §§ 105, 502, 1125, 1126 And 1128, Fed. R. Bankr. P. 2002, 3003, 3017, 3018, 3020 And 9007, Del. Bankr. L.R. 3017-1 (I) Approving Proposed Disclosure Statement; (II) Approving Key Dates And Deadlines Related To Ballot Solicitation And Tabulation Procedures, Forms Of Ballots, And Manner Of Notice; And (III) Fixing Date, Time And Place For Confirmation Hearing And Deadline For Filing Objections Thereto (the "Motion").

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.



PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion or the relief requested therein must be made in writing, filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), 824 Market Street, Wilmington, Delaware 19801, and served so as to be received by the following parties no later than **July 2, 2012 at 4:00 p.m. (Eastern)**: (i) Filene's Basement, LLC, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Jason M. Liberi, Esq. and Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq. and Suzanne D.T. Lovett, Esq.; (iii) counsel to the Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark S. Indelicato, Esq., Mark T. Power, Esq., and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath, Esq., and Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq., Seth Goldman, Esq. and Bradley R. Schneider and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Gregory W. Werkheiser, and Matthew B. Harvey; (v) counsel to the Pre-Petition Agent, Riemer & Braunstein, LLP, Three Center Plaza, Boston, MA 02108, Attn: David S. Berman, Esq., Riemer & Braunstein, LLP, Seven Times Square, New York, New York 10036, Attn: Maura I. Russell, Esq. and Womble Carlyle Sandridge & Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, Delaware 19801, Attn.: Steven K. Kortanek, Esq.; and (vi) the

Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **July 9, 2012 at 11:00 a.m. (Eastern)** before the Honorable Kevin J. Carey, United States Bankruptcy Judge for the District of Delaware, in the United States Bankruptcy Court for the District of Delaware, 5<sup>th</sup> Floor, Courtroom 5, 824 North Market Street, Wilmington, Delaware 19801 ("Hearing"). Only objections made in writing and timely filed and received will be considered by the Court at the Hearing.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO  
THE MOTION ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE  
ABOVE PROCEDURES, THE RELIEF REQUESTED IN THE MOTION MAY BE  
GRANTED WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: Wilmington, Delaware  
June 22, 2012

/s/ Jason M. Liberi

Mark S. Chehi (I.D. No. 2855)  
Jason M. Liberi (I.D. No. 4425)  
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- and -

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New York, New York 10036-6522  
(212) 735-3000  
(212) 735-2000

Counsel for Debtors and Debtors in Possession

## **EXHIBIT A**

**(Disclosure Statement and Solicitation Procedures Order)**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	X	
	:	
In re:	:	Chapter 11
	:	
Filene's Basement, L.L.C., <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors <sup>1</sup>	:	Jointly Administered
	:	
	:	
-----	X	<b>Related Docket Nos. 1364, ____</b>

ORDER: (I) APPROVING DISCLOSURE STATEMENT;  
(II) APPROVING BALLOT SOLICITATION AND TABULATION  
PROCEDURES, KEY DATES AND DEADLINES RELATED THERETO,  
FORMS OF BALLOTS, AND MANNER OF NOTICE; AND  
(III) FIXING DATE, TIME AND PLACE FOR CONFIRMATION HEARING AND  
DEADLINE FOR FILING OBJECTIONS THERETO

A hearing having been held on July 9, 2012 (the "Hearing"), to consider the motion of the Debtors, dated June 22, 2012 (the "Motion"), pursuant to sections 105(a), 502, 1125, 1126 and 1128 of title 11, United States Code (the "Bankruptcy Code"), Rules 2002, 3003, 3017, 3018, 3020 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3017-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") seeking an order (i) approving the form and content of the proposed Disclosure Statement with respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, filed on May 24, 2012 (as same may be amended or modified, the "Disclosure Statement"), (ii) approving the Ballot Solicitation and Tabulation Procedures and certain key dates and deadlines related thereto,

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

a copy of which is annexed hereto as Exhibit A (the "Solicitation Procedures")<sup>2</sup>, forms of ballots, and manner of notice, and (iii) fixing the date, time and place for the confirmation hearing on the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders and filed on May 24, 2012 (as same may be amended or modified, the "Plan") and the deadline for filing objections to the Plan, as more fully set forth in the Motion; and it appearing from the affidavits of service on file with this Court and as described in the Motion that proper and timely notice of the Hearing has been given; and the Court finding that such notice was adequate and sufficient under the circumstances; and the appearances of all interested parties having been duly noted on the record of the Hearing; and each of the objections, if any, to the proposed Disclosure Statement or the Motion having been either (a) withdrawn or rendered moot by proposed modifications to the Disclosure Statement, or (b) overruled by the Court; and the Debtors having made the conforming additions, changes, corrections and deletions to the Disclosure Statement to conform the Disclosure Statement to the record of the Hearing and any agreements reached with the parties that had filed objections, a copy of which revised Disclosure Statement is annexed hereto as Exhibit B; and it appearing to the Court that it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and upon the Motion, the Disclosure Statement, the Solicitation Procedures and

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<sup>2</sup> Capitalized terms used in this order but not otherwise defined shall have the meanings ascribed to such terms in the Solicitation Procedures or the Plan (defined below).

the record of the Hearing and upon all of the proceedings heretofore had herein and after due deliberation and sufficient cause appearing, therefore it is

IT IS HEREBY ORDERED, FOUND AND DETERMINED THAT:

**I. Approval of Disclosure Statement**

1. Pursuant to Bankruptcy Rule 3017(b), (a) the Disclosure Statement (together with the exhibits filed by the Debtors leading up to the Disclosure Statement Hearing) is approved as containing adequate information regarding the Plan within the meaning of Bankruptcy Code section 1125(a), and (b) to the extent not withdrawn, settled, or otherwise resolved, all objections to the Disclosure Statement are overruled.

2. The Debtors are authorized to (i) make non-material changes to the Disclosure Statement, Plan and related documents (including the exhibits thereto) and (ii) revise the Disclosure Statement and related documents (including the exhibits thereto) to add further disclosure concerning events occurring at or after the Disclosure Statement Hearing, before distributing it in accordance with the terms of this Order. The Debtors shall file copies with the Court of any changed pages blacklined to show the changes.

3. The Cure Procedures for executory contracts and unexpired leases outlined in the Motion and the form of notice of Cure Notice attached as Exhibit C to the Motion are hereby approved. Cure Objections must be filed by August 21, 2012. Disputed regarding Cure Amounts will be resolved either consensually by the parties or by the Court at the Confirmation Hearing (or at such later time as may be determined by the Debtors).

**II. Establishment of the Record Date, the Voting Deadline, and Certain Other Procedures**

**A) Voting Record Date**

4. Notwithstanding anything to the contrary in Bankruptcy Rule 3018(a), the Voting Record Date for determining (a) creditors and interest holders entitled to receive Solicitation Packages (as defined herein) and other notices and (b) creditors and interest holders entitled to vote to accept or reject the Plan shall be July 13, 2012.

**B) Voting Deadline**

5. The last date and time by which ballots for accepting or rejecting the Plan must be received by the Voting Agent (defined below) in order to be counted shall be August 23, 2012, at 5:00 p.m. (prevailing Pacific time) (the "Voting Deadline"). In order to be counted, ballots must be returned to the Voting Agent on or prior to the Voting Deadline by (a) mail in the return envelope provided with each ballot or (b) overnight delivery at the claim or interest holder's expense or (c) by hand delivery to the Voting Agent. Ballots submitted by facsimile or electronic mail transmission shall not be counted.

**C) Procedures for Temporary Allowance of Claims Pursuant to Rule 3018 for Voting Purposes**

6. The last date and time for filing and serving motions pursuant to Bankruptcy Rule 3018(a) ("Rule 3018(a) Motions") seeking temporary allowance of claims for the purpose of voting to accept or reject the Plan shall be August 10, 2012, at 4:00 p.m. (prevailing Eastern time) (the "Rule 3018(a) Motion Deadline"). Rule 3018(a) Motions must (a) be made in writing, (b) comply with the Bankruptcy Rules, and the Local Rules, (c) set forth the name of the party asserting the Rule 3018(a) Motion, (d) state with particularity the legal and factual bases for the Rule 3018(a) Motion, and (e) be



filed with the Bankruptcy Court and served so as to be RECEIVED by the Notice Parties (defined below) no later than the Rule 3018(a) Motion Deadline.

7. Any party timely filing and serving a Rule 3018(a) Motion shall be provided a ballot and permitted to cast a provisional vote to accept or reject the Plan. If, and to the extent that, the Debtors and such party are unable to resolve the issues raised by the Rule 3018(a) Motion prior to the Voting Deadline, then at a hearing prior to the Confirmation Hearing, the Court will determine whether the provisional ballot should be counted as a vote on the Plan.

### **III. Approval of the Confirmation Hearing Date and Time, Deadline and Procedures for Filing Objections and Replies Thereto and the Form and Manner of Notice of the Confirmation Hearing**

#### **A) Confirmation Hearing Date and Time**

8. The Confirmation Hearing shall be August 29, 2012, at 10:00 a.m. (prevailing Eastern time). The Debtors may continue the Confirmation Hearing by announcing such continuance in open court, in an agenda for such hearing, or by filing notice of the continuance.

#### **B) Deadline and Procedures for Filing Confirmation Objections**

9. Pursuant to Bankruptcy Rule 3020(b)(1), Confirmation Objections shall be filed and served by 4:00 p.m. (prevailing Eastern time) on August 21, 2012 (the "Confirmation Objection Deadline"). Confirmation Objections not timely filed and served in accordance with this Order shall not be considered.

10. Confirmation Objections, if any, must (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) state the name and address of the objecting or responding party, and the nature and amount of any claim or interest asserted by such party against or in the Debtors, their estates, or their property; (d) state with

particularity the basis and nature of any objection or response and the legal and factual bases therefor; (e) reference with specificity the provisions of the Plan to which objection or response is made, including proposed language to be added to the Plan or existing language in the Plan to be modified or deleted to resolve such objection or response; (f) be filed, together with proof of service, with the Bankruptcy Court; and (g) be served so as to be actually received by the Confirmation Objection Deadline on the following parties (collectively, the "Notice Parties"): (i) Syms Corp. and Filene's Basement, LLC, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq.; (iii) counsel to the Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq. Confirmation

Objections not timely filed and served in the manner set forth above shall not be considered and shall be deemed overruled.

**C) Replies to Confirmation Objections**

11. Parties-in-interest shall be allowed to file a reply or omnibus reply on or before August 27, 2012, at 4:00 p.m. (prevailing Eastern Time) to any confirmation objections that may be filed.

**D) Form of Confirmation Hearing Notice**

12. The notice of the Confirmation Hearing and related matters, substantially in the form attached hereto as Exhibit C (the "Confirmation Hearing Notice"), is hereby approved.

**E) Manner of Notice by Publication**

13. In addition to including the Confirmation Hearing Notice in the Solicitation Packages, the Debtors shall supplement such notice by causing the Confirmation Hearing Notice to be published in (i) the national edition of USA Today, (ii) the Boston Globe and (iii) Women's Wear Daily (trade publication) on or before July 23, 2012 (the "Publication Deadline"). The version of the Confirmation Hearing Notice published pursuant to this paragraph may be modified to conserve space and minimize cost to the estate. At a minimum, it must contain the information set forth in paragraph 31 of the Motion. The publication of the Confirmation Hearing Notice shall provide sufficient notice to persons who do not otherwise receive the Confirmation Hearing Notice by mail.

**IV. Approval of the Solicitation Procedures**

14. The Solicitation Procedures attached hereto as Exhibit A are good and sufficient and satisfy the requirements of the Bankruptcy Code and Bankruptcy Rules. The Solicitation Procedures are approved in the form and manner set forth on Exhibit A.

#### **V. Copies or Review of Documents**

15. Imaged copies of the complete Plan and the Disclosure Statement, including after the Exhibit Filing Date any omitted exhibits to the Plan, are publicly available on the Internet at the Bankruptcy Court's website, <http://www.deb.uscourts.gov>, (registration is required) or at the Voting Agent's website, [www.kccllc.net/filenes](http://www.kccllc.net/filenes) (free of charge). Copies of the Plan and the Disclosure Statement (including all exhibits and/or appendices thereto) also may be obtained by first-class mail from the Voting Agent at Kurtzman Carson Consultants LLC, Re: Syms Corp., et. al., 2335 Alaska Avenue, El Segundo, CA 90245, Attn: Voting Dept. (the "Voting Agent"), Telephone: (877) 606-7510. Copies of the Plan and the Disclosure Statement (including all exhibits and/or appendices thereto) may also be reviewed during regular business hours (8:00 a.m. to 4:00 p.m. weekdays, except legal holidays) at the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

16. The Debtors shall use best efforts to file all Exhibit to the Plan that are not otherwise already attached to the Plan with the Court on or before August 13, 2012 (the "Exhibit Filing Date").

17. The Debtors are authorized to take or refrain from taking any action necessary or appropriate to implement the terms of and the relief granted in this Order without seeking further order of the Court.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2012

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Honorable Kevin J. Carey  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
	:	
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors. <sup>1</sup>	:	Jointly Administered
	:	
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**SYMS CORP. AND FILENE'S BASEMENT, LLC BALLOT  
SOLICITATION AND TABULATION PROCEDURES**

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

**SYMS CORP. AND FILENE'S BASEMENT, LLC BALLOT  
SOLICITATION AND TABULATION PROCEDURES**

The following procedures (the "Solicitation Procedures") are adopted with respect to (a) the distribution of Ballots and solicitation materials with respect to the Plan, and (b) the return and tabulation of Ballots.

1. **Definitions:**

- (a) **"Ballot"** means a form of ballot approved by the Court in the Disclosure Statement and Solicitation Procedures Order.
- (b) **"Bar Date"** means March 1, 2012, the date set by the Bankruptcy Court as the last day for filing proofs of claim other than claims by Governmental Units (as that term is defined in the Bankruptcy Code).
- (c) **"Beneficial Owner(s)"** means any entity with a beneficial ownership interest in Syms shares held by a Nominee.
- (d) **"Court"** means the United States Bankruptcy Court for the District of Delaware.
- (e) **"Confirmation Hearing"** means the hearing on the confirmation of the Plan, as such hearing may be adjourned from time to time.
- (f) **"Confirmation Hearing Notice"** means a notice of (a) the approval of the Disclosure Statement and the Solicitation Procedures and the scheduling of the Confirmation Hearing, and (b) the procedure for holders of Claims to obtain a Solicitation Package in a form approved by the Court in the Disclosure Statement and Solicitation Procedures Order.
- (g) **"Creditors' Committee"** means the Official Committee of Unsecured Creditors appointed by the United States Trustee pursuant to Bankruptcy Code Section 1102.
- (h) **"Debtor(s)"** means any of Syms Corp., Filene's Basement, LLC, Syms Clothing, Inc., or Syms Advertising, Inc., as debtors and debtors-in-possession.

- (i) **"Disclosure Statement"** means the disclosure statement filed on May 24, 2012 with respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders, as same may be amended or modified.
- (j) **"Disclosure Statement and Solicitation Procedures Order"** means the order of the Court approving the Disclosure Statement and the Solicitation Procedures.
- (k) **"Effective Date"** means the date the Plan becomes effective.
- (l) **"Equity Committee"** means the Official Committee of Equity Security Holders of Syms Corp.
- (m) **"Mailing Deadline"** means July 20, 2012, the date by which the Voting Agent shall mail the Solicitation Packages.
- (n) **"Nominee"** means an entity, including brokers, banks, dealers or other agents or nominees, that is the record holder of Syms shares in which another entity holds the beneficial ownership interest.
- (o) **"Notice Parties"** means (i) Syms Corp. and Filene's Basement, LLC, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq.; (iii) counsel to the Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq.
- (p) **"Plan"** means the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of



Syms Corp. Equity Security Holders, dated May 24, 2012, as same may be amended or modified.

- (q) **"Plan Proponents"** means the Debtors together with the Equity Committee.
- (r) **"Record Owner"** means any entity with a registered ownership interest in Syms shares.
- (s) **"Schedules"** means the Schedules and Statements of Financial Affairs filed by the Debtors on December 22, 2011 [D.I. 438, 439, 440, 441].
- (t) **"Solicitation Package"** means, and will consist of, all of the following:
  - (i) Notice of the Confirmation Hearing and related matters, substantially in the form approved by the Court, setting forth the time fixed for filing acceptances and rejections to the Plan, the time fixed for filing objections to confirmation of the Plan, and the date and time of the Confirmation Hearing;
  - (ii) for entities entitled to vote on the Plan, parties on the Master Service List for these Bankruptcy cases, the United States Trustee, counsel to the Creditors' Committee and counsel to the Equity Committee, a CD-ROM containing the Disclosure Statement (with exhibits, including the Plan, the Disclosure Statement and Solicitation Procedures Order and these Solicitation Procedures); and
  - (iii) for entities entitled to vote on the Plan, appropriate Ballots, voting instructions, and pre-addressed, postage-paid, return envelopes.
- (u) **"Voting Agent"** means Kurtzman Carson Consultants, LLC, or such other firm that may be retained by the Debtors to act as the solicitation and tabulation agent with respect to the Plan.
- (v) **"Voting Deadline"** means 5:00 p.m. prevailing Pacific Time on August 23, 2012 or such other date that is established by the Court as the deadline for the return of Ballots on the Plan.

- (w) **"Voting Record Date"** means July 13, 2012 or such other date that is established by the Court as the date on which the creditors and interest holders entitled to vote on the Plan is set.
- (x) **"3018(a) Motion"** means a motion filed in accordance with the Solicitation Procedures and the Disclosure Statement and Solicitation Procedures Order for the temporary allowance of a Claim or Interest for the purpose of accepting or rejecting the Plan pursuant to Federal Rule of Bankruptcy Procedure 3018(a).
- (y) **"3018(a) Motion Deadline"** means 4:00 p.m. prevailing Eastern Time on August 10, 2012, the deadline for the filing and service of all 3018(a) Motions, or such other date that is established by the Court as the deadline for filing and service of 3018(a) Motions.

Any capitalized term used herein but not otherwise defined shall have the meaning ascribed to such term in the Plan.

2. **Confirmation Hearing Notice:**

The Debtors will cause the Confirmation Hearing Notice to be published once in: (i) the national edition of USA Today, (ii) the Boston Globe and (iii) Women's Wear Daily (trade publication), on or about July 23, 2012.

3. **Distribution of Solicitation Packages:**

Creditors, interest holders, and parties-in-interest in these chapter 11 cases will receive Solicitation Packages containing different documents depending on their relationship to the Debtors and whether they are entitled to vote on the Plan. For ease of reference, a table indicating the different documents which may constitute the different Solicitation Packages and the parties the Debtors propose to receive each Solicitation Package follows:

Contents of Solicitation Package for Particular Parties					
	Syms and Filene's Classes 1-3 <sup>2</sup>	Syms' Class 4 and 6 and Filene's Classes 4 and 5	Contingent, unliquidated or disputed claims	Core Service Parties <sup>3</sup>	Counter-parties to executory contracts
Confirmation Hearing Notice (Unimpaired – Non-Voting) ("Unimpaired Creditor Notice")	<b>X</b>				
Confirmation Hearing Notice (Generic)		<b>X</b>		<b>X</b>	<b>X</b>
Confirmation Hearing Notice (CUD – Non-Voting) ("CUD Notice")			<b>X</b>		
Ballot for the appropriate class		<b>X</b>			
Solicitation letters, if any, from the Debtors and any official Committee		<b>X</b>		<b>X</b>	
CD-ROM containing Disclosure Statement, the Plan, and the materials appended thereto, and Disclosure Statement and Solicitation Procedures Order		<b>X</b>		<b>X</b>	

- (a) **Scheduled Claims:** The Voting Agent will cause a Solicitation Package to be served upon each holder of a Claim listed in the Debtors' Schedules at the addresses stated therein other than holders of such Claims who have filed a proof of claim.
- (b) **Filed Claims:** The Voting Agent will cause a Solicitation Package to be served upon each holder of a Claim that has filed a proof of claim against any of the Debtors on or prior to the Bar Date that has not been withdrawn or disallowed or expunged by an order of the Court entered on or before the Voting Record Date. To the extent the proof of claim was filed by counsel on behalf of the claimant, the Voting Agent will cause the Solicitation Package to be served upon such counsel.
- (c) **Parties to Executory Contracts and Unexpired Leases:** The Voting Agent will cause a Solicitation Package to be served on each entity listed on the Schedules as a party to an executory contract or unexpired lease with the Debtors, irrespective

<sup>2</sup> Includes creditors holding allowed claims that are not classified and unimpaired under the Plan (e.g., Administrative Claims and Priority Tax Claims).

<sup>3</sup> In the above table, "Core Service Parties" refers to the following parties: Parties on the Master Service List; United States Trustee; counsel to the Creditors' Committee; and counsel to the Equity Committee.

of whether, pursuant to section 365(a) of the Bankruptcy Code, such contract is, in fact, an "executory contract" or such lease is, in fact, an "unexpired lease."

- (d) **Syms Shareholders:** The Voting Agent will cause a Solicitation Package to be served on each holder of record of Syms shares, with a reasonably sufficient number of Ballots and Solicitation Packages to be served on Nominees for distribution to the Beneficial Holders of the shares for whom such Nominee acts.
- (e) **Other Parties:** The Voting Agent will cause a Solicitation Package to be served upon the Office of the United States Trustee for the District of Delaware, counsel for the Creditors' Committee, counsel for the Equity Committee, and on each party that has filed a notice of appearance with the Court and has not withdrawn such notice of appearance as of the date the Court enters the Disclosure Statement and Solicitation Procedures Order.

#### 4. **Return of Ballots:**

- (a) **Holders that Are Entitled to Vote:** Except as provided herein (i) each holder of a Claim (1) for which a proof of claim was filed by the Bar Date, if required, (2) for which a Claim amount may be determined pursuant to Section 5(a) hereof as of the Voting Deadline, (3) which Claim is not treated as unimpaired under the Plan, (4) which Claim is not in a Class that is deemed to have rejected the Plan, (5) which Claim is not an Intercompany Claim or Superpriority Intercompany Claim, (6) which Claim is not subject to a pending objection or otherwise deemed contingent, unliquidated or disputed on the Voting Record Date and (7) if required, which Claim is the subject of a 3018(a) Motion filed by the 3018(a) Motion Deadline, and (ii) each holder of an Interest in Syms, whether a Record Owner or a Beneficial Owner – provided however that a Beneficial Owner and Nominee may not both vote with respect to the same Syms shares – is entitled to vote to accept or reject the Plan. For the avoidance of doubt, holders of Syms Class 4 Claims, Syms Class 6 Interests, and Filene's Class 4 Claims and Filene's Class 5 Claims are the impaired classes that are entitled to vote to accept or reject the Plan.
- (b) **Voting by Syms Shareholders:** The Debtors will transmit Solicitation Packages to Record Owners of Syms Class 6 Interests and Nominees as of the Voting Record Date. Nominees shall be provided with a sufficient quantity of Beneficial Owner ballots for distribution to their Beneficial Owners. In Order to facilitate the mailing of ballots to holders of Syms Class 6 Interests, any transfer agents are required to provide the voting agent with an electronic file, in a format acceptable to the Voting Agent, containing the names, addresses, and holdings of the respective Registered Owners and Nominees of the Syms shares as of the Voting Record Date or, if unable to provide an acceptable electronic file, two sets of pressure-sensitive labels and a list containing the same information. The Nominees are authorized and required to forward Solicitation Packages to the

Beneficial Holders for voting, and to provide the Beneficial Holders with a return envelop addressed to the Nominee for the return of the Beneficial Holders votes. The Nominees will then return the Master Ballots reflecting the votes of the Beneficial Holders to the Voting Agent.

- (c) **Authority to Complete and Execute Ballots:** If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer or employee of a corporation, or any other entity acting in a fiduciary or representative capacity, such person must indicate such capacity when signing. The authority of the signatory of each Ballot to complete and execute the Ballot shall be presumed, but each such signatory shall certify, by executing the Ballot, that he or she has such authority and shall provide evidence of such authority upon request of the Voting Agent.
- (d) **Place to Send Completed Ballots:** All Ballots should be returned by mail, hand delivery or overnight courier to the Voting Agent. Ballots relating to Claims against the Debtors should be sent to the Voting Agent at the below address.

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

Master Ballots and Record Owner Ballots relating to Syms Class 6 Common Stock Interests should be returned by mail, hand delivery or overnight courier to the Voting Agent at the below address. Beneficial Owner Ballots should be sent by Beneficial Owners directly to their Nominee, so the Nominee may cast a Master Ballot reflecting the votes of Beneficial Owners.

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
599 Lexington Avenue, 39<sup>th</sup> Floor  
New York, NY 10022  
Attn.: Voting Department

- (e) **Deadline for Receiving Completed Ballots:** All Ballots must be *actually received* by the Voting Agent by 5:00 p.m. Pacific Time on the Voting Deadline. Such Ballots may be received by the Voting Agent at the address set forth on the return envelope. The Voting Agent will not accept Ballots submitted by telecopy, facsimile or other electronic means, including email. The Voting Agent will date and time-stamp all Ballots when received. In addition, the Voting Agent will create an electronic image of all such Ballots received and will retain an electronic copy of such Ballots for a period of one (1) year following the Voting Deadline, unless otherwise instructed by the Debtors, in writing, or otherwise ordered by the Court. The Debtors, in their sole discretion, shall have the ability to extend in writing the Voting Deadline.

5. **Tabulation of Ballots:**

- (a) **Determination of Amount of Claims Voted.** With respect to the tabulation of Ballots for all Claims and Interests entitled to vote on the Plan, solely for voting purposes (not for distribution purposes), the amount to be used to tabulate acceptance or rejection of the Plan will be as described below.

i. **Syms Class 4 – Syms General Unsecured Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(A) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a General Unsecured Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Unsecured Claim agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(B) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such General Unsecured Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(C) The General Unsecured Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(D) If a General Unsecured Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(E) If a proof of claim for a General Unsecured Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

ii. **Syms Class 6 – Interests in Syms:** Each holder of an Interest in Syms shall be entitled to one (1) vote for each Syms share owned, fractional shares will be disregarded for voting purposes. Beneficial Holders and Nominees may not both cast votes with respect to the same Syms shares.

iii. **Filene's Class 4 – Filene's General Unsecured (Short-Term) Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(F) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a Filene's General Unsecured (Short-Term) Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Unsecured Claim agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(G) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such Filene's General Unsecured (Short-Term) Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(H) The Filene's General Unsecured (Short-Term) Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(I) If a Filene's General Unsecured (Short-Term) Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(J) If a proof of claim for a Filene's General Unsecured (Short-Term) Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

iv. **Filene's Class 5 – Filene's General Unsecured (Long-Term) Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(A) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a Filene's General Unsecured (Long-Term) Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Unsecured Claim agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(B) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such Filene's General Unsecured (Long-Term) Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(C) The Filene's General Unsecured (Long-Term) Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(D) If a Filene's General Unsecured (Long-Term) Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(E) If a proof of claim for a Filene's General Unsecured (Long-Term) Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(b) **Ballots Excluded:** A Ballot will not be counted if any of the following applies to such Ballot:

(i) The holder submitting the Ballot is not entitled to vote, pursuant to Section 4(a) hereof.



- (ii) The Ballot is not **actually received** by the Voting Agent in the manner set forth in Section 4(d) and (e) hereof by the Voting Deadline unless the Debtors shall have granted in writing an extension of the Voting Deadline with respect to such Ballot.
  - (iii) The Ballot is returned to the Voting Agent, indicating acceptance or rejection of the Plan but is unsigned.
  - (iv) The Ballot is postmarked prior to the Voting Deadline but is received after the Voting Deadline.
  - (v) The Ballot is illegible or contains insufficient information to discern the identification of the holder of the Claim.
  - (vi) The Ballot is transmitted to the Voting Agent by telecopy, facsimile or other electronic means, including email.
  - (vii) The Ballot is submitted in a form that is not the appropriate Ballot for such holder.
  - (viii) The Ballot is not completed.
- (c) **General Solicitation Procedures and Standard Assumptions:** In addition, the following solicitation procedures and standard assumptions will be used in tabulating Ballots:
- (i) A holder may not split his, her, or its vote, except as provided pursuant to Section 5(c)(ii). Accordingly, except as provided in Section 5(c)(ii) hereof, (1) each holder shall have a single vote within a particular class, (2) the full amount of all such holder's Claims or Interests (calculated in accordance with these procedures) within a particular class shall be deemed to have been voted either to accept or reject a Plan, and (3) any Ballot that partially rejects and partially accepts the Plan shall not be counted.
  - (ii) A Nominee casting a Master Ballot may split the votes cast on the Master Ballot to reflect the Ballots transmitted from the Beneficial Holders to the Nominee. Beneficial Holders may not split their votes, and if any Beneficial Holder attempts to split its votes, the Nominee should contact the Voting Agent immediately.

- (iii) The Voting Agent may, in its sole and absolute discretion, contact voters to cure any defects in the Ballots, provided, however, under no circumstances shall the Voting Agent have any obligation to contact voters to cure defects in the Ballots.
- (iv) Any voter that delivers a valid Ballot may withdraw his, her, or its vote by delivering a written notice of withdrawal to the Voting Agent before the Voting Deadline. To be valid, the notice of withdrawal must (1) be signed by the party who signed the Ballot to be revoked, and (2) be received by the Voting Agent before the Voting Deadline. The Debtors may contest the validity of any withdrawals.
- (v) If multiple Ballots are received from different holders purporting to hold the same Claim, the latest-dated Ballot that is received prior to the Voting Deadline will be the Ballot that is counted.
- (vi) If multiple Ballots are received from a holder of a Claim and someone purporting to be his, her, or its counsel or agent, the Ballot received from the holder of the Claim will be the Ballot that is counted, and the vote of the purported counsel or agent will not be counted.
- (vii) There shall be a rebuttable presumption that any holder who submits a properly completed superseding Ballot or withdrawal of Ballot on or before the Voting Deadline has sufficient cause, within the meaning of Bankruptcy Rule 3018(a), to change or withdraw such holder's acceptance or rejection of the Plan.
- (viii) A Ballot that is completed, but on which the holder did not vote to accept or reject the Plan, or voted to both accept and reject the Plan, shall not be counted as a vote to accept or reject the Plan.
- (ix) If no votes to accept or reject the Plan are received with respect to a particular class, such class will be deemed to have accepted the Plan.
- (x) If multiple Ballots are received from a holder of a Claim or Interest for the same Claim or Interest, the latest-dated Ballot that is received prior to the Voting Deadline shall be the Ballot that is counted as a vote to accept or reject the Plan.

**6. Special Notice Provisions for Holders of Interests in Syms**

The Debtors will transmit Solicitation Packages to Record Owners of Syms Class 6 Interests and Nominees as of the Voting Record Date. Nominees shall be provided with a sufficient quantity of Beneficial Owner ballots for distribution to their Beneficial Owners. In Order to facilitate the mailing of ballots to holders of Syms Class 6 Interests, any transfer agents are required to provide the voting agent with an electronic file, in a format acceptable to the Voting Agent, containing the names, addresses, and holdings of the respective Registered Owners and Nominees of the Syms Class 6 Interests as of the Voting Record Date or, if unable to provide an acceptable electronic file, two sets of pressure-sensitive labels and a list containing the same information.

The Nominees are authorized and required to forward Solicitation Packages to the Beneficial Holders for voting, and to provide the Beneficial Holders with a return envelop addressed to the Nominee for the return of the Beneficial Holders votes. The Nominees will then return the Master Ballots reflecting the votes of the Beneficial Holders to the Voting Agent.

Nominees are entitled to seek reimbursement from the Debtors for their reasonable, actual, and necessary out-of-pocket expenses incurred in performing the tasks described above upon written request by such entities (subject to the Bankruptcy Court's jurisdiction to resolve any disputes over any request for such reimbursement).

**7. 3018(a) Motions:**

Pursuant to the Solicitation Procedures, holders of Syms and Filene's general unsecured claims who timely file a proof of claim by the Bar Date, and whose Claims are contingent, disputed or unliquidated, or any holders of Claims whose Claim is the subject of an objection pending on the Voting Record Date, will not be entitled to vote to accept or reject the Plan unless they file and serve a 3018(a) Motion by the 3018(a) Motion Deadline in accordance with the Disclosure Statement and Solicitation Procedures Order. To the extent that these Claimants timely file and serve a 3018(a) Motion, they only will be able to cast a provisional vote to accept or reject the Plan in accordance with the Disclosure Statement and Solicitation Procedures Order.

**8. Third-Party Releases:**

Article XI.F of the Plan contains certain third-party releases, exculpation provisions, and injunction language (collectively, the "Third Party Releases"). Voting claim and interest holders will have the option to "opt-in" or "opt-out" of the Third Party Releases under Article XI.F of the Plan by marking the appropriate box on their ballot.

**EXHIBIT C**

**(Cure Notice)**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	x	
	:	
In re:	:	Chapter 11
	:	
Filene's Basement, L.L.C., <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors <sup>1</sup>	:	Jointly Administered
	:	
-----	x	

NOTICE OF CURE AMOUNT WITH RESPECT TO EXECUTORY CONTRACT OR  
UNEXPIRED LEASE TO BE ASSUMED PURSUANT TO THE JOINT CHAPTER 11  
PLAN OF REORGANIZATION OF SYMS CORP. AND ITS SUBSIDIARIES

**THIS NOTICE IS BEING PROVIDED TO ALL NON-DEBTOR PARTIES TO  
EXECUTORY CONTRACTS OR UNEXPIRED LEASES THAT MAY BE ASSUMED  
PURSUANT TO THE PLAN (AS DEFINED BELOW).**

**FILING OF PLAN AND DISCLOSURE STATEMENT**

On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement, dated May 24, 2012, (the "Disclosure Statement"), as providing adequate information for holders of claims against and interests in the Debtors to make a decision as to whether to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders, (ii) the cure procedures for executory contracts or unexpired leases to be assumed and reinstated pursuant to the Plan, and (iii) the procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Solicitation Procedures and the Disclosure Statement are annexed as Exhibits A and B to the Disclosure Statement and Solicitation Procedures Order.

In the Disclosure Statement and Solicitation Procedures Order, the Bankruptcy Court scheduled a hearing (the "Confirmation Hearing") on confirmation of the Plan. The Confirmation Hearing will be held at **10:00 a.m. (prevailing Eastern time) on August 29, 2012**, before the Honorable Kevin J. Carey, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Courtroom 5, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court and the Plan may be further modified, if necessary, pursuant to 11 U.S.C. § 1127, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

## ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES UNDER THE PLAN

The order confirming the Plan (the “Confirmation Order”) will constitute an order under Bankruptcy Code section 365 rejecting all prepetition executory contracts, including purchase orders, and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtors, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a pending motion to assume or reject on the Confirmation Date, or (d) is identified in Exhibit B to the Plan as an insurance policy or insurance agreement of the Debtors; provided, however, that the Debtors may amend such Exhibit B at any time prior to the date the Plan is confirmed (the “Confirmation Date”).

1. Notice of Assumption: The Debtors hereby provide notice (the “Notice”) of their intent to assume certain executory contracts or unexpired leases pursuant to the Plan, including those listed on Exhibit A hereto (the “Assumed Contracts”), as of the Effective Date.

2. Notice of Cure Amount: On the Effective Date or as soon thereafter as practicable, the Debtors or Reorganized Syms, as applicable, shall pay the amount, if any, necessary to cure any defaults of any of the Debtors under the Assumed Contracts according to the Debtors’ books and records. Such amounts are set forth on Exhibit A hereto (the “Cure Amount”). The Debtors will continue to pay all postpetition amounts owing under the Assumed Contracts until the assumption of the Assumed Contracts. The Debtors’ records reflect that, other than the Cure Amount, there are no other defaults under the Assumed Contracts.

3. Objecting to the Proposed Assumption or Cure Amount: Each non-Debtor party to an Assumed Contract shall have until **August 21, 2012 at 4:00 p.m. (prevailing Eastern time) (the “Cure Objection Deadline”)** to file an objection to (a) the proposed assumption of the applicable Assumed Contract (and must state in the objection, with specificity, the legal and factual basis of its objection) and/or (b) the Cure Amount (and must state in its objection, with specificity, what Cure Amount and include invoices and other appropriate documentation in support thereof). If no objection is timely received, (x) the non-Debtor party to the Assumed Contract shall be deemed to have consented to the assumption of the Assumed Contract and shall be forever barred from asserting any objection with regard to such assumption, and (y) the proposed Cure Amount shall be controlling, notwithstanding anything to the contrary in any Assumed Contract or other document as of the date of this Notice, and the non-Debtor party to an Assumed Contract shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting, collecting, or seeking to collect any additional amounts relating thereto against the Debtors or the Reorganized Debtors, or the property of any of them. Objections, if any, to the proposed assumption and/or Cure Amount must be in writing, filed with the Bankruptcy Court and served in hard-copy form so that they are actually received by the Cure Objection Deadline by the following parties: (collectively, the “Notice Parties”): (i) Syms Corp. and Filene’s Basement, LLC, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott,

Esq.; (iii) counsel to the Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq.

4. Hearing with Respect to Objections: If an objection to the proposed assumption and/or to the Cure Amount is timely-filed and received in accordance with the procedures set forth in the preceding paragraph, and the parties do not reach a consensual resolution of such objection, a hearing with respect to such objection will be held at the Confirmation Hearing (or at any later hearing scheduled by the Debtors). Objections to the proposed Cure Amount or assumption of an executory contract or unexpired lease will not be treated as objections to confirmation of the Plan.

5. Reservation of Rights: Notwithstanding anything to the contrary herein, prior to the Effective Date, the Debtors may amend their decision with respect to the assumption of any Assumed Contract and provide a new notice amending the information provided in the applicable Cure Notice. In the case of an executory contract or unexpired lease designated as an Assumed Contract which is the subject of a Cure Amount Objection which has not been resolved prior to the Effective Date, the Debtors may designate such executory contract or unexpired lease for rejection at any time prior to the payment of the Cure Amount.

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## COPIES OF DOCUMENTS

Any party in interest wishing to obtain (i) information about the Solicitation Procedures or (ii) copies of the Disclosure Statement, the Plan or the Solicitation Procedures (a) should contact the Debtors' Voting Agent at **(877) 606-7510 or FilenesInfo@kccllc.com.**, or (b) view such documents at the Debtors' website, at **www.kccllc.net/filenes**. All documents that are filed with the Court may be reviewed during regular business hours (9:00 a.m. to 4:00 p.m. weekdays, except legal holidays) at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

Dated:           Wilmington, Delaware  
                  June [ ], 2012]

/s/ draft

Mark S. Chehi (I.D. No. 2855)  
Jason M. Liberi (I.D. No. 4425)  
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- and -

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(212) 735-2000

Counsel for Debtors and Debtors in Possession

**EXHIBIT D**  
**(Confirmation Hearing Notice)**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	X	
	:	
In re:	:	Chapter 11
	:	
Filene's Basement, L.L.C., <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors <sup>1</sup>	:	Jointly Administered
	:	
	:	
-----	X	

NOTICE OF ORDER (I) APPROVING DISCLOSURE STATEMENT;  
(II) APPROVING KEY DATES AND DEADLINES RELATED TO BALLOT  
SOLICITATION AND TABULATION PROCEDURES, FORMS OF BALLOTS, AND  
MANNER OF NOTICE; AND (III) FIXING DATE, TIME AND PLACE FOR  
CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS THERETO

**TO ALL CREDITORS, INTEREST HOLDERS AND PARTIES IN INTEREST,  
PLEASE TAKE NOTICE THAT:**

1. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement, dated May 24, 2012, (the "Disclosure Statement"), as providing adequate information for holders of claims against and interests in the Debtors to make a decision as to whether to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders, and (ii) the procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Solicitation Procedures and the Disclosure Statement are annexed as Exhibits A and B to the Disclosure Statement and Solicitation Procedures Order.
2. The Solicitation Procedures contain special balloting instructions and solicitation and tabulation procedures. **GENERAL UNSECURED CREDITORS AND SYMS SHAREHOLDERS, AND THEIR COUNSEL SHOULD REVIEW THE SOLICITATION PROCEDURES CAREFULLY.**

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

3. The Disclosure Statement and Solicitation Procedures Order require that votes to accept or reject the Plan must be actually received by Kurtzman Carson Consultants, L.L.C. (the "Voting Agent") **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended in the sole discretion of the Debtors (the "Voting Deadline").
4. A hearing (the "Confirmation Hearing") to consider the confirmation of the Plan will be held at **10:00 a.m. prevailing Eastern Time on August 29, 2012**, before the Honorable Kevin J. Carey, United States Bankruptcy Judge at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Courtroom 5, Wilmington, Delaware. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtors of the adjourned date(s) at the Confirmation Hearing or any continued hearing, and the Plan may be modified, if necessary, pursuant to section 1127 of the Bankruptcy Code prior to, during, or as a result of the Confirmation Hearing, without further notice to interested parties other than by filing such modifications with the Court prior to the Confirmation Hearing or announcing any such modifications at the Confirmation Hearing.
5. In accordance with the Solicitation Procedures, Solicitation Packages will be mailed to (a) all holders of Claims listed on the Debtors' Schedules, (b) all holders of Claims who have filed a proof of claim by the Bar Date (or their counsel if the proof of claim was filed by such counsel on behalf of the claimant), (c) each entity listed on the Schedules as a party to an executory contract or unexpired lease with the Debtors, (d) Syms shareholders of record, (e) the Office of the United States Trustee for the District of Delaware, (f) counsel for the Creditors' Committee, (g) counsel for the Equity Committee, and (h) each party that filed a notice of appearance with the Court and has not withdrawn such notice of appearance as of the date the Court enters the Disclosure Statement and Solicitation Procedures Order.
6. Any holder of a Claim or Interest that the Debtors believe, in accordance with the Disclosure Statement and Solicitation Procedures Order, is entitled to vote to accept or reject the Plan, has been mailed a Ballot and voting instructions appropriate for such Claim or Interest. For any vote to accept or reject the Plan to be counted, a Ballot to accept or reject the Plan must be actually received by the Voting Agent by the Voting Deadline. In accordance with the Solicitation Procedures, all Ballots must be returned to the Voting Agent at:

**Creditor Ballots**

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

**Shareholder Ballots (Beneficial Owner  
Ballots to be returned to Nominee)**

Kurtzman Carson Consultants, LLC  
Syms Corp. Class 6 Interests Balloting  
599 Lexington Avenue  
39<sup>th</sup> Floor  
New York, NY 10022

7. Objections to the confirmation of, 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 or proposed modification, and (d) be filed, together with proof of service, with the Court and served so that they are **actually received** no later than **5:00 p.m. prevailing Eastern Time on August 21, 2012** (the "Objection Deadline") by all of the following parties (the "Notice Parties"): (i) Syms Corp., et al, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq.; (iii) counsel to the Official Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq. **Objections not timely filed and served in the manner set forth above may not be considered and shall be overruled.**
8. Any holder of a Claim that is not scheduled and is not the subject of a timely filed proof of claim or a proof of claim deemed timely filed with the Court pursuant to either the Bankruptcy Code or any order of the Court or otherwise deemed timely filed under applicable law, shall not be treated as a creditor with respect to such Claim for purposes of (a) receiving notices regarding the Plan, (b) voting on the Plan or (c) receiving distribution under the Plan.

9. Any party in interest wishing to obtain (i) information about the Solicitation Procedures or (ii) copies of the Disclosure Statement, the Plan or the Solicitation Procedures (a) should contact the Debtors' Voting Agent at **(877) 606-7510 or FilenesInfo@kccllc.com.**, or (b) view such documents at the Debtors' website, at **www.kccllc.net/filenes**. All documents that are filed with the Court may be reviewed during regular business hours (9:00 a.m. to 4:00 p.m. weekdays, except legal holidays) at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

Dated: Wilmington, Delaware  
June [ ], 2012]

/s/ draft

Mark S. Chehi (I.D. No. 2855)  
Jason M. Liberi (I.D. No. 4425)  
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- and -

Jay M. Goffman  
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Suzanne D.T. Lovett  
Skadden, Arps, Slate, Meagher & Flom LLP  
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New York, New York 10036-6522  
(212) 735-3000  
(212) 735-2000

Counsel for Debtors and Debtors in Possession

**EXHIBIT E**  
**(Forms of Ballot for Voting Classes)**

## **EXHIBIT E-1**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- x  
In re: : Chapter 11  
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)  
Debtors.<sup>1</sup> : Jointly Administered  
----- -x

BALLOT FOR ACCEPTING OR REJECTING THE JOINT CHAPTER 11 PLAN OF  
REORGANIZATION OF SYMS CORP. AND ITS SUBSIDIARIES FOR HOLDERS OF  
FILENE'S CLASS 4 FILENE'S GENERAL UNSECURED (SHORT-TERM) CLAIMS

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The above captioned Debtors (the "Debtors"), as debtors and debtors in possession, are soliciting votes with respect to the Joint Chapter 11 Plan of Reorganization, dated May 24, 2012 (as same may be amended or modified, the "Plan"), from the holders of certain impaired claims against and interests in the Debtors. As discussed in the Disclosure Statement (as defined below), the Plan, while prepared jointly, constitutes two separate plans, one for Syms Corp. ("Syms"), and one for Filene's Basement LLC ("Filene's"). The Debtors do not believe that Syms Advertising, Inc. or Syms Clothing, Inc. have any assets or liabilities. Accordingly, the Debtors have not proposed a separate plan for either of these Debtors and have provided in the Plan that they shall be merged into Reorganized Syms. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's.

On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"), as providing adequate information for holders of claims against and ownership interests in the Debtors to make a decision as to whether to accept or reject the Plan, and (ii) the

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies this Ballot.

**THIS BALLOT IS TO BE USED FOR VOTING BY HOLDERS OF FILENE'S CLASS 4 GENERAL UNSECURED (SHORT-TERM) CLAIMS. IN ORDER FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE PROPERLY COMPLETED, SIGNED AND RETURNED SO THAT IT IS ACTUALLY RECEIVED BY KURTZMAN CARSON CONSULTANTS, L.L.C. (THE "VOTING AGENT") BY 5:00 P.M. PREVAILING PACIFIC TIME ON AUGUST 23, 2012, UNLESS SUCH TIME IS EXTENDED BY THE DEBTORS, IN THEIR SOLE DISCRETION, IN WRITING (THE "VOTING DEADLINE").**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THIS BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THIS BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT THE FOLLOWING ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS:**

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department  
Email: [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com)  
Telephone: (877) 606-7510

**PLEASE COMPLETE THE FOLLOWING:**

Item 1. **AMOUNT OF CLAIM.** For purposes of voting to accept or reject the Plan, the undersigned holds a Filene's Class 4 General Unsecured (Short-Term) Claim against Filene's Basement, LLC in the amount of \$[\_\_\_].

Item 2. **VOTE ON THE PLAN.** The undersigned holder of a Filene's Class 4 General Unsecured (Short-Term) Claim in the amount set forth in Item 1 above hereby votes to:

Check one box only:      ☐ Accept the Plan  
   ☐ Reject the Plan

Item 3. **CONVENIENCE CLASS ELECTION.** The undersigned holder of a Filene's Class 4 General Unsecured (Short-Term) Claim in the amount set forth in Item 1 above hereby:

Check the box **only** if intending to elect to reduce your claim to \$10,000 and be treated as a holder of a Filene's Class 3 Convenience Claim ☐ Elects to reduce its allowed claim to \$10,000 and be treated as a holder of a Filene's Class 3 Convenience Claim

Item 4. **VOTE ON THIRD PARTY RELEASES.** Article XI.F of the Plan provides for certain Third Party Releases to become effective on the Effective Date. The undersigned holder of a Filene's Class 4 General Unsecured (Short-Term) Claim in the amount set forth in Item 1 above hereby:

Check one box only: ☐ Elects to Opt-in to the Third Party Releases  
☐ Elects to Opt-out of the Third Party Releases

Item 5. **ACKNOWLEDGEMENTS AND CERTIFICATION.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned certifies that: (a) this Ballot is the only Ballot submitted for its Unsecured Claim, (b) it has full power and authority to vote to accept or reject the Plan with respect to its Unsecured Claim identified in Item 1 above, and (c) it was the holder of the Unsecured Claim identified in Item 1 above on July [ ], 2012. The undersigned further acknowledges that the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement, including the Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures.

Print or Type Name of Claimant:

Social Security or Federal Tax I.D. No. of Claimant:

Signature:

Name of signatory (if different than claimant):

If by Authorized Agent, Title of Agent:

Street Address:

City, State, and Zip Code:

Telephone Number:

Date Completed

VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT FOR  
HOLDERS OF FILENE'S CLASS 4 GENERAL UNSECURED (SHORT-TERM) CLAIM

1. This Ballot is submitted to you to solicit your vote to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (as same may be amended or modified, the "Plan"), which is described in the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"). As discussed in the Disclosure Statement, the Plan, while prepared jointly, constitutes two separate plans, one for Syms, and one for Filene's. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement as providing adequate information for holders of claims against and ownership interests in the Debtors to make a decision as to whether to accept or reject the Plan, and the Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies the Ballot. All capitalized terms used herein or in the Ballot but not otherwise defined shall have the meanings ascribed to them in the Plan or the Solicitation Procedures. **PLEASE READ THE PLAN, THE DISCLOSURE STATEMENT AND THE SOLICITATION PROCEDURES CAREFULLY BEFORE COMPLETING THE BALLOT.**
2. The Plan will be accepted by Filene's Class 4 if it is accepted by the holders of two-thirds in amount and more than one-half in number of Claims in Filene's Class 4 voting on the Plan. If the Plan is confirmed by the Court, all holders of Interests in, and any and all other holders of Claims against, Filene's (including those who abstain or reject the Plan or are not entitled to vote thereon) will be bound by the confirmed Plan and the transactions contemplated thereby.
3. To have your vote counted, you must complete, sign and return the Ballot so that it is actually received by Kurtzman Carson Consultants, L.L.C. (the "Voting Agent"), **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended by the Debtors, in their sole discretion, in writing (the "Voting Deadline"). Deliveries of Ballots by mail, hand delivery or overnight courier to the Voting Agent should be sent to:

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

**Ballots will not be accepted by telecopy, facsimile or other electronic means, including email.**

4. To properly complete the Ballot, you must follow the procedures described below:
  - (a) Make sure that the information required in Item 1 is correct.
  - (b) Cast one vote to accept or reject the Plan by checking the appropriate box in Item 2.
  - (c) Indicate in Item 3 whether you elect to reduce your Filene's Class 4 General Unsecured (Short-Term) Claim to an allowed amount of \$10,000 and be treated as holding a Filene's Class 3 Convenience Claim. Check this box only if you intend to elect to reduce your claim to \$10,000 and be treated as a holder of a Filene's Class 3 Convenience Claim. If you elect treatment as a holder of a Class 3 Convenience Claim, do not also make an election on the Third Party Releases in Item 4.
  - (d) Indicate in Item 4 whether you elect to Opt-in or Opt-out of the Third Party Releases provided for in Article XI.F of the Plan. If you submit your Ballot without selecting either option, you will be deemed to have opted-out of the Third Party Releases.
  - (e) If you are completing the Ballot as an authorized officer or employee of the holder of the Claim, state your title.
  - (f) If you are completing the Ballot on behalf of another person or entity, indicate your relationship to such person or entity and the capacity in which you are signing and submit satisfactory evidence of your authority to so act (*e.g.*, a power of attorney or a certified copy of board resolutions authorizing you to so act).
  - (g) If you submit more than one Ballot voting the same Claim prior to the Voting Deadline, then only the last timely filed Ballot shall be counted.
  - (h) If you believe that you have received the wrong Ballot, please contact the Voting Agent immediately.
  - (i) Sign and date your Ballot.

- (j) Provide your name and mailing address.
- (k) Return your Ballot to the Voting Agent by using the enclosed pre-addressed return envelope and mailing it to the Voting Agent so that it is actually received before the Voting Deadline of **5:00 p.m. prevailing Pacific Time on August 23, 2012.**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THE BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN, OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT (877) 606-7510 OR FILENESINFO@KCCLLC.COM.**

## **EXHIBIT E-2**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- x  
In re: : Chapter 11  
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)  
Debtors.<sup>1</sup> : Jointly Administered  
----- -x

BALLOT FOR ACCEPTING OR REJECTING THE JOINT CHAPTER 11 PLAN OF  
REORGANIZATION OF SYMS CORP. AND ITS SUBSIDIARIES FOR HOLDERS OF  
FILENE'S CLASS 5 GENERAL UNSECURED (LONG-TERM) CLAIMS

--

The above captioned Debtors (the "Debtors"), as debtors and debtors in possession, are soliciting votes with respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (as same may be amended or modified, the "Plan"), from the holders of certain impaired claims against and interests in the Debtors. As discussed in the Disclosure Statement (as defined below), the Plan, while prepared jointly, constitutes two separate plans, one for Syms Corp. ("Syms"), and one for Filene's Basement LLC ("Filene's"). The Debtors do not believe that Syms Advertising, Inc. or Syms Clothing, Inc. have any assets or liabilities. Accordingly, the Debtors have not proposed a separate plan for either of these Debtors and have provided in the Plan that they shall be merged into Reorganized Syms. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's.

On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"), as providing adequate information for holders of claims against the Debtors to make a decision as to whether to accept or reject the Plan, and (ii) the Ballot Solicitation and

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies this Ballot.

**THIS BALLOT IS TO BE USED FOR VOTING BY HOLDERS OF FILENE'S CLASS 5 GENERAL UNSECURED (LONG-TERM) CLAIMS. IN ORDER FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE PROPERLY COMPLETED, SIGNED AND RETURNED SO THAT IT IS ACTUALLY RECEIVED BY KURTZMAN CARSON CONSULTANTS, L.L.C. (THE "VOTING AGENT") BY 5:00 P.M. PREVAILING PACIFIC TIME ON AUGUST 23, 2012, UNLESS SUCH TIME IS EXTENDED BY THE DEBTORS, IN THEIR SOLE DISCRETION, IN WRITING (THE "VOTING DEADLINE").**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THIS BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THIS BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT THE FOLLOWING ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS:**

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department  
Email: FilenesInfo@kccllc.com  
Telephone: (877) 606-7510

**PLEASE COMPLETE THE FOLLOWING:**

Item 1. **AMOUNT OF CLAIM.** For purposes of voting to accept or reject the Plan, the undersigned holds a Filene's Class 5 General Unsecured (Long-Term) Claim against Filene's Basement, LLC in the amount of \$[\_\_\_].

Item 2. **VOTE ON THE PLAN.** The undersigned holder of a Filene's Class 5 General Unsecured (Long-Term) Claim in the amount set forth in Item 1 above hereby votes to:

Check one box only:      ☐ Accept the Plan  
   ☐ Reject the Plan

Item 3. **CONVENIENCE CLASS ELECTION.** The undersigned holder of a Filene's Class 5 General Unsecured (Long-Term) Claim in the amount set forth in Item 1 above hereby:

Check the box **only** if intending to elect to reduce your claim to \$10,000 and be treated as a holder of a Filene's Class 3 Convenience Claim ☐ Elects to reduce its allowed claim to \$10,000 and be treated as a holder of a Filene's Class 3 Convenience Claim

Item 4. **VOTE ON THIRD PARTY RELEASES.** Article XI.F of the Plan provides for certain Third Party Releases to become effective on the Effective Date. The undersigned holder of a Filene's Class 5 General Unsecured (Long-Term) Claim in the amount set forth in Item 1 above hereby:

Check one box only: ☐ Elects to Opt-in to the Third Party Releases  
☐ Elects to Opt-out of the Third Party Releases

Item 5. **ACKNOWLEDGEMENTS AND CERTIFICATION.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned certifies that: (a) this Ballot is the only Ballot submitted for its Unsecured Claim, (b) it has full power and authority to vote to accept or reject the Plan with respect to its Unsecured Claim identified in Item 1 above, and (c) it was the holder of the Unsecured Claim identified in Item 1 above on **July** [\_\_], 2012. The undersigned further acknowledges that the Debtors solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement, including the Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures.

Print or Type Name of Claimant:

Social Security or Federal Tax I.D. No. of Claimant:

Signature:

Name of signatory (if different than claimant):

If by Authorized Agent, Title of Agent:

Street Address:

City, State, and Zip Code:

Telephone Number:

Date Completed

VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT FOR  
HOLDERS OF FILENE'S CLASS 5 GENERAL UNSECURED (LONG-TERM) CLAIM

1. The Ballot is submitted to you to solicit your vote to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp and its Subsidiaries, dated May 24, 2012 (as same may be amended or modified, the "Plan"), which is described in the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"). As discussed in the Disclosure Statement, the Plan, while prepared jointly, constitutes two separate plans, one for Syms Corp. ("Syms"), and one for Filene's Basement LLC ("Filene's"). The Debtors do not believe that Syms Advertising, Inc. or Syms Clothing, Inc. have any assets or liabilities. Accordingly, the Debtors have not proposed a plan for either of these Debtors other than that they shall be merged into Reorganized Syms as provided in the Plan. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement as providing adequate information for holders of claims against the Debtors to make a decision as to whether to accept or reject the Plan, and the Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies the Ballot. All capitalized terms used herein or in the Ballot but not otherwise defined shall have the meanings ascribed to them in the Plan or the Solicitation Procedures. **PLEASE READ THE PLAN, THE DISCLOSURE STATEMENT AND THE SOLICITATION PROCEDURES CAREFULLY BEFORE COMPLETING THE BALLOT.**
2. The Plan will be accepted by Filene's Class 5 if it is accepted by the holders of two-thirds in amount and more than one-half in number of Claims in Filene's Class 5 voting on the Plan. If the Plan is confirmed by the Court, all holders of Interests in, and any and all other holders of Claims against, Filene's (including those who abstain or reject the Plan or are not entitled to vote thereon) will be bound by the confirmed Plan and the transactions contemplated thereby.
3. To have your vote counted, you must complete, sign and return the Ballot so that it is actually received by Kurtzman Carson Consultants, L.L.C. (the "Voting Agent"), **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended by the Debtors, in their sole discretion, in writing (the "Voting Deadline"). Deliveries of Ballots by mail, hand delivery or overnight courier to the Voting Agent should be sent to:

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

**Ballots will not be accepted by telecopy, facsimile or other electronic means, including email.**

4. To properly complete the Ballot, you must follow the procedures described below:
  - (a) Make sure that the information required in Item 1 is correct.
  - (b) Cast one vote to accept or reject the Plan by checking the appropriate box in Item 2.
  - (c) Indicate in Item 3 whether you elect to reduce your Filene's Class 5 Claim to an allowed amount of \$10,000 and be treated as holding a Filene's Class 3 Convenience Claim. Check this box only if you intend to elect to reduce your claim to \$10,000 and be treated as a holder of a Filene's Class 3 Convenience Claim. If you elect treatment as a holder of a Class 3 Convenience Claim, do not also make an election on the Third Party Releases in Item 4.
  - (d) Indicate in Item 4 whether you elect to Opt-in or Opt-out of the Third Party Releases provided for in Article XI.F of the Plan. If you submit your Ballot without selecting either option, you will be deemed to have opted-out of the Third Party Releases.
  - (e) If you are completing the Ballot as an authorized officer or employee of the holder of the Claim, state your title.
  - (f) If you are completing the Ballot on behalf of another person or entity, indicate your relationship to such person or entity and the capacity in which you are signing and submit satisfactory evidence of your authority to so act (*e.g.*, a power of attorney or a certified copy of board resolutions authorizing you to so act).
  - (g) If you submit more than one Ballot voting the same Claim prior to the Voting Deadline, then only the last timely filed Ballot shall be counted.

- (h) If you believe that you have received the wrong Ballot, please contact the Voting Agent immediately.
- (i) Sign and date your Ballot.
- (j) Provide your name and mailing address.
- (k) Return your Ballot to the Voting Agent by using the enclosed pre-addressed return envelope and mailing it to the Voting Agent so that it is actually received before the Voting Deadline of **5:00 p.m. prevailing Pacific Time on August 23, 2012.**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THE BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN, OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT (877) 606-7510 OR FILENESINFO@KCCLLC.COM.**

## **EXHIBIT E-3**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- x  
In re: : Chapter 11  
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)  
Debtors.<sup>1</sup> : Jointly Administered  
----- -x

BALLOT FOR ACCEPTING OR REJECTING THE JOINT CHAPTER 11 PLAN OF  
REORGANIZATION OF SYMS CORP. AND ITS SUBSIDIARIES FOR HOLDERS OF  
SYMS CLASS 4 GENERAL UNSECURED CLAIMS

--

The above captioned Debtors (the "Debtors"), as debtors and debtors in possession, are soliciting votes with respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp and its Subsidiaries, dated May 24, 2012 (as same may be amended or modified, the "Plan"), from the holders of certain impaired claims against and interests in the Debtors. As discussed in the Disclosure Statement (as defined below), the Plan, while prepared jointly, constitutes two separate plans, one for Syms Corp. ("Syms"), and one for Filene's Basement LLC ("Filene's"). The Debtors do not believe that Syms Advertising, Inc. or Syms Clothing, Inc. have any assets or liabilities. Accordingly, the Debtors have not proposed a separate plan for either of these Debtors and have provided in the Plan that they shall be merged into Reorganized Syms. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's.

On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"), as providing adequate information for holders of claims against and ownership interests in the Debtors to make a decision as to whether to accept or reject the Plan, and (ii) the

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies this Ballot.

**THIS BALLOT IS TO BE USED FOR VOTING BY HOLDERS OF SYMS CLASS 4 GENERAL UNSECURED CLAIMS ONLY. IN ORDER FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE PROPERLY COMPLETED, SIGNED AND RETURNED SO THAT IT IS ACTUALLY RECEIVED BY KURTZMAN CARSON CONSULTANTS, L.L.C. (THE "VOTING AGENT") BY 5:00 P.M. PREVAILING PACIFIC TIME ON AUGUST 23, 2012, UNLESS SUCH TIME IS EXTENDED BY THE DEBTORS, IN THEIR SOLE DISCRETION, IN WRITING (THE "VOTING DEADLINE").**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THIS BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THIS BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT THE FOLLOWING ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS:**

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department  
Email: [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com)  
Telephone: (877) 606-7510

**PLEASE COMPLETE THE FOLLOWING:**

Item 1. **AMOUNT OF CLAIM.** For purposes of voting to accept or reject the Plan, the undersigned holds a Syms Class 4 General Unsecured Claim against Syms Corp. in the amount of \$[\_\_\_].

Item 2. **VOTE ON THE PLAN.** The undersigned holder of a Syms Class 4 General Unsecured Claim in the amount set forth in Item 1 above hereby votes to:

Check one box only:      ☐ Accept the Plan  
   ☐ Reject the Plan

Item 3. **CONVENIENCE CLASS ELECTION.** The undersigned holder of a Syms Class 4 General Unsecured Claim in the amount set forth in Item 1 above hereby:

Check the box **only** if intending to elect to reduce your claim to \$10,000 and be treated as a holder of a Syms Class 3 Convenience Claim ☐ Elects to reduce its allowed claim to \$10,000 and be treated as a holder of a Syms Class 3 Convenience Claim

Item 4. **VOTE ON THIRD PARTY RELEASES.** Article XI.F of the Plan provides for certain Third Party Releases to become effective on the Effective Date. The undersigned holder of a Syms Class 4 General Unsecured Claim in the amount set forth in Item 1 above hereby:

Check one box only: ☐ Elects to Opt-in to the Third Party Releases  
☐ Elects to Opt-out of the Third Party Releases

Item 5. **ACKNOWLEDGEMENTS AND CERTIFICATION.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned certifies that: (a) this Ballot is the only Ballot submitted for its Unsecured Claim, (b) it has full power and authority to vote to accept or reject the Plan with respect to its Unsecured Claim identified in Item 1 above, and (c) it was the holder of the Unsecured Claim identified in Item 1 above on **July** [\_\_], 2012. The undersigned further acknowledges that the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement, including the Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures.

Print or Type Name of Claimant:

Social Security or Federal Tax I.D. No. of Claimant:

Signature:

Name of signatory (if different than claimant):

If by Authorized Agent, Title of Agent:

Street Address:

City, State, and Zip Code:

Telephone Number:

Date Completed

VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT FOR  
HOLDERS OF SYMS CLASS 4 GENERAL UNSECURED CLAIMS

1. The Ballot is submitted to you to solicit your vote to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp and its Subsidiaries, dated May 24, 2012 (as same may be amended or modified, the "Plan"), which is described in the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"). As discussed in the Disclosure Statement, the Plan, while prepared jointly, constitutes two separate plans, one for Syms Corp. ("Syms"), and one for Filene's Basement LLC ("Filene's"). For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement as providing adequate information for holders of claims against and ownership interests in the Debtors to make a decision as to whether to accept or reject the Plan, and the Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies the Ballot. All capitalized terms used herein or in the Ballot but not otherwise defined shall have the meanings ascribed to them in the Plan or the Solicitation Procedures. **PLEASE READ THE PLAN, THE DISCLOSURE STATEMENT AND THE SOLICITATION PROCEDURES CAREFULLY BEFORE COMPLETING THE BALLOT.**
2. The Plan will be accepted by Syms Class 4 if it is accepted by the holders of two-thirds in amount and more than one-half in number of Claims in Syms Class 4 voting on the Plan. If the Plan is confirmed by the Court, all holders of Interests in, and any and all other holders of Claims against, Syms (including those who abstain or reject the Plan or are not entitled to vote thereon) will be bound by the confirmed Plan and the transactions contemplated thereby.
3. To have your vote counted, you must complete, sign and return the Ballot so that it is actually received by Kurtzman Carson Consultants, L.L.C. (the "Voting Agent"), **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended by the Debtors, in their sole discretion, in writing (the "Voting Deadline"). Deliveries of Ballots by mail, hand delivery or overnight courier to the Voting Agent should be sent to:

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

**Ballots will not be accepted by telecopy, facsimile or other electronic means, including email.**

4. To properly complete the Ballot, you must follow the procedures described below:
  - (a) Make sure that the information required in Item 1 is correct.
  - (b) Cast one vote to accept or reject the Plan by checking the appropriate box in Item 2.
  - (c) Indicate in Item 3 whether you elect to reduce your Syms Class 4 General Unsecured Claim to an allowed amount of \$10,000 and be treated as holding a Syms Class 3 Convenience Claim. Check this box only if you intend to elect to reduce your claim to \$10,000 and be treated as a holder of a Syms Class 3 Convenience Claim. If you elect treatment as a holder of a Class 3 Convenience Claim, do not also make an election on the Third Party Releases in Item 4.
  - (d) Indicate in Item 4 whether you elect to Opt-in or Opt-out of the Third Party Releases provided for in Article XI.F of the Plan. If you submit your Ballot without selecting either option, you will be deemed to have opted-out of the Third Party Releases.
  - (e) If you are completing the Ballot as an authorized officer or employee of the holder of the Claim, state your title.
  - (f) If you are completing the Ballot on behalf of another person or entity, indicate your relationship to such person or entity and the capacity in which you are signing and submit satisfactory evidence of your authority to so act (*e.g.*, a power of attorney or a certified copy of board resolutions authorizing you to so act).
  - (g) If you submit more than one Ballot voting the same Claim prior to the Voting Deadline, then only the last timely filed Ballot shall be counted.
  - (h) If you believe that you have received the wrong Ballot, please contact the Voting Agent immediately.
  - (i) Sign and date your Ballot.
  - (j) Provide your name and mailing address.

- (k) Return your Ballot to the Voting Agent by using the enclosed pre-addressed return envelope and mailing it to the Voting Agent so that it is actually received before the Voting Deadline of **5:00 p.m. prevailing Pacific Time on August 23, 2012.**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THE BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN, OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT (877) 606-7510 OR FILENESINFO@KCCLLC.COM.**

## **EXHIBIT E-4**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- x  
In re: : Chapter 11  
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)  
Debtors.<sup>1</sup> : Jointly Administered  
----- -x

RECORD OWNER BALLOT FOR ACCEPTING OR REJECTING THE JOINT CHAPTER 11  
PLAN OF REORGANIZATION OF SYMS CORP. AND ITS SUBSIDIARIES FOR  
HOLDERS OF SYMS CLASS 6 COMMON STOCK INTERESTS

The above captioned Debtors (the "Debtors"), as debtors and debtors in possession, are soliciting votes with respect to the Joint Chapter 11 Plan of Reorganization, dated May 24, 2012 (as same may be amended or modified, the "Plan"), from the holders of certain impaired claims against and interests in the Debtors. As discussed in the Disclosure Statement (as defined below), the Plan, while prepared jointly, constitutes two separate plans, one for Syms Corp. ("Syms"), and one for Filene's Basement LLC ("Filene's"). The Debtors do not believe that Syms Advertising, Inc. or Syms Clothing, Inc. have any assets or liabilities. Accordingly, the Debtors have not proposed a separate plan for either of these Debtors and have provided in the Plan that they shall be merged into Reorganized Syms. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's.

On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement With Respect to the Debtors' Joint Chapter 11 Plan of Reorganization, dated May 24, 2012 (the "Disclosure Statement"), as providing adequate information for holders of claims against and ownership interests in the Debtors to make a decision as to whether to accept or reject the Plan, and (ii) the Ballot Solicitation and Tabulation

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.



Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies this Ballot.

**THIS BALLOT IS TO BE USED FOR VOTING BY REGISTERED HOLDERS OF SYMS CLASS 6 INTERESTS. IN ORDER FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE PROPERLY COMPLETED, SIGNED AND RETURNED SO THAT IT IS ACTUALLY RECEIVED BY KURTZMAN CARSON CONSULTANTS, L.L.C. (THE "VOTING AGENT") BY 5:00 P.M. PREVAILING PACIFIC TIME ON AUGUST 23, 2012, UNLESS SUCH TIME IS EXTENDED BY THE DEBTORS, IN THEIR SOLE DISCRETION, IN WRITING (THE "VOTING DEADLINE").**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THIS BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THIS BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT THE FOLLOWING TELEPHONE NUMBER AND EMAIL ADDRESS:**

Kurtzman Carson Consultants, LLC

Email: [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com)

Telephone: (877) 606-7510

**PLEASE COMPLETE THE FOLLOWING:**

Item 1. **NUMBER OF SHARES.** For purposes of voting to accept or reject the Plan, the undersigned holds Class 6 Interests in Syms Corp. in the amount of \_\_\_ shares.

Item 2. **VOTE ON THE PLAN.** The undersigned holder of Syms Class 6 Interests in the amount set forth in Item 1 above hereby votes to:

Check one box only:

☐ Accept the Plan

☐ Reject the Plan

Item 3. **VOTE ON THIRD PARTY RELEASES.** Article XI.F of the Plan provides for certain Third Party Releases to become effective on the Effective Date. The undersigned holder of Syms Class 6 Interests in the amount set forth in Item 1 above hereby:

Check one box only:

☐ Elects to Opt-in to the Third Party Releases

☐ Elects to Opt-out of the Third Party Releases

Item 4.      **ACKNOWLEDGEMENTS AND CERTIFICATION.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned certifies that: (a) this Ballot is the only Ballot submitted for its stock Interests, (b) it has full power and authority to vote to accept or reject the Plan with respect to its Interest identified in Item 1 above, and (c) it was the holder of the Interests identified in Item 1 above on July [\_\_\_], 2012. The undersigned further acknowledges that the Debtors solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement, including the Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures.

Print or Type Name of Holder: \_\_\_\_\_

Last Four (4) Digits of Social Security or Federal Tax  
I.D. No. of Holder: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of signatory (if different than Interest Holder): \_\_\_\_\_

If by Authorized Agent, Title of Agent: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, and Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date Completed \_\_\_\_\_

VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT FOR RECORD OWNERS  
OF SYMS CLASS 6 COMMON STOCK INTERESTS

1. This Ballot is submitted to you to solicit your vote to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (as same may be amended or modified, the "Plan"), which is described in the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"). As discussed in the Disclosure Statement, the Plan, while prepared jointly, constitutes two separate plans, one for Syms, and one for Filene's. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement as providing adequate information for holders of claims against the Debtors to make a decision as to whether to accept or reject the Plan, and the Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies the Ballot. All capitalized terms used herein or in the Ballot but not otherwise defined shall have the meanings ascribed to them in the Plan or the Solicitation Procedures. **PLEASE READ THE PLAN, THE DISCLOSURE STATEMENT AND THE SOLICITATION PROCEDURES CAREFULLY BEFORE COMPLETING THE BALLOT.**
2. The Plan will be accepted by Syms Class 6 if it is accepted by the holders of two-thirds in amount of the Interests in Syms Class 6 voting on the Plan. If the Plan is confirmed by the Court, all holders of Interests in, and any and all other holders of Claims against, Syms (including those who abstain or reject the Plan or are not entitled to vote thereon) will be bound by the confirmed Plan and the transactions contemplated thereby.
3. To have your vote counted, you must complete, sign and return the Ballot so that it is actually received by Kurtzman Carson Consultants, L.L.C. (the "Voting Agent"), **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended by the Debtors, in their sole discretion, in writing (the "Voting Deadline"). Deliveries of Ballots by mail, hand delivery or overnight courier to the Voting Agent should be sent to:

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
599 Lexington Avenue, 39<sup>th</sup> Floor  
New York, NY 10022  
Attn.: Voting Department

**Ballots will not be accepted by telecopy, facsimile or other electronic means, including email.**

4. To properly complete the Ballot, you must follow the procedures described below:
  - (a) Make sure that the information required in Item 1 is correct.
  - (b) Cast one vote to accept or reject the Plan by checking the appropriate box in Item 2.
  - (c) Indicate whether you elect to Opt-in or Opt-out of the Third Party Releases provided for in Article XI.F of the Plan. If you submit your Ballot without selecting either option, you will be deemed to have opted-out of the Third Party Releases.
  - (d) If you are completing the Ballot as an authorized officer or employee of the holder of the Interests, state your title.
  - (e) If you are completing the Ballot on behalf of another person or entity, indicate your relationship to such person or entity and the capacity in which you are signing and submit satisfactory evidence of your authority to so act (*e.g.*, a power of attorney or a certified copy of board resolutions authorizing you to so act).
  - (f) If you submit more than one Ballot voting the same Interests prior to the Voting Deadline, then only the last timely filed Ballot shall be counted.
  - (g) If you believe that you have received the wrong Ballot, please contact the Voting Agent immediately.
  - (h) Sign and date your Ballot.
  - (i) Provide your name and mailing address.
  - (j) Return your Ballot to the Voting Agent by using the enclosed pre-addressed return envelope and mailing it to the Voting Agent so that it is actually received before the Voting Deadline of **5:00 p.m. prevailing Pacific Time on August 23, 2012.**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THE BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN, OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT (877) 606-7510 OR FILENESINFO@KCCLLC.COM.**

## **EXHIBIT E-5**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- x  
In re: : Chapter 11  
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)  
Debtors.<sup>1</sup> : Jointly Administered  
----- -x

BENEFICIAL BALLOT FOR ACCEPTING OR REJECTING THE JOINT CHAPTER 11  
PLAN OF REORGANIZATION OF SYMS CORP. AND ITS SUBSIDIARIES FOR  
HOLDERS OF SYMS CLASS 6 COMMON STOCK INTERESTS

The above captioned Debtors (the "Debtors"), as debtors and debtors in possession, are soliciting votes with respect to the Joint Chapter 11 Plan of Reorganization, dated May 24, 2012 (as same may be amended or modified, the "Plan"), from the holders of certain impaired claims against and interests in the Debtors. As discussed in the Disclosure Statement (as defined below), the Plan, while prepared jointly, constitutes two separate plans, one for Syms Corp. ("Syms"), and one for Filene's Basement LLC ("Filene's"). The Debtors do not believe that Syms Advertising, Inc. or Syms Clothing, Inc. have any assets or liabilities. Accordingly, the Debtors have not proposed a separate plan for either of these Debtors and have provided in the Plan that they shall be merged into Reorganized Syms. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's.

On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"), as providing adequate information for holders of claims against and ownership interests in the Debtors to make a decision as to whether to accept or reject the Plan, and (ii) the

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order set a Voting Record Date of July [\_\_\_], 2012. The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies this Ballot.

**THIS BALLOT IS TO BE USED FOR VOTING BY BENEFICIAL HOLDERS OF SYMS CLASS 6 INTERESTS. IN ORDER FOR YOUR VOTE TO BE COUNTED, YOU MUST DELIVER YOUR BALLOT TO YOUR BROKER, BANK, DEALER, AGENT OR OTHER NOMINEE (EACH OF THE FOREGOING, A NOMINEE). PLEASE RETURN YOUR BALLOT TO YOUR NOMINEE WELL BEFORE THE VOTING DEADLINE IN ORDER TO ALLOW SUFFICIENT TIME TO PERMIT YOUR NOMINEE TO DELIVER A MASTER BALLOT (THE "MASTER BALLOT") INCLUDING YOUR VOTE TO KURTZMAN CARSON CONSULTANTS, L.L.C. (THE "VOTING AGENT") BY 5:00 P.M. PREVAILING PACIFIC TIME ON AUGUST 23, 2012, UNLESS SUCH TIME IS EXTENDED BY THE DEBTORS, IN THEIR SOLE DISCRETION, IN WRITING (THE "VOTING DEADLINE").**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THIS BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THIS BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT THE FOLLOWING TELEPHONE NUMBER AND EMAIL ADDRESS:**

Kurtzman Carson Consultants, LLC

Email: [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com)  
Telephone: (877) 606-7510

**PLEASE COMPLETE THE FOLLOWING:**

Item 1. **NUMBER OF SHARES.** For purposes of voting to accept or reject the Plan, the undersigned holds Class 6 Interests in Syms Corp. in the amount of \_\_\_ shares. If your shares are held by a Nominee on your behalf and you do not know the amount of shares held, please contact your Nominee.

Item 2. **VOTE ON THE PLAN.** The undersigned holder of Syms Class 6 Interests in the amount set forth in Item 1 above hereby votes to:

Check one box only:      ☐ Accept the Plan  
   ☐ Reject the Plan



Item 3. **VOTE ON THIRD PARTY RELEASES.** Article XI.F of the Plan provides for certain Third Party Releases to become effective on the Effective Date. The undersigned holder of Syms Class 6 Interests in the amount set forth in Item 1 above hereby:

Check one box only:      ☐ Elects to Opt-in to the Third Party Releases  
   ☐ Elects to Opt-out of the Third Party Releases

Item 4. **ACKNOWLEDGEMENTS AND CERTIFICATION.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned certifies that: (a) this Ballot is the only Ballot submitted for its stock Interest, (b) it has full power and authority to vote to accept or reject the Plan with respect to its Interests identified in Item 1 above, and (c) it was the holder of the Interests identified in Item 1 above on July [\_\_\_], 2012. The undersigned further acknowledges that the Debtors solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement, including the Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures.

Print or Type Name of Holder:

---

Last Four (4) Digits of Social Security or Federal Tax  
I.D. No. of Holder:

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Signature:

---

Name of signatory (if different than Interest Holder):

---

If by Authorized Agent, Title of Agent:

---

Street Address:

---

City, State, and Zip Code:

---

Telephone Number:

---

Date Completed

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VOTING INSTRUCTIONS FOR COMPLETING THE BENEFICIAL OWNER BALLOT FOR  
HOLDERS OF SYMS CLASS 6 COMMON STOCK INTERESTS

1. This Ballot is submitted to you to solicit your vote to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (as same may be amended or modified, the "Plan"), which is described in the Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (the "Disclosure Statement"). As discussed in the Disclosure Statement, the Plan, while prepared jointly, constitutes two separate plans, one for Syms, and one for Filene's. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement as providing adequate information for holders of claims against the Debtors to make a decision as to whether to accept or reject the Plan, and the Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies the Ballot. All capitalized terms used herein or in the Ballot but not otherwise defined shall have the meanings ascribed to them in the Plan or the Solicitation Procedures. **PLEASE READ THE PLAN, THE DISCLOSURE STATEMENT AND THE SOLICITATION PROCEDURES CAREFULLY BEFORE COMPLETING THE BALLOT.**
2. The Plan will be accepted by Syms Class 6 if it is accepted by the holders of two-thirds in amount of the Interests in Syms Class 6 voting on the Plan. If the Plan is confirmed by the Court, all holders of Interests in, and any and all other holders of Claims against, Syms (including those who abstain or reject the Plan or are not entitled to vote thereon) will be bound by the confirmed Plan and the transactions contemplated thereby.
3. To have your vote counted, you must complete, sign and return the Ballot in the enclosed envelope to your Nominee in order to allow sufficient time to permit your Nominee to deliver a Master Ballot including your vote to Kurtzman Carson Consultants, L.L.C. (the "Voting Agent"), by **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended by the Debtors, in their sole discretion, in writing (the "Voting Deadline").

**Ballots will not be accepted by telecopy, facsimile or other electronic means, including email.**

4. To properly complete the Ballot, you must follow the procedures described below:
- (a) Make sure that the information required in Item 1 is correct.
  - (b) Cast one vote to accept or reject the Plan by checking the appropriate box in Item 2.
  - (c) Indicate in Item 3 whether you elect to Opt-in or Opt-out of the Third Party Releases provided for in Article XI.F of the Plan. If you submit your Ballot without selecting either option, you will be deemed to have opted-out of the Third Party Releases.
  - (d) If you are completing the Ballot as an authorized officer or employee of the holder of the Interests, state your title.
  - (e) If you are completing the Ballot on behalf of another person or entity, indicate your relationship to such person or entity and the capacity in which you are signing and submit satisfactory evidence of your authority to so act (*e.g.*, a power of attorney or a certified copy of board resolutions authorizing you to so act).
  - (f) If you submit more than one Ballot voting the same Interests prior to the Voting Deadline, then only the last timely filed Ballot shall be counted.
  - (g) If you believe that you have received the wrong Ballot, please contact the Voting Agent immediately.
  - (h) Sign and date your Ballot.
  - (i) Provide your name and mailing address.
  - (j) Return your Ballot to your Nominee using the enclosed envelope in enough time for your Nominee to cast your vote on a Master Ballot so that it is actually received by the Voting Agent before the Voting Deadline of **5:00 p.m. prevailing Pacific Time on August 23, 2012.**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THE BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN, OR**

**SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT (877) 606-7510 OR FILENESINFO@KCCLLC.COM.**

## **EXHIBIT E-6**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- x  
In re: : Chapter 11  
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)  
Debtors.<sup>1</sup> : Jointly Administered  
----- -x

**MASTER BALLOT FOR ACCEPTING OR REJECTING THE DEBTORS' JOINT  
CHAPTER 11 PLAN OF REORGANIZATION FOR HOLDERS OF SYMS CLASS 6  
INTERESTS**

This Master Ballot is submitted to you as a broker, bank, dealer or other agent or nominee that is the record holder of Syms Corp. shares in which another entity holds the beneficial ownership interest (a "Nominee") by Syms Corp. and each of its affiliated debtors and debtors in possession (collectively, the "Debtors") to solicit votes of Beneficial Holders of Interests in Syms Corp. to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, dated May 24, 2012 (collectively, and as may be subsequently amended, supplemented, or modified, the "Plan"), which is described in the accompanying Disclosure Statement With Respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries dated, May 24, 2012 (collectively, and as may be subsequently amended, supplemented, or modified, the "Disclosure Statement"). Please take any action that is required to enable each Beneficial Holder to timely vote its Interests in Syms Corp. As used herein, the term "Ballot" refers to a ballot submitted by a holder of an interest in Syms Corp.

As discussed in the Disclosure Statement, the Plan, while prepared jointly, constitutes two separate plans, one for Syms Corp. ("Syms"), and one for Filene's Basement LLC ("Filene's"). The Debtors do not believe that Syms Advertising, Inc. or Syms Clothing, Inc. have

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

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any assets or liabilities. Accordingly, the Debtors have not proposed a separate plan for either of these Debtors and have provided in the Plan that they shall be merged into Reorganized Syms. For purposes of voting on the Plan, votes will be tabulated separately for Syms and Filene's.

On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement, as providing adequate information for holders of claims against and interests in the Debtors to make a decision as to whether to accept or reject the Plan, and (ii) the Ballot Solicitation and Tabulation Procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures are annexed as Exhibit B to the Disclosure Statement, which accompanies this Ballot.

**THIS MASTER BALLOT RELATES ONLY TO VOTES CAST ON ACCOUNT OF SYMS CLASS 6 INTERESTS. IN ORDER FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE PROPERLY COMPLETED, SIGNED AND RETURNED SO THAT IT IS RECEIVED BY KURTZMAN CARSON CONSULTANTS, L.L.C. (THE "VOTING AGENT") BY 5:00 P.M. PREVAILING PACIFIC TIME ON AUGUST 23, 2012, UNLESS SUCH TIME IS EXTENDED BY THE DEBTORS, IN THEIR SOLE DISCRETION, IN WRITING (THE "VOTING DEADLINE").**

**IF YOU HAVE ANY QUESTIONS CONCERNING THE SOLICITATION PROCEDURES OR HOW TO PROPERLY COMPLETE THIS BALLOT, OR IF YOU DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT, PLAN OR SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THIS BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT THE FOLLOWING ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS:**

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
599 Lexington Avenue, 39<sup>th</sup> Floor  
New York, NY 10022  
Attn.: Voting Department  
Email: FilenesInfo@kccllc.com  
Telephone: (917) 281.4800

## **IMPORTANT**

**PLEASE READ AND FOLLOW THE ATTACHED INSTRUCTIONS CAREFULLY. COMPLETE, SIGN AND DATE THIS MASTER BALLOT, AND RETURN IT SO THAT IT IS ACTUALLY RECEIVED BY THE VOTING AGENT ON OR BEFORE THE VOTING DEADLINE BY 5:00 P.M. (PREVAILING PACIFIC TIME), ON AUGUST 23, 2012. IF THIS MASTER BALLOT IS NOT COMPLETED, SIGNED AND RECEIVED ON OR BEFORE THE VOTING DEADLINE AND THE VOTING DEADLINE IS NOT EXTENDED, THE VOTES TRANSMITTED BY THIS MASTER BALLOT WILL NOT BE COUNTED.**

**You should review the Disclosure Statement, the Plan and the instructions contained herein before you transmit votes. You or the Beneficial Holder of the Syms Class 6 Interests for whom you are the Nominee may wish to seek legal advice concerning the Plan and the classification and treatment of the Syms Class 6 Interests under the Plan.**

**If the Plan is confirmed by the Bankruptcy Court, it will be binding on you and the Beneficial Holder of the Syms Class 6 Interests for whom you are the Nominee, whether or not such Beneficial Holders vote and whether or not any votes are transmitted by this Master Ballot.**

**Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Plan or the Solicitation Procedures.**

**JULY [\_\_], 2012 IS THE VOTING RECORD DATE.**

## **INSTRUCTIONS FOR COMPLETING THE MASTER BALLOT**

### **VOTING DEADLINE/ VOTING AGENT:**

**The Voting Deadline is 5:00 p.m. (Prevailing Pacific Time), on August 23, 2012.** To have the vote of you or your customers count, you must complete, sign and return this Master Ballot so that it is **actually received** by the Voting Agent at the following address no later than the Voting Deadline:

EQUITY MASTER BALLOT CODE [\_\_]



**Kurtzman Carson Consultants, LLC**

**Re: Syms Corp., et al.  
599 Lexington Avenue, 39<sup>th</sup> Floor  
New York, NY 10022  
Attn.: Voting Department**

**If you are both the Record Owner and Beneficial Holder of Syms Class 6 Interests and you wish to vote such interests:** You may complete, execute and return to the Voting Agent a Master Ballot with respect to such Syms Class 6 Interests that you as Beneficial Holder wish to vote.

If you are transmitting the votes of any Beneficial Holders of Syms Class 6 Interests other than yourself, you may either:

1. Vote on behalf of Beneficial Holders of such securities by (a) immediately distributing the Solicitation Package, including Ballots, you receive from the Voting Agent to all such Beneficial Holders together with a return envelope, postage pre-paid, addressed to you, (b) promptly collecting Ballots from such Beneficial Holders that cast votes on the Plan, (c) compiling and validating the votes and other relevant information of all such Beneficial Holders on the Master Ballot, and (d) transmitting the Master Ballot to the Voting Agent by the Voting Deadline of 5:00 p.m. (Prevailing Pacific Time) on **August 23, 2012**.

With respect to all Ballots returned to you, you must properly complete the Master Ballot, as follows:

- (a) Check the appropriate box in Item 1 on the Master Ballot;
- (b) In Item 2 of this Master Ballot, indicate the votes to accept or reject the Plan, as transmitted to you by the Beneficial Holders of Syms Class 6 Interests. To identify such Beneficial Holders without disclosing their names, please use the customer account number assigned by you to each such Beneficial Holder, or if no such customer account number exists, please assign a number to each account (making sure to retain a separate list of each Beneficial Holder and the assigned number). **IMPORTANT: BENEFICIAL HOLDERS MAY NOT SPLIT THEIR VOTES. EACH BENEFICIAL HOLDER MUST VOTE ALL OF THEIR SYMS CLASS 6 INTERESTS EITHER TO ACCEPT OR REJECT THE PLAN. IF ANY BENEFICIAL HOLDER HAS ATTEMPTED TO SPLIT SUCH VOTE, PLEASE CONTACT THE VOTING AGENT IMMEDIATELY.** Any Ballot or Master Ballot that is validly executed but (i) does not indicate acceptance or rejection of the Plan by the indicated Beneficial Holder, or (ii) indicates both an acceptance and rejection of the Plan by the indicated Beneficial Holder, will not be counted as to such Beneficial Holder;

EQUITY MASTER BALLOT CODE [\_\_]

- (c) In Item 2 of this Master Ballot, indicate whether a Beneficial Holder has elected to opt-in to the Third Party Releases provided for in Article XI.F of the Plan, by placing an "x" in the appropriate column. Total up the number of shares held by all Beneficial Holders whose votes you are transmitting by this Master Ballot and indicate the total number of shares held by Beneficial Owners electing to opt-in to the Third Party Releases in the last row of Item 2.
- (d) Review the certification in Item 3 of the Master Ballot;
- (e) In Item 3, sign and date the Master Ballot, and provide the remaining information requested;
- (f) If additional space is required to respond to any item on the Master Ballot, please use additional sheets of paper clearly marked to indicate the applicable Item of the Master Ballot to which you are responding; and
- (g) Deliver the completed, executed Master Ballot so as to be **actually received** by the Voting Agent before the Voting Deadline. You must retain the original completed, executed Ballot returned to you by a Beneficial Holder, as well as an electronic copy for a period of one year after the Effective Date, unless otherwise ordered by the Court.

**PLEASE NOTE:**

**This Master Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan.**

No Ballot or Master Ballot shall constitute or be deemed to be a proof of Claim or an assertion of a Claim.

**No fees, commissions, or other remuneration will be payable** to any Nominee or other person for soliciting Ballots accepting the Plan. The Debtors will, however, upon request, reimburse you for customary mailing and handling expenses incurred by you in forwarding the Ballots and other enclosed materials to the Beneficial Holders of Syms Class 6 Interests held by you as a Nominee or in a fiduciary capacity.

No Master Ballot may be submitted by email, facsimile or other means of electronic transmission.

EQUITY MASTER BALLOT CODE [\_\_]

**IF YOU HAVE ANY QUESTIONS REGARDING THIS MASTER BALLOT OR THE SOLICITATION PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THE MASTER BALLOT, BALLOTS, THE DISCLOSURE STATEMENT OR OTHER RELATED MATERIALS, PLEASE CONTACT THE VOTING AGENT, BY EMAIL [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com) OR TELEPHONE (917) 281-4800.**

EQUITY MASTER BALLOT CODE [\_\_]

**THIS MASTER BALLOT MUST BE ACTUALLY RECEIVED BY THE VOTING AGENT AT THE ADDRESS LISTED BELOW, BEFORE 5:00 P.M., (PREVAILING PACIFIC TIME), ON AUGUST 23, 2012 OR THE VOTES TRANSMITTED HEREBY WILL NOT BE COUNTED.**

**Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
599 Lexington Avenue, 39<sup>th</sup> Floor  
New York, NY 10022  
Attn.: Voting Department**

**PLEASE NOTE: THE VOTING AGENT WILL NOT ACCEPT BALLOTS OR MASTER BALLOTS BY FACSIMILE OR OTHER MEANS OF ELECTRONIC TRANSMISSION.**

ANY BALLOT THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR A REJECTION OF THE PLAN, OR THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR THAT OTHERWISE FAILS TO COMPLY WITH THE DISCLOSURE STATEMENT OR THE SOLICITATION PROCEDURES, WILL NOT BE COUNTED.

EQUITY MASTER BALLOT CODE [\_\_]

## **MASTER BALLOT**

**Item 1. Certification of Authority to Vote.** The undersigned certifies that it (please check the applicable box):

- ☐ is a Nominee for the Beneficial Holder of Syms Class 6 Interests for the number of shares listed in Item 2 below as of July [\_\_\_], 2012, or is the Record Owner of such securities; or
- ☐ is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by Nominee or a Beneficial Holder that on July [\_\_\_], 2012, was the holder of the number of shares listed in Item 2 below; or
- ☐ is acting under a proxy granted by a Nominee for the Beneficial Holders (please attach a copy of the proxy to the Master Ballot),

and accordingly, has full power and authority to vote to accept or reject the Plan on behalf of the Beneficial Holders of the Syms Class 6 Interests.

**Item 2. Syms Class 6 Equity Interest Vote on Plan.** The undersigned certifies that the following Beneficial Holders of Syms Class 6 Equity Interests, as identified by their respective customer account numbers, were Beneficial Holders of Interests in Syms Corp. on July [\_\_\_], 2012 and have delivered to the undersigned, as Nominee, properly executed Ballots casting votes as indicated and containing instructions for the casting of those votes on their behalf (indicate in the appropriate column the aggregate number of shares voted for each account, or attach such information to this Master Ballot in the form of the following table). **Please note: Each Beneficial Holder must vote all of their Syms Class 6 Interest either to accept or reject the Plan and may not split such vote.**

ANY EXECUTED BALLOT RECEIVED THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN, OR THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED.

Customer Name or Account Number for Each Beneficial Holder	Votes on the Plan		
	Accept the Plan (Number of Shares)	Reject the Plan (Number of Shares)	Election to Opt- in to Third Party Releases
1.			
2.			
3.			
4.			
5.			
6.			
7.			

EQUITY MASTER BALLOT CODE [\_\_\_]

Customer Name or Account Number for Each Beneficial Holder	Votes on the Plan		
	Accept the Plan (Number of Shares)	Reject the Plan (Number of Shares)	Election to Opt- in to Third Party Releases
8.			
9.			
10.			
TOTALS			

IF YOU ARE ACTING AS A NOMINEE FOR MORE THAN TEN BENEFICIAL HOLDERS, PLEASE ATTACH ADDITIONAL SHEETS, AS NECESSARY.

**Item 3. Certification.** By signing this Master Ballot, the undersigned certifies that each holder of a Syms Class 6 Interest listed in Item 2, above, has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned further certifies and acknowledges that the solicitation of votes for the Plan is subject to all the terms and conditions set forth in the Disclosure Statement and Solicitation Procedures Order and the Solicitation Procedures.

Print or Type Name of Nominee:

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Last Four (4) Digits of Social Security or Federal Tax  
I.D. No. of Nominee:

---

Participant Number:

---

Name of Proxy Holder or Agent for Voting Nominee  
(if applicable):

---

Signature:

---

Name of signatory :

---

Title:

---

Street Address:

---

City, State, and Zip Code:

---

Telephone Number:

---

Date Completed:

---

Before you transmit such votes, please carefully review the Disclosure Statement and the Solicitation Procedures. If you do not have a copy of the Disclosure Statement, you may obtain such copy by contacting the Voting Agent. **THIS MASTER BALLOT RELATES ONLY TO VOTES CAST ON ACCOUNT OF SYMS CLASS 6 INTERESTS.**

EQUITY MASTER BALLOT CODE [\_\_]

**NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL RENDER YOU OR ANY OTHER PERSON AN AGENT OF ANY OF THE DEBTORS OR THE VOTING AGENT, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENTS ON BEHALF OF ANY OF THEM WITH RESPECT TO THE PLAN.**

EQUITY MASTER BALLOT CODE [\_\_\_]

**EXHIBIT F**

**(Unimpaired Creditors Confirmation Hearing Notice)**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	X
	:
In re:	: Chapter 11
	:
Filene's Basement, L.L.C., <u>et al.</u> ,	: Case No. 11-13511 (KJC)
	:
Debtors <sup>1</sup>	: Jointly Administered
	:
	:
-----	X

NOTICE OF ORDER (I) APPROVING DISCLOSURE STATEMENT;  
(II) APPROVING KEY DATES AND DEADLINES RELATED TO BALLOT  
SOLICITATION AND TABULATION PROCEDURES, FORMS OF BALLOTS, AND  
MANNER OF NOTICE; AND (III) FIXING DATE, TIME AND PLACE FOR  
CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS THERETO

**THIS NOTICE IS BEING PROVIDED TO ALL CREDITORS OF THE DEBTORS  
WHOSE CLAIMS OR INTERESTS HAVE BEEN CLASSIFIED AS UNIMPAIRED  
UNDER THE PLAN PROPOSED BY THE DEBTORS**

1. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement, dated May 24, 2012, (the "Disclosure Statement"), as providing adequate information for holders of claims against and interests in the Debtors to make a decision as to whether to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders, and (ii) the procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Solicitation Procedures and the Disclosure Statement are annexed as Exhibits A and B to the Disclosure Statement and Solicitation Procedures Order.
2. The Solicitation Procedures contain special balloting instructions and solicitation and tabulation procedures. **You are receiving this notice because you have been identified as a holder of an Unimpaired Claim under the Plan. In accordance with section**

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

**1126(f) of the Bankruptcy Code, with respect to your Unimpaired Claim, you will (a) be deemed to have accepted the Plan and (b) not be entitled to vote on the Plan. The Debtors therefore will not solicit your vote, and you will not receive a ballot with respect to your Unimpaired Claim. Accordingly, the Debtors have provided you with a copy of this notice for informational purposes only.**

3. The Disclosure Statement and Solicitation Procedures Order require that votes to accept or reject the Plan must be actually received by Kurtzman Carson Consultants, L.L.C. (the "Voting Agent") **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended in the sole discretion of the Debtors (the "Voting Deadline").
4. A hearing (the "Confirmation Hearing") to consider the confirmation of the Plan will be held at **10:00 a.m. prevailing Eastern Time on August 29, 2012**, before the Honorable Kevin J. Carey, United States Bankruptcy Judge at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Courtroom 5, Wilmington, Delaware. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtors of the adjourned date(s) at the Confirmation Hearing or any continued hearing, and the Plan may be modified, if necessary, pursuant to section 1127 of the Bankruptcy Code prior to, during, or as a result of the Confirmation Hearing, without further notice to interested parties other than by filing such modifications with the Court prior to the Confirmation Hearing or announcing any such modifications at the Confirmation Hearing.
5. In accordance with the Solicitation Procedures, Solicitation Packages will be mailed to (a) all holders of Claims listed on the Debtors' Schedules, (b) all holders of Claims subject who have filed a proof of claim by the Bar Date (or their counsel if the proof of claim was filed by such counsel on behalf of the claimant), (c) each entity listed on the Schedules as a party to an executory contract or unexpired lease with the Debtors, (d) Syms shareholders of record, (e) the Office of the United States Trustee for the District of Delaware, (f) counsel for the Creditors' Committee, (g) counsel for the Equity Committee, and (h) each party that filed a notice of appearance with the Court and has not withdrawn such notice of appearance as of the date the Court enters the Disclosure Statement and Solicitation Procedures Order.
6. Any holder of a Claim or Interest that the Debtors believe, in accordance with the Disclosure Statement and Solicitation Procedures Order, is entitled to vote to accept or reject the Plan, has been mailed a Ballot and voting instructions appropriate for such Claim or Interest. For any vote to accept or reject the Plan to be counted, a Ballot to accept or reject the Plan must be actually received by the Voting Agent by the Voting Deadline. In accordance with the Solicitation Procedures, all Ballots must be returned to the Voting Agent at:

**Creditor Ballots**

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

**Shareholder Ballots (Beneficial Owner  
Ballots to be returned to Nominee)**

Kurtzman Carson Consultants, LLC  
Syms Corp. Class 6 Interests Balloting  
599 Lexington Avenue  
39<sup>th</sup> Floor  
New York, NY 10022

7. Objections to the confirmation of, 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 or proposed modification, and (d) be filed, together with proof of service, with the Court and served so that they are **actually received** no later than **5:00 p.m. prevailing Eastern Time on August 21, 2012** (the "Objection Deadline") by all of the following parties (the "Notice Parties"): (i) Syms Corp., et al, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq.; (iii) counsel to the Official Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq. **Objections not timely filed and served in the manner set forth above may not be considered and shall be overruled.**
8. Any holder of a Claim that is not scheduled and is not the subject of a timely filed proof of claim or a proof of claim deemed timely filed with the Court pursuant to either the Bankruptcy Code or any order of the Court or otherwise deemed timely filed under applicable law, shall not be treated as a creditor with respect to such Claim for purposes of (a) receiving notices regarding the Plan, (b) voting on the Plan or (c) receiving distribution under the Plan.

9. Any party in interest wishing to obtain (i) information about the Solicitation Procedures or (ii) copies of the Disclosure Statement, the Plan or the Solicitation Procedures (a) should contact the Debtors' Voting Agent at **(877) 606-7510 or FilenesInfo@kccllc.com.**, or (b) view such documents at the Debtors' website, at **www.kccllc.net/filenes**. All documents that are filed with the Court may be reviewed during regular business hours (9:00 a.m. to 4:00 p.m. weekdays, except legal holidays) at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

Dated:           Wilmington, Delaware  
                  June [\_\_\_], 2012]

/s/ draft

Mark S. Chehi (I.D. No. 2855)  
Jason M. Liberi (I.D. No. 4425)  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, Delaware 19899-0636  
(302) 651-3000  
(302) 651-3001

- and -

Jay M. Goffman  
Mark A. McDermott  
Suzanne D.T. Lovett  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522  
(212) 735-3000  
(212) 735-2000

Counsel for Debtors and Debtors in Possession

## **EXHIBIT G**

**(Contingent, Unliquidated, or Disputed Claim Confirmation Hearing Notice)**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	X	
	:	
In re:	:	Chapter 11
	:	
Filene's Basement, L.L.C., <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors <sup>1</sup>	:	Jointly Administered
	:	
	:	
-----	X	

NOTICE OF ORDER (I) APPROVING DISCLOSURE STATEMENT;  
(II) APPROVING KEY DATES AND DEADLINES RELATED TO BALLOT  
SOLICITATION AND TABULATION PROCEDURES, FORMS OF BALLOTS, AND  
MANNER OF NOTICE; AND (III) FIXING DATE, TIME AND PLACE FOR  
CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS THERETO

**THIS NOTICE IS BEING PROVIDED TO ALL CREDITORS OF THE DEBTORS  
WHOSE CLAIMS ARE CONTINGENT, UNLIQUIDATED, OR DISPUTED.**

1. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement, dated May 24, 2012, (the "Disclosure Statement"), as providing adequate information for holders of claims against and interests in the Debtors to make a decision as to whether to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders, and (ii) the procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Solicitation Procedures and the Disclosure Statement are annexed as Exhibits A and B to the Disclosure Statement and Solicitation Procedures Order.
2. The Solicitation Procedures contain special balloting instructions and solicitation and tabulation procedures. **Your claim has been identified as a contingent, unliquidated or disputed claim or a claim scheduled as zero or unknown in amount or a claim to which the Debtors have filed an objection.** If you wish to dispute this classification

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

and seek temporary allowance of your claim for voting purposes, you must file a Rule 3018(a) Motion in accordance with the procedure set forth below.

3. The last date and time for filing and serving motions pursuant to Bankruptcy Rule 3018(a) ("Rule 3018(a) Motions") seeking temporary allowance of claims for the purpose of voting to accept or reject the Plan shall be **August 10, 2012, at 4:00 p.m. prevailing Eastern time** (the "Rule 3018(a) Motion Deadline"). Rule 3018(a) Motions must (a) be made in writing, (b) comply with the Bankruptcy Rules, and the Local Rules, (c) set forth the name of the party asserting the Rule 3018(a) Motion, (d) state with particularity the legal and factual bases for the Rule 3018(a) Motion, and (e) be filed with the Bankruptcy Court and served so as to be RECEIVED by the Notice Parties (defined below in paragraph 9) no later than the Rule 3018(a) Motion Deadline.
4. Any party timely filing and serving a Rule 3018(a) Motion shall be provided a ballot and permitted to cast a provisional vote to accept or reject the Plan. If, and to the extent that, the Debtors and such party are unable to resolve the issues raised by the Rule 3018(a) Motion prior to the Voting Deadline, then at the Confirmation Hearing, the Voting Agent shall inform the Court whether including the relevant provisional ballot would affect the outcome of the voting to accept or reject the respective Plan in the relevant class in which the provisional ballot was cast. The Court may then determine whether the provisional ballot should be counted as a vote on the Plan.
5. The Disclosure Statement and Solicitation Procedures Order require that votes to accept or reject the Plan must be actually received by Kurtzman Carson Consultants, L.L.C. (the "Voting Agent") **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended in the sole discretion of the Debtors (the "Voting Deadline").
6. A hearing (the "Confirmation Hearing") to consider the confirmation of the Plan will be held at **10:00 a.m. prevailing Eastern Time on August 29, 2012**, before the Honorable Kevin J. Carey, United States Bankruptcy Judge at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Courtroom 5, Wilmington, Delaware. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtors of the adjourned date(s) at the Confirmation Hearing or any continued hearing, and the Plan may be modified, if necessary, pursuant to section 1127 of the Bankruptcy Code prior to, during, or as a result of the Confirmation Hearing, without further notice to interested parties other than by filing such modifications with the Court prior to the Confirmation Hearing or announcing any such modifications at the Confirmation Hearing.
7. In accordance with the Solicitation Procedures, Solicitation Packages will be mailed to (a) all holders of Claims listed on the Debtors' Schedules, (b) all holders of Claims who have filed a proof of claim by the Bar Date (or their counsel if the proof of claim was filed by such counsel on behalf of the claimant), (c) each entity listed on the Schedules as a party

to an executory contract or unexpired lease with the Debtors, (d) Syms shareholders of record, (e) the Office of the United States Trustee for the District of Delaware, (f) counsel for the Creditors' Committee, (g) counsel for the Equity Committee, and (h) each party that filed a notice of appearance with the Court and has not withdrawn such notice of appearance as of the date the Court enters the Disclosure Statement and Solicitation Procedures Order.

8. Any holder of a Claim or Interest that the Debtors believe, in accordance with the Disclosure Statement and Solicitation Procedures Order, is entitled to vote to accept or reject the Plan, has been mailed a Ballot and voting instructions appropriate for such Claim or Interest. For any vote to accept or reject the Plan to be counted, a Ballot to accept or reject the Plan must be actually received by the Voting Agent by the Voting Deadline. In accordance with the Solicitation Procedures, all Ballots must be returned to the Voting Agent at:

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Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

**Shareholder Ballots (Beneficial Owner  
Ballots to be returned to Nominee)**

Kurtzman Carson Consultants, LLC  
Syms Corp. Class 6 Interests Balloting  
599 Lexington Avenue  
39<sup>th</sup> Floor  
New York, NY 10022

9. Objections to the confirmation of, 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 or proposed modification, and (d) be filed, together with proof of service, with the Court and served so that they are **actually received** no later than **5:00 p.m. prevailing Eastern Time on August 21, 2012**] (the "Objection Deadline") by all of the following parties (the "Notice Parties"): (i) Syms Corp., et al, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq.; (iii) counsel to the Official Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn:



David Klauder, Esq. **Objections not timely filed and served in the manner set forth above may not be considered and shall be overruled.**

10. Any holder of a Claim that is not scheduled and is not the subject of a timely filed proof of claim or a proof of claim deemed timely filed with the Court pursuant to either the Bankruptcy Code or any order of the Court or otherwise deemed timely filed under applicable law, shall not be treated as a creditor with respect to such Claim for purposes of (a) receiving notices regarding the Plan, (b) voting on the Plan or (c) receiving distribution under the Plan.

11. Any party in interest wishing to obtain (i) information about the Solicitation Procedures or (ii) copies of the Disclosure Statement, the Plan or the Solicitation Procedures (a) should contact the Debtors' Voting Agent at **(877) 606-7510 or FilenesInfo@kccllc.com.**, or (b) view such documents at the Debtors' website, at **www.kccllc.net/filenes**. All documents that are filed with the Court may be reviewed during regular business hours (9:00 a.m. to 4:00 p.m. weekdays, except legal holidays) at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

Dated:           Wilmington, Delaware  
                  June [\_\_\_], 2012]

/s/ draft

Mark S. Chehi (I.D. No. 2855)  
Jason M. Liberi (I.D. No. 4425)  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, Delaware 19899-0636  
(302) 651-3000  
(302) 651-3001

- and -

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Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
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(212) 735-3000  
(212) 735-2000

Counsel for Debtors and Debtors in Possession