

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

In re:)	Chapter 11
)	
SCHWAB INDUSTRIES, INC., <i>et al.</i> , ¹)	Case No. 10-60702-rk
)	(Jointly Administered)
Debtors.)	
)	Judge Russ Kendig
)	

JOINT MOTION OF DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER: (A) APPROVING SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO APPROVAL OF DISCLOSURE STATEMENT AND CONFIRMATION OF PROPOSED PLAN OF LIQUIDATION; (B) APPROVING FORM OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (C) CONDITIONALLY APPROVING THE DISCLOSURE STATEMENT; (D) SCHEDULING DATES AND DEADLINES WITH RESPECT THERETO; AND (E) AUTHORIZING USE OF THE ADMINISTRATIVE EXPENSE FUND TO PAY CERTAIN ADMINISTRATIVE CLAIMS

Schwab Industries, Inc. and its affiliated debtors and debtors-in-possession (collectively, the “*Debtors*”) and the Official Committee of Unsecured Creditors (the “*Committee*,” and collectively with the Debtors, the “*Plan Proponents*”) hereby jointly move (the “*Motion*”) for entry of an order (the “*Solicitation Procedures Order*”), pursuant to sections 105(a), 1125 and 1126 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002, 3003, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”):

(i) approving procedures for soliciting, receiving and tabulating votes on the Plan (as defined herein) and for filing objections to the Plan and to the adequacy of the Disclosure Statement;

(ii) approving the manner and forms of notice and other documents related to the approval of the Disclosure Statement and confirmation of the Plan; (iii) conditionally approving the Disclosure

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

Statement; (iv) setting a joint hearing on the adequacy of the Disclosure Statement and confirmation of the Plan; and (v) authorizing and directing the Plan Proponents to use certain funds from the Administrative Expense Fund to pay certain Agreed Administrative Claims. In support of this Motion, the Plan Proponents respectfully state:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. Venue of these cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105, 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020.

RELEVANT BACKGROUND

3. On February 28, 2010 (the “*Petition Date*”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio (the “*Court*”).

4. The Debtors are currently operating and managing their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Committee was appointed on March 9, 2010.

5. On October 12, 2010, the Plan Proponents filed their Joint Plan of Liquidation Dated October 12, 2010 (the “*Plan*”) and the Disclosure Statement With Respect to Joint Plan of Liquidation of Schwab Industries, Inc., et al. Pursuant to 11 U.S.C. § 1125 (the “*Disclosure Statement*”). The Plan provides for, among other things:²

² Capitalized terms undefined herein shall have the meanings ascribed to them in the Plan and Disclosure Statement.

- the liquidation of the Debtors' assets in a manner designed to maximize recoveries to all Creditors;
- the formation of a Creditor Trust, to which the Debtors' remaining assets, including, without limitation, Cash, real property, accounts receivable, motor vehicles, furniture, fixtures, inventory, investments, partnership or other ownership interests, refunds, accounts, equipment and Causes of Action, will be transferred. The Creditor Trust will be charged with liquidating such assets and making Pro Rata distributions to holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims and Allowed General Unsecured Claims pursuant to the Plan.
- cancellation of the Debtors' existing Equity Securities, the holders of which will receive no distributions on account of their existing Interests in the Debtors; and
- a structured dismissal of these Cases if it is determined that the Creditor Trustee will be unable to generate sufficient cash proceeds from the liquidation of Creditor Trust Assets to pay holders of Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full. Pursuant to such a dismissal, the Creditor Trustee will be charged with, among other things, dissolving the Debtors in the Ohio state courts, prosecuting Causes of Action in this Court and distributing the Debtors' assets as set forth in the Plan.

6. The Plan Proponents also seek authority to address certain expenses of administration in connection with that certain May 28, 2010 *Order (1) Authorizing the Sale of Substantially all of the Debtors' Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, Subject to Higher or Better Offers Pursuant to Bankruptcy Code 363 and 365; (2) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases; (3) Waiving the Fourteen-Day Period Provided by Bankruptcy Rule 6004(h); and Granting Related Relief* (Docket No. 455) (the “Sale Order”).

7. Pursuant to the Sale Order, the Court authorized the Debtors to enter into, execute and close the transaction contemplated in that certain Asset Purchase Agreement by and among Oldcastle Materials, Inc. (“Oldcastle”), as buyer, and the Debtors, as sellers (the “Oldcastle APA”).

8. Among other consideration, pursuant to section 2.4(b)(5) of the Oldcastle APA, Oldcastle and the Debtors agreed that Oldcastle would provide funding of up to \$900,000 for Debtors to satisfy “Administrative Expenses” (also defined under the Plan as “Administrative Claims”) (the “Administrative Expense Fund”).

9. Also pursuant to section 2.4(b)(5) of the Oldcastle APA, it was contemplated that Oldcastle and the Debtors would determine which Administrative Claims to use the Administrative Expense Fund to pay, within sixty (60) days of closing the transaction contemplated by the Oldcastle APA, and in the event that no decision was made, the determination regarding use of the Administrative Expense Fund would be determined by the Bankruptcy Court.

10. On June 2, 2010, the Debtors and Oldcastle closed the transaction contemplated by the Oldcastle APA.

11. At closing, Oldcastle fully funded the Administrative Expense Fund and the entire \$900,000 of the Administrative Expense Fund remains on deposit with the Debtors' counsel.

12. Discussions continue among the Plan Proponents and Oldcastle regarding uses for the Administrative Expense Fund.

RELIEF REQUESTED

13. For the reasons set forth below, the Plan Proponents request that the Court enter an Order: (a) conditionally approving the Disclosure Statement for purposes of allowing the Court to consider both the confirmation of the Plan and adequacy of the Disclosure Statement at the Joint Hearing (defined below); and (b) scheduling the following dates with respect to the Plan and Disclosure Statement:

Event	Date or Deadline
Service of Disclosure Statement, Plan and Notice of Combined Disclosure Statement Adequacy and Plan Confirmation Hearing (the " <i>Joint Hearing Notice</i> ")	November 2, 2010
Deadline for Objections to Adequacy of Disclosure Statement and/or Plan Confirmation	November 30, 2010, at 5:00 p.m. prevailing Eastern time
Voting Deadline With Respect to Plan	November 30, 2010, at 5:00 p.m. prevailing Eastern time
Deadline for Plan Proponents To File Report of Voting	December 3, 2010, at 5:00 p.m. prevailing Eastern time
Joint Disclosure Statement Adequacy and Plan Confirmation Hearing (the " <i>Joint Hearing</i> ")	December 6, 2010

14. The Plan Proponents further request that the Court: (a) approve the form of ballots to be used for voting on the Plan; and (b) find that the Plan Proponents will fulfill their duties to provide the information required under section 1102(b) of the Bankruptcy Code by: (i) transmitting the Disclosure Statement and Plan; (ii) soliciting acceptances of the Plan; and

(iii) affording all Creditors the opportunity to contact the undersigned counsel with questions concerning the Plan, the Disclosure Statement and the chapter 11 process.

BASIS FOR RELIEF

I. Approval of Solicitation and Notice Procedures

15. To solicit acceptances or rejections of the Plan effectively and consistently with the requirements of the Bankruptcy Code, the Bankruptcy Rules and due process, the Plan Proponents seek approval of the solicitation procedures (the “*Solicitation Procedures*”), which are attached to the proposed Solicitation Procedures Order as *Exhibit A*. The Solicitation Procedures will allow the Plan Proponents to distribute solicitation materials and tabulate acceptances of the Plan effectively. Furthermore, the Solicitation Procedures, in conjunction with the Plan Proponents’ proposed Joint Hearing Notice, provide adequate notice to all holders of Claims and Interests regarding the solicitation process as well as the relevant dates associated with the Solicitation Procedures. The Solicitation Procedures are appropriate based on the particular circumstances of the Cases and, therefore, should be approved.

A. Approval of Form of Solicitation Package and Distribution Thereof

16. Holders of Claims entitled to vote on the Plan shall receive a Solicitation Package, consisting of the following:

- a copy of the Solicitation Procedures Order;
- a copy of the Disclosure Statement (which includes a copy of the Plan as Exhibit A);
- a Class 2 or Class 3 Ballot (including a pre-addressed, postage pre-paid return envelope); and
- a copy of the Joint Hearing Notice.

B. Approval of Form of Ballots

17. In accordance with Bankruptcy Rule 3018(c), the Plan Proponents have prepared and customized ballots for holders of Claims entitled to vote on the Plan. These ballots will be substantially in the form attached to the proposed Solicitation Procedures Order as *Exhibit B*.

18. Solicitation will be conducted by the Debtors' noticing, claims and balloting agent, The Garden City Group, Inc. ("*Garden City*"). Pursuant to the Solicitation Procedures, Garden City will distribute the appropriate ballots to holders of Secured Claims in Class 2 and holders of General Unsecured Claims in Class 3. All other Classes are unimpaired and are conclusively presumed to have accepted the Plan or are Impaired Classes that are deemed to have rejected the Plan. Thus, holders of Claims and Interests in unimpaired Classes and Impaired Classes deemed to have rejected the Plan will not receive a ballot.

19. The Plan Proponents submit that the forms of the ballots comply with Bankruptcy Rule 3018(c) and should be approved.

C. Approval of Disputed Claims Notice and Procedures for Temporary Allowance of Claims or Interests

20. Pursuant to section 1126(a) of the Bankruptcy Code, only "holder[s] of claim[s] or interest[s] allowed under section 502 . . . may accept or reject a plan." 11 U.S.C. § 1126(a). Under section 502(a) of the Bankruptcy Code, "[a] claim or interest, proof of which is filed under section 501 . . . , is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Based on the foregoing, except as set forth below, holders of Claims and Interests for which an objection is pending are not entitled to vote on the Plan.

21. Bankruptcy Rule 3018(a) allows for temporary allowance of claims or interests for which an objection is pending at the time when plan votes are solicited so that holders may vote such claims or interests at a temporarily allowed amount. *See* Fed. R. Bankr. P. 3018(a). In

light of Bankruptcy Rule 3018(a), the Plan Proponents will send holders of Claims whose Claims are subject to an objection on the Record Date the following, in lieu of the Solicitation Package:

- a copy of the Solicitation Procedures Order;
- a copy of the Disclosure Statement (which includes a copy of the Plan as Exhibit A);
- a Notice of Non-Voting Status with Respect to Disputed Claims (the “*Disputed Claim Notice*”), in substantially the form attached to the proposed Solicitation Procedures Order as *Exhibit C*; and
- a copy of the Joint Hearing Notice.

22. The Disputed Claim Notice will inform a relevant holder that its Claim is subject to an objection, and that a holders of such Claim cannot vote any disputed portion of its Claim unless one or more of the following events have taken place at least ten (10) days before the Voting Deadline: (a) an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing; (b) an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing; (c) a stipulation or other agreement is executed between the holder of such Claim and the Plan Proponents resolving the objection and allowing such Claim in an agreed-upon amount; (d) a stipulation or other agreement is executed between the holder of such Claim and the Plan Proponents temporarily allowing the holder of such Claim to vote its Claim in an agreed-upon amount; or (e) the pending objection to such Claim is voluntarily withdrawn by the Plan Proponents (each, a “*Resolution Event*”).³ No later than two (2) business days after a Resolution Event, Garden City shall distribute a ballot and a pre-addressed, postage pre-paid

³ A holder of a Claim subject to an objection solely to reduce the amount of the Claim shall be entitled to vote the undisputed portion of its Claim without the occurrence of a Resolution Event. Likewise, a holder of a Claim subject to an objection solely to reclassify the Claim shall be entitled to vote the reclassified Claim without the occurrence of a Resolution Event; provided, however, that the Class the Claim is reclassified in is entitled to vote.

return envelope to the relevant holder of such Claim that has been allowed (whether permanently or temporarily for voting purposes) by such Resolution Event.

23. Moreover, if the holder of a Claim receives a Solicitation Package, but the Debtors or Committee object to such Claim after the Record Date, the holder's claim shall be deemed temporarily allowed for voting purposes only without further action by the holder of such Claim and without further order of the Court.

24. The Plan Proponents submit that such notice procedures with respect to Claims subject to pending objections satisfy the requirements of the Bankruptcy Code and the Bankruptcy Rules, and request that they be approved.

D. Approval of Form of Notices to Non-Voting Classes

25. In compliance with section 1123(a)(1) of the Bankruptcy Code and as reflected in Article II of the Plan, Administrative Claims and Priority Tax Claims are not classified under the Plan. *See* 11 U.S.C. § 1123(a)(1) (prohibiting classification of administrative claims and certain priority claims). These unclassified claims are not entitled to vote on the Plan as the Bankruptcy Code requires that they not be compromised under a plan. Article IV of the Plan also sets forth the unimpaired Class of Claims presumed to accept the Plan and the Impaired Class of Interests deemed to have rejected the Plan. Holders of Claims and Interests in these Classes also are not entitled to vote on the Plan.

26. Thus, the Plan Proponents will not solicit votes from holders of unclassified Claims, nor will they solicit votes from holders of Class 1 Claims. The Plan Proponents will, however, send the following in lieu of the Solicitation Package:

- a copy of the Solicitation Procedures Order;
- a copy of the Disclosure Statement (which includes a copy of the Plan as Exhibit A);

- a Notice of Non-Voting Status to holders of Claims in unimpaired Classes deemed to accept the Plan and holders of unclassified Claims, substantially in the form attached to the proposed Solicitation Procedures Order as *Exhibit D* (the “*Deemed Acceptance Non-Voting Status Notice*”); and
- a copy of the Joint Hearing Notice.

27. The Deemed Acceptance Non-Voting Status Notice will explain to the holder of an unclassified Claim or a holder of a Claim in an unimpaired Class of such holder’s non-voting status. The Plan Proponents submit that the Deemed Acceptance Non-Voting Status Notice complies with the Bankruptcy Code and should be approved.

28. Additionally, the Plan Proponents will not solicit votes from holders of Class 4 Interests pursuant to section 1126(g) of the Bankruptcy Code, as such holders are deemed to have rejected the Plan and are not entitled to vote thereon because they will not receive or retain any property under the Plan on account of such Interest. *See* 11 U.S.C. § 1126(g). The Plan Proponents will, however, send the following in lieu of the Solicitation Package:

- a copy of the Solicitation Procedures Order;
- a copy of the Disclosure Statement (which includes a copy of the Plan as Exhibit A);
- a Notice of Non-Voting Status with respect to holders of Class 4 Interests, substantially in the form attached to the proposed Solicitation Procedures Order as *Exhibit E* (the “*Deemed Rejection Non-Voting Status Notice*”); and
- a copy of the Joint Hearing Notice.

29. The Deemed Rejection Non-Voting Status Notice will explain to the holder of a Class 4 Interest such holder’s non-voting status. The Plan Proponents submit that the Deemed Rejection Non-Voting Status Notice complies with the Bankruptcy Code and should be approved.

E. Returned Solicitation Packages or Notices

30. In compliance with Bankruptcy Rules 2002 and 3017, the Plan Proponents will send the Joint Hearing Notice (whether independently or as part of a Solicitation Package) to holders of Claims and Interests at the addresses listed on the Debtors' Schedules of Assets and Liabilities (as amended, the "*Schedules*") or on subsequently-filed proofs of claim. However, the Plan Proponents anticipate that some of these Joint Hearing Notices or Solicitation Packages may be returned by the United States Postal Service or other carrier as undeliverable. The Plan Proponents believe that it would be costly and inefficient to re-send Joint Hearing Notices or Solicitation Packages to holders of Claims and Interests where an initial attempt to serve such holders was unsuccessful. Therefore, the Plan Proponents seek the Court's approval for a departure from the strict notice rule, excusing the Plan Proponents from re-mailing Joint Hearing Notices or Solicitation Packages to those holders determined to be undeliverable, unless the Plan Proponents, through Garden City, are provided with or otherwise locate accurate addresses for such entities not less than seven (7) business days prior to the Voting Deadline. If a holder of a Claim or Interest has changed its mailing address after the Petition Date or after filing a proof of claim, the burden should be on the holder, not the Plan Proponents, to advise Garden City of its new address.

II. Voting and General Tabulation Procedures

31. The Plan Proponents respectfully request that the Court approve the voting and tabulation procedures described herein and in the Solicitation Procedures, in accordance with section 1126(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a).

A. Establishment of Record Date

32. The Plan Proponents request that the Court establish the date that the Solicitation Procedures Order is entered on the docket in the Cases as the record date (the “*Record Date*”) for determining: (a) holders of Claims that are entitled to receive the Solicitation Package pursuant to the Solicitation Procedures and vote on the Plan; (b) holders of Claims entitled to vote to accept the Plan; and (c) whether Claims have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of a Claim.

B. Approval of Voting Procedures

33. The Plan Proponents propose that only the following holders of Claims shall be entitled to vote to accept or reject the Plan:

- (a) holders of Claims in Class 2 or Class 3 for which proofs of claim have been timely filed, as reflected on the Claims Register as of the Record Date; provided, however, that holders of Claims for which an objection is pending prior to the Record Date shall not be entitled to vote unless they become eligible to vote through a Resolution Event;⁴
- (b) holders of Claims in Class 2 or Class 3 that are listed in the Schedules, with the exception of those Claims that are scheduled as contingent, unliquidated or disputed (excluding such scheduled Claims in Class 2 or Class 3 that have been superseded by a timely filed proof of claim); and
- (c) holders whose Class 2 or Class 3 Claims have been allowed (whether permanently or temporarily pursuant to Bankruptcy Rule 3018(a))

⁴ A holder of a Claim subject to an objection solely to reduce the amount of the Claim shall be entitled to vote the undisputed portion of its Claim without the occurrence of a Resolution Event. Likewise, a holder of a Claim subject to an objection solely to reclassify the Claim shall be entitled to vote the reclassified Claim without the occurrence of a Resolution Event; provided, however, that the Class the Claim is reclassified in is entitled to vote.

pursuant to an agreement or settlement with the Plan Proponents, as reflected in a document filed with the Court, in an order of the Court, or in a document executed by the Plan Proponents pursuant to authority granted by the Court, in each case regardless of whether a proof of claim has been filed.

34. The assignee of a transferred Claim in Class 2 or Class 3 (whether based upon a timely filed proof of claim or the Schedules) shall be permitted to vote such Claim only if the transfer or assignment has been fully effectuated pursuant to the procedures dictated by Bankruptcy Rule 3001(e) and such transfer has been consummated on or prior to the Record Date.

C. Establishment of Voting Deadline

35. The Plan Proponents request that the Court establish a voting deadline on a date that is no later than seven (7) business days prior to the Joint Hearing (the “*Voting Deadline*”). For votes to be counted, all ballots must be properly executed, completed and delivered as specified in the Solicitation Procedures so as to be received by the Voting Deadline. The Joint Hearing Notice will prominently display the Voting Deadline date and time.

D. Approval of General Tabulation Procedures

36. In tabulating votes, the Plan Proponents propose that the following hierarchy shall be used to determine the Claim amount associated with each holder’s vote:

- (a) the Claim amount settled and/or agreed upon by the Plan Proponents, as reflected in a document filed with the Court, in an order of the Court or in a document executed by the Plan Proponents pursuant to authority granted by the Court;

- (b) the Claim amount allowed (temporarily or otherwise) pursuant to a Resolution Event under the Solicitation Procedures;
- (c) the Claim amount set forth in a proof of claim that has been timely filed by the Bar Date (or deemed timely filed by the Court under applicable law); provided, however, that ballots cast by holders whose claims are not listed on the Schedules, but who timely filed proofs of claim in unliquidated or unknown amounts that are not the subject of an objection, will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code, and will count as ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code; provided further, however, that to the extent the Claim amount contained in the proof of claim is different from the Claim amount set forth in a document filed with the Court as referenced in the Solicitation Procedures, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective proof of claim;
- (d) the Claim amount listed in the Schedules, provided that such Claim is not scheduled as contingent, disputed or unliquidated and has not been paid; and
- (e) in the absence of any of the foregoing, the Claim will not be counted for voting purposes.

37. If a holder of a Claim that is entitled to vote has more than one Claim against one or more of the Debtors based upon different transactions, the Claim holder shall be entitled to

one vote for numerosity purposes in the aggregate dollar amount of all of said Claims. If a holder of a Claim that is entitled to vote has Claims (either scheduled or filed or both) against more than one of the Debtors based on the same transaction (*e.g.*, a Claim against one Debtor that was guaranteed by another Debtor), the Claim holder shall be entitled to one vote for numerosity purposes in a dollar amount based upon its Claim against one of the Debtors.

38. The Claim amount established pursuant to the Solicitation Procedures shall control for voting purposes only, shall not operate as a waiver of a holder's rights asserted in its proof of claim, and shall not constitute the allowed amount of any Claim.

39. Garden City shall review all ballots as they are received to determine their compliance with the above described rules. If Garden City determines that a ballot does not comply with the rules and therefore would not be counted, Garden City may, but is not required to, notify the party that submitted the ballot of the problem and advise such party that a replacement ballot may be submitted; provided, however, that no replacement ballot submitted after the Voting Deadline shall be considered unless ordered by the Court.

III. Conditional Approval of the Disclosure Statement and Setting of Joint Hearing on Adequacy of Disclosure Statement and Plan Confirmation

40. Section 105(d)(2)(B)(vi) of the Bankruptcy Code states that in a case filed under chapter 11 of the Bankruptcy Code, a court may provide "that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan." While the Plan Proponents believe that the Court has already indicated its willingness to conduct a Joint Hearing on adequacy of the Disclosure Statement and confirmation of the Plan, out of an abundance of caution, they request entry of an order authorizing the same.

41. Here, the Plan Proponents believe that a Joint Hearing is in the best interests of the Estates and Creditors for several reasons. First, a Joint Hearing will promote judicial

economy in that it will minimize the Court's burden in adjudicating those matters necessary to arrive at a confirmed Plan. Second, a Joint Hearing will result in significant cost savings to the Estates – both in terms of professional fees and the cost of providing required notices to holders of Claims and Interests – and these savings will inure to the direct benefit of Creditors entitled to receive distributions from the Creditor Trust. Third, each of the major constituencies in these Cases, including the Debtors, the Committee, the Pre-Petition Lenders and a number of the Debtors' largest administrative creditors, have played an integral role in formulating and drafting the Plan and Disclosure Statement and are familiar with their respective terms, thereby mitigating the benefits associated with separate Plan confirmation and Disclosure Statement adequacy hearings. Finally, the Plan Proponents submit that holders of Claims and Interests will have more than adequate time to review and contemplate both the Plan and the Disclosure Statement, and those holders will not be prejudiced by the setting of a Joint Hearing.

42. Accordingly, in order to reduce costs of administration for all parties and allow all interested parties to be heard at the Joint Hearing, rather than at two separate hearings, the Plan Proponents request that this Court conditionally approve the Disclosure Statement, reserving for all parties interested in objecting to the adequacy of the Disclosure Statement the ability to file such objection by the deadline for objections to the adequacy of Disclosure Statement and/or confirmation of Plan (proposed as November 30, 2010) and be heard on such objection at the Joint Hearing.

43. Conditional approval of the Disclosure Statement would be consistent with the application of these time- and cost-saving measures where the Debtor and the Committee are jointly proposing a chapter 11 plan. *See In re Michael Day Enters., Inc.*, Case No. 09-55159 (Bankr. N.D. Ohio 2010) (Shea-Stonum, J.) (Docket No. 157, entered June 22, 2010); *In re*

Medina Glass Block, Inc., Case No. 08-54333 (Bankr. N.D. Ohio 2009) (Shea-Stonum, J.) (Docket No. 261, entered May 28, 2009). These steps save costs where the principal stakeholders are in agreement that confirmation of a plan is in the best interests of the debtors' estates.

44. As discussed above, the Plan Proponents, along with Garden City, are prepared to serve Solicitation Packages upon entry of the Solicitation Procedures Order

IV. Authorization and Direction For the Plan Proponents To Use Certain Funds from the Administrative Expense Fund to Pay Certain Agreed Administrative Claims

45. The Plan Proponents have identified certain Administrative Claims (the "*Exhibit F Claims*"), identified on *Exhibit F* to the Solicitation Procedures Order, which should be paid promptly, and in no event later than December 10, 2010, in order to: (a) avoid unnecessary interest and expenses; (b) avoid confusion; and (c) streamline objectives for the Creditor Trustee.

46. The Exhibit F Claims are comprised of administrative expenses of the Debtors' estates relating, in large part, to: (a) taxes incurred following the Petition Date; (b) fees owed to the Office of the United States Trustee; and (c) costs incurred by the Debtors' employees for services provided to preserve the Debtors' Estates. The Exhibit F Claims do not include professional fees.

47. Accordingly, the Plan Proponents seek authorization and direction from the Court to use \$374,645.64 from the Administrative Expense Fund to pay the Exhibit F Claims no later than December 10, 2010.

CONCLUSION

WHEREFORE, the Plan Proponents respectfully request that this Court: (i) grant the relief requested herein; (ii) enter the Solicitation Procedures Order in the form attached hereto; and (iii) grant such other and further relief as is just and proper.

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF SCHWAB
INDUSTRIES, INC., *et al.***

SCHWAB INDUSTRIES, INC., *et al.*

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