

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

	X	
	:	
In re:	:	Chapter 11
	:	
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	:	Hrg. Date: [7/9/12 at 11:00 a.m.]
	:	Obj. Due: TBD

**DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 105(a),
1125, 1126, AND 1129 (I) AUTHORIZING THE DEBTORS TO DISTRIBUTE
AN ACCREDITED INVESTOR QUESTIONNAIRE TO SYMS CORP. EQUITY
HOLDERS, (II) APPROVING PROCEDURES RELATED THERETO, AND
(III) ESTABLISHING A RIGHTS OFFERING RECORD DATE**

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") hereby move (the "Motion") for entry of an order, pursuant to sections 105(a), 1125, 1126 and 1129 of title 11 of the United States Code (the "Bankruptcy Code") (i) authorizing the Debtors to distribute the Accredited Investor Questionnaire (as defined below) to Syms Corp. ("Syms") equity holders, (ii) approving the Accredited Investor Procedures (as defined below) related thereto, and (iii) establishing the Accredited Investor Record Date (as defined below) and Rights Offering Record Date (as defined below). In support of this Motion, the Debtors respectfully represent as follows:

¹ 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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JURISDICTION AND VENUE

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

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 105(a), 1125, 1126 and 1129.

BACKGROUND

3. 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 factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Declaration of Gary Binkoski in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration") filed on the Petition Date and fully incorporated herein by reference.

4. On November 8, 2011, the Office of the United States Trustee (the "U.S. 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 U.S. Trustee appointed an Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee") and, together with the Creditors' Committee, the "Official Committees") in these chapter 11 cases pursuant to Bankruptcy Code section 1102.

RELIEF REQUESTED

5. By this Motion, the Debtors request entry of an order (i) authorizing the Debtors to distribute the Accredited Investor Questionnaire (as defined below) to Syms equity holders, (ii) approving the Accredited Investor Procedures (as defined below) related thereto, and

(iii) establishing the Accredited Investor Record Date (as defined below) and Rights Offering Record Date (as defined below).

BASIS FOR RELIEF

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 Equity Committee [Docket No. 1363] (as may be subsequently amended, supplemented, or modified, the "Plan"). The Debtors also filed a disclosure statement with respect thereto [Docket No. 1364] (the "Disclosure Statement").

7. On June 26, 2012, representatives of the Debtors, the Official Committees, and Ms. Marcy Syms entered into formal mediation, with the assistance of the Honorable James Peck, in an effort to resolve certain outstanding issues. As a result of these efforts, the parties agreed in principle upon terms for a global resolution of such issues and a fully consensual plan of reorganization. Although such resolution is subject to documentation, the parties anticipate modifying the Plan and the Disclosure Statement in the coming days to memorialize the parties' agreement, with the aim of allowing the Debtors to exit Chapter 11 as quickly as possible.

8. Under the Plan, all allowed claims against Syms will be paid in full pursuant to certain agreed upon time frames. After all allowed claims against Syms are paid in full, all allowed trade and other vendor claims against Filene's also will be paid in full and all allowed unguaranteed lease rejection claims against Filene's will be paid 75% of their claims, pursuant to certain agreed upon time frames. The Plan also contemplates a transaction, in which reorganized Syms will redeem shares owned or controlled by Ms. Marcy Syms, the company's majority shareholder, at a price equal to \$2.49 per share. The funds necessary to pay the foregoing amounts will be obtained from proceeds realized from an offering of new shares (the "Rights Offering") and dispositions of real estate and other assets.

9. In particular, under the Rights Offering, Syms anticipates raising \$25 million in cash from the offer of 10,040,160 shares of new common stock at a price equal to \$2.49 per share. These funds will be used to fund Chapter 11 exit costs, working capital for the reorganized company, and to the extent of any excess, toward partial payment for the redemption of shares owned or controlled by Ms. Syms and the payment of Syms creditors in accordance with the Plan. The Rights Offering will be made available to existing holders of Syms common stock who are also accredited investors,² other than Ms. Syms (each, an "Eligible Holder").

10. In connection with the Rights Offering, certain Syms equity holders who are also members of the Equity Committee (the "Backstop Parties"), Syms and Ms. Syms propose entering into that certain Equity Commitment Agreement (the "Equity Commitment Agreement"). Pursuant to the Equity Commitment Agreement, the Backstop Parties agree to purchase all shares of Syms common stock offered to, but not purchased by, other Eligible Holders through the Rights Offering (the "Backstop Commitment"). As a result, Syms expects to receive the full amount of the Rights Offering proceeds. Concurrently herewith, Syms has filed a motion requesting authority to enter into the Equity Commitment Agreement.

11. In issuing the rights and selling Syms stock in connection with the Rights Offering, the Debtors may be subject to the securities registration requirements of the Securities Act of 1933 (the "Securities Act"). Moreover, it may be argued that the issuance of shares as part of the Rights Offering does not qualify for the exemption provided by section 1145 of the Bankruptcy Code. Accordingly, out of an abundance of caution, the Debtors intend to satisfy the "private placement" exemption provided by section 4(2) of the Securities Act.

² Within the meaning of Rule 501(a) promulgated under the Securities Act of 1933.

12. Section (4)(2) of the Securities Act exempts from registration "transactions by an issuer not involving a public offering." 15 U.S.C. § 77D. Rule 506 promulgated under the Securities Act, which is a section 4(2) "safe harbor" rule, allows issuers to raise an unlimited amount of capital from "accredited investors," as such term is defined in Rule 501 promulgated under the Securities Act ("Accredited Investors"), subject to compliance with certain other requirements. For that reason, the Debtors intend to limit participation in the Rights Offering to Syms equity holders that are Accredited Investors.

13. The Debtors therefore must determine which of the Syms equity holders are Accredited Investors. In order to obtain the information necessary to make such determination, the Debtors seek authority to distribute a questionnaire in substantially the same form as Exhibit A hereto (the "Accredited Investor Questionnaire"), to all known Syms equity holders as of July 12, 2012 (the "Accredited Investor Record Date"), including each known beneficial owner of Syms equity interests. The Accredited Investor Questionnaire requests that Syms equity holders certify whether they are Accredited Investors or not.

14. To that end, the Debtors seek authority to implement the following procedures (the "Accredited Investor Procedures") for the purpose of determining whether Syms equity holders are Accredited Investors and, thus, eligible to participate in the Rights Offering:

- (a) Commencing as soon as reasonably possible after the entry of an order approving these Accredited Investor Procedures and the Accredited Investor Questionnaire and, in any event, no later than July 16, 2012, the Debtors' claims, noticing and solicitation agent, Kurtzman Carson Consultants LLC ("KCC"), shall mail, via first-class mail, one or more Accredited Investor Questionnaires, as applicable, to each broker, dealer, agent, bank or other entity (each, a "Record Holder") that holds book-entry positions in Syms stock as of the Rights Offering Record Date, either for itself or for beneficial owners of Syms stock as of the Rights Offering Record Date (collectively and, together with those Record Holders holding

book-entry positions in Syms stock for themselves, the "Beneficial Owners").

- (b) Prior to mailing the Accredited Investor Questionnaires to the Record Holders, KCC will contact each Record Holder to determine the number of Accredited Investor Questionnaires needed by the Record Holder for distribution to the Beneficial Owners for whom the Record Holder performs services. KCC will mail to each Record Holder the requisite number of Accredited Investor Questionnaires in accordance with paragraph (a) of these Accredited Investor Procedures. The Record Holders shall be required to distribute the Accredited Investor Questionnaires they receive as promptly as possible to the Beneficial Owners for whom they provide services. The Beneficial Owners shall then return the Accredited Investor Questionnaires directly or indirectly to KCC in the manner described in paragraph (c) of these Accredited Investor Procedures.
- (c) Each Beneficial Owner must affirmatively certify on its Accredited Investor Questionnaire whether it is an Accredited Investor or not, as indicated on the Accredited Investor Questionnaire. To be deemed an Accredited Investor eligible to participate in the Rights Offering, a Beneficial Owner must complete the Accredited Investor Questionnaire certifying such Beneficial Owner's status as an Accredited Investor and, if the Beneficial Owner is not the Record Holder, return the properly executed Accredited Investor Questionnaire to the Record Holder **so as to be actually received** by the Record Holder before such date and time as may be specified by the Record Holder. The Record Holder shall certify on the Accredited Investor Questionnaire the amount of shares of Syms stock it holds for the benefit of the Beneficial Owner and return the complete Accredited Investor Questionnaire to KCC **so as to be actually received** by KCC before 5:00 p.m. (Eastern Time) on August 6, 2012 (the "Accredited Investor Deadline"). Completed Accredited Investor Questionnaires may be transmitted electronically by Record Holders to KCC, by facsimile to (212) 702-0864 or by electronic mail to symsinfo@kccllc.com, so long as such electronic transmissions are actually received by the Accredited Investor Deadline. Any Record Holder that elects to electronically transmit completed Accredited Investor Questionnaires to KCC must also deliver the hard-copy original Accredited Investor Questionnaires to KCC no later than five (5) business days after the Accredited Investor Deadline.
- (d) Any Beneficial Owner that does not validly certify that it is an Accredited Investor on the Accredited Investor Questionnaire and return same to KCC before the Accredited Investor Deadline shall

not be entitled to participate in the Rights Offering. Any Accredited Investor Questionnaire that is timely returned to KCC but does not indicate whether the relevant Beneficial Owner is or is not an Accredited Investor will not be deemed to have been validly executed, and the applicable Beneficial Owner will not be entitled to participate in the Rights Offering. Any Beneficial Owner that fails to submit a duly executed Accredited Investor Questionnaire to KCC before the Accredited Investor Deadline will not be entitled to participate in the Rights Offering.

- (e) The Debtors alone shall have the right to challenge the certification of any Beneficial Owner on its Accredited Investor Questionnaire. If the parties cannot resolve such dispute, the dispute shall be resolved by the Court.

15. In addition, the Debtors request that the Accredited Investor Record Date also serve as the record date for the purpose of determining which Accredited Investors are entitled to participate in the Rights Offering (the "Rights Offering Record Date"), such that only those Accredited Investors who were Syms equity holders as of the Rights Offering Record Date shall be entitled to participate in the Rights Offering, unless otherwise agreed by the Debtors in writing with the written consent of the Backstop Parties.

APPLICABLE AUTHORITY

16. Section 105(a) of the Bankruptcy Code provides that the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. 11 U.S.C. § 105(a). Section 105(a) grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code while applying equitable principles where appropriate. This includes the disclosure, solicitation, and plan confirmation requirements of sections 1125, 1126 and 1129 of the Bankruptcy Code.

17. The Debtors believe that the relief requested herein is appropriate as part of the chapter 11 plan process. As described above, the Debtors anticipate that the Rights Offering will be an important component of the Plan. In preparing to commence the Rights

Offering, the Debtors must establish which of the Syms equity holders are Accredited Investors. The Debtors believe that the most efficient way to identify Accredited Investors is to distribute the Accredited Investor Questionnaire to all Syms equity holders.³ Accordingly, the Debtors believe that the relief requested herein is warranted and, indeed, appropriate under the circumstances.

NOTICE

18. Notice of this Motion will be given to: (i) the United States Trustee for the District of Delaware; (ii) counsel to the agent for the Debtors' prepetition lenders; (iii) counsel to the Creditors' Committee; (iv) counsel to the Equity Committee; and (v) all parties who have filed 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 REQUEST

19. No previous request for the relief sought herein has been made to this Court or any other court.

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³ For the avoidance of doubt as to whether distribution of the Accredited Investor Questionnaire would constitute solicitation of acceptances of the Plan, the Accredited Investor Questionnaire will not include a summary or description of the Plan.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form annexed hereto (i) authorizing the Debtors to distribute the Accredited Investor Questionnaire to Syms equity holders, (ii) approving the Accredited Investor Procedures, (iii) establishing the Accredited Investor Record Date and Rights Offering Record Date, and (iv) granting such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 29, 2012

/s/ Jason M. Liberi

Mark S. Chehi (I.D. No. 2855)
Jason M. Liberi (I.D. No. 4425)
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Counsel for Debtors and Debtors in Possession

EXHIBIT A

Form of Accredited Investor Questionnaire

ACCREDITED INVESTOR QUESTIONNAIRE

You have been identified as the beneficial owner, or a representative acting on behalf of a beneficial owner, of shares of common stock, par value \$0.05 per share, of Syms Corp., a New Jersey corporation (the “Company”).

On November 2, 2011, the Company and each of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. In connection with their chapter 11 cases, the Debtors are contemplating a plan of reorganization that would involve certain transactions to be made available only to certain shareholders who are “Accredited Investors” as defined in the United States securities laws.

Please complete, and, if applicable, have your nominee complete the nominee confirmation of ownership form portion of, this “Accredited Investor Questionnaire”, certifying whether or not you are an accredited investor, and return such executed questionnaire to the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC (the “Subscription Agent”), on or before 5:00 p.m. (prevailing Eastern Time) on [August 6], 2012 (the “Accredited Investor Deadline”) at the following address:

*By First Class, Registered, Certified, or Express Mail,
Overnight Courier, Electronic Mail or via Facsimile:*

Syms Corp.
c/o Kurtzman Carson Consultants LLC
599 Lexington Avenue, 39th Floor
New York, NY 10022
E-mail: Symsinfo@kccllc.com
Fax: (212) 702-0864

Accredited Investor Questionnaires will be deemed to be timely returned only when actually received by the Subscription Agent on or before the Accredited Investor Deadline.

IF YOU DO NOT PROPERLY MAKE EITHER OF THE TWO POSSIBLE CERTIFICATIONS IN THE ACCREDITED INVESTOR QUESTIONNAIRE AND CAUSE ITS RETURN TO THE SUBSCRIPTION AGENT PRIOR TO THE [AUGUST 6], 2012 ACCREDITED INVESTOR DEADLINE YOU WILL NOT BE ENTITLED TO PARTICIPATE IN THE RIGHTS OFFERING.

This questionnaire shall not constitute an offer to sell or the solicitation of any offer to buy any securities.

IMPORTANT: If you hold your shares through a bank, broker or other nominee (collectively, the “Nominee”), you MUST return the completed Accredited Investor Questionnaire to your Nominee so they may complete the confirmation of ownership section on your behalf.

If you have any questions about the Accredited Investor Questionnaire or the procedures described herein, please contact the Subscription Agent, Kurtzman Carson Consultants LLC, at (877) 833-4150.

SIGNATURE PAGE TO ACCREDITED INVESTOR QUESTIONNAIRE

The undersigned hereby represents for the benefit of Syms Corp., a New Jersey corporation (the “Company”) and each of its subsidiaries (collectively, the “Debtors”) that, as of the date set forth below, it is the beneficial owner, or is acting on behalf of a beneficial owner, as of July 12, 2012 (the “Record Date”), of the number of shares of common stock, par value \$0.05 per share (“Common Stock”), set forth below.

The undersigned also hereby represents for the benefit of the Debtors that it:

- ☐ Is an “Accredited Investor” under the definition attached as Annex A. ☐ Is NOT an “Accredited Investor” under the definition attached as Annex A.

The undersigned understands that it is providing the information contained herein to the Company solely for purposes of enabling it to consider undertaking a transaction with respect to its shares of Common Stock. This letter neither is an offer with respect to the Common Stock nor creates any obligations whatsoever on the part of the Company to make any offer or on the part of the undersigned to participate if an offer is made.

The undersigned agrees that it will promptly notify the Subscription Agent in writing at either of the addresses indicated above if any of the representations it makes in this letter cease to be correct.

PLEASE COMPLETE AND RETURN THIS QUESTIONNAIRE AT THE ADDRESS INDICATED ABOVE SO THAT IT IS ACTUALLY RECEIVED BY THE SUBSCRIPTION AGENT ON OR PRIOR TO [AUGUST 6], 2012. THIS QUESTIONNAIRE MAY BE RETURNED BY ELECTRONIC MAIL, FIRST CLASS, REGISTERED, CERTIFIED, OR EXPRESS MAIL, OVERNIGHT COURIER OR VIA FACSIMILE.

Dated: _____, 2012

Name of Holder:

Number of Shares of Common Stock held as of the
Record Date:

By: _____
(Name)

Signature: _____

Title: _____

(Address)

(City/State/Zip Code)

(Phone)

(Facsimile)

(E-Mail Address)

NOMINEE'S CONFIRMATION OF OWNERSHIP

Your ownership of Common Stock must be confirmed to participate in the Rights Offering.

The Nominee holding your Common Stock as of the Record Date must complete Box A on your behalf. Box B is only required if any or all of your Common Stock was on loan as of the Rights Offer Record Date (as determined by your Nominee).

Box A	
For Use Only by the Nominee	
DTC Participant Name: _____	
DTC Participant Number: _____	
Number of Shares of Common Stock (CUSIP 871551 10 7) held by this account as of the Record Date: _____ shares of Common Stock	
Medallion Guarantee:	
Nominee contact name and telephone number:	
Contact name:	_____
Contact telephone number:	_____

Box B	
Nominee Proxy - Only if Needed	
DTC Participant Name:	_____
DTC Participant Number:	_____
Number of Shares of Common Stock (CUSIP 871551 10 7) held on behalf of, and hereby assigned to, the Nominee listed above in Box A as of the Record Date: _____ shares of Common Stock	
Medallion Guarantee:	
Nominee contact name and telephone number:	
Contact name:	_____
Contact telephone number:	_____

(TO BE COMPLETED ONLY IF YOUR SHARES ARE HELD IN A BANK OR
BROKERAGE ACCOUNT)

Definition of an “Accredited Investor”

“Accredited Investor” (pursuant to Rule 501 promulgated under the Securities Act of 1933, as amended (the “Act”)) means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

- (i) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- (ii) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
- (iii) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- (iv) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
- (v) Any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of his purchase exceeds \$1,000,000;¹
- (vi) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- (vii) Any trust, with total assets in excess of \$5,000,000, not formed for the specific

¹ Net worth for this purpose means total assets (excluding primary residence but including personal property and other assets) in excess of total liabilities. (In calculating net worth, the related amount of indebtedness secured by the primary residence up to its fair market value may also be excluded. Indebtedness secured by the residence in excess of the value of the home should be considered a liability and deducted from net worth.)

purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii); and

- (viii) Any entity in which all of the equity owners are accredited investors.

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.¹ : Jointly Administered
----- X Related Docket No. ____

ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 1125, 1126, AND 1129 (I) AUTHORIZING THE DEBTORS TO DISTRIBUTE AN ACCREDITED INVESTOR QUESTIONNAIRE TO SYMS CORP. EQUITY HOLDERS, (II) APPROVING PROCEDURES RELATED THERETO, AND (III) ESTABLISHING A RIGHTS OFFERING RECORD DATE

Upon the motion (the "Motion")² of the Debtors for entry of an order under Bankruptcy Code sections 105(a), 1125, 1126, and 1129 (i) authorizing the Debtors to distribute the Accredited Investor Questionnaire to Syms equity holders, (ii) approving the Accredited Investor Procedures, and (iii) establishing the Accredited Investor Record Date and Rights Offering Record Date; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is fair and reasonable, in the best interests of the Debtors, their estates, their creditors, their stakeholders and other parties in interest; and the proposed notice is fair and adequate; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

¹ 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.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.
2. The form of Accredited Investor Questionnaire attached hereto as Exhibit A is approved.
3. The following Accredited Investor Procedures shall govern the Debtors' determination of which Syms equity holders are "accredited investors," as such term is defined in Rule 501 promulgated under the Securities Act (collectively, the "Accredited Investors"):
 - (a) Commencing as soon as reasonably possible after the entry of this Order approving these Accredited Investor Procedures and the Accredited Investor Questionnaire and, in any event, no later than July 16, 2012, the Debtors' claims, noticing and solicitation agent, Kurtzman Carson Consultants LLC ("KCC"), shall mail, via first-class mail, one or more Accredited Investor Questionnaires, as applicable, to each broker, dealer, agent, bank or other entity (each, a "Record Holder") that holds book-entry positions in Syms stock as of the Rights Offering Record Date, either for itself or for beneficial owners of Syms stock as of the Rights Offering Record Date (collectively and, together with those Record Holders holding book-entry positions in Syms stock for themselves, the "Beneficial Owners").
 - (b) Prior to mailing the Accredited Investor Questionnaires to the Record Holders, KCC will contact each Record Holder to determine the number of Accredited Investor Questionnaires needed by the Record Holder for distribution to the Beneficial Owners for whom the Record Holder performs services. KCC will mail to each Record Holder the requisite number of Accredited Investor Questionnaires in accordance with paragraph (a) of these Accredited Investor Procedures. The Record Holders shall be required to distribute the Accredited Investor Questionnaires they receive as promptly as possible to the Beneficial Owners for whom they provide services. The Beneficial Owners shall then return the Accredited Investor Questionnaires directly or indirectly to KCC in the manner described in paragraph (c) of these Accredited Investor Procedures.
 - (c) Each Beneficial Owner must affirmatively certify on its Accredited Investor Questionnaire whether it is an Accredited Investor or not, as indicated on the Accredited Investor Questionnaire. To be deemed an Accredited Investor eligible to participate in the Rights

Offering, a Beneficial Owner must complete the Accredited Investor Questionnaire certifying such Beneficial Owner's status as an Accredited Investor and, if the Beneficial Owner is not the Record Holder, return the properly executed Accredited Investor Questionnaire to the Record Holder **so as to be actually received** by the Record Holder before such date and time as may be specified by the Record Holder. The Record Holder shall certify on the Accredited Investor Questionnaire the amount of shares of Syms stock it holds for the benefit of the Beneficial Owner and return the complete Accredited Investor Questionnaire to KCC **so as to be actually received** by KCC before 5:00 p.m. (Eastern Time) on August 6, 2012 (the "Accredited Investor Deadline"). Completed Accredited Investor Questionnaires may be transmitted electronically by Record Holders to KCC, by facsimile to (212) 702-0864 or by electronic mail to symsinfo@kccllc.com, so long as such electronic transmissions are actually received by the Accredited Investor Deadline. Any Record Holder that elects to electronically transmit completed Accredited Investor Questionnaires to KCC must also deliver the hard-copy original Accredited Investor Questionnaires to KCC no later than five (5) business days after the Accredited Investor Deadline.

- (d) Any Beneficial Owner that does not validly certify that it is an Accredited Investor on the Accredited Investor Questionnaire and return same to KCC before the Accredited Investor Deadline shall not be entitled to participate in the Rights Offering. Any Accredited Investor Questionnaire that is timely returned to KCC but does not indicate whether the relevant Beneficial Owner is or is not an Accredited Investor will not be deemed to have been validly executed, and the applicable Beneficial Owner will not be entitled to participate in the Rights Offering. Any Beneficial Owner that fails to submit a duly executed Accredited Investor Questionnaire to KCC before the Accredited Investor Deadline will not be entitled to participate in the Rights Offering.
- (e) The Debtors alone shall have the right to challenge the certification of any Beneficial Owner on its Accredited Investor Questionnaire. If the parties cannot resolve such dispute, the dispute shall be resolved by the Court.

4. The Accredited Investor Procedures set forth herein are approved.

5. July 12, 2012 is established as the Accredited Investor Record Date and

the Rights Offering Record Date. The Debtors shall cause notice of such record dates to be provided on the KCC website, at <http://www.kccllc.net/fileenes>.

6. Only those Accredited Investors who were Syms equity holders as of the Rights Offering Record Date shall be entitled to participate in the Rights Offering, unless otherwise agreed by the Debtors in writing with the written consent of the Backstop Parties.

7. Notwithstanding anything in this Order or the Motion to the contrary, each of the parties to the Backstop Agreement shall be deemed to be an Accredited Investor for purposes of the Rights Offering and shall not be required to execute or return an Accredited Investor Questionnaire.

8. The Debtors are authorized to take all actions necessary or appropriate to implement the relief granted in this Order.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware
_____, 2012

Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Form of Accredited Investor Questionnaire

ACCREDITED INVESTOR QUESTIONNAIRE

You have been identified as the beneficial owner, or a representative acting on behalf of a beneficial owner, of shares of common stock, par value \$0.05 per share, of Syms Corp., a New Jersey corporation (the “Company”).

On November 2, 2011, the Company and each of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. In connection with their chapter 11 cases, the Debtors are contemplating a plan of reorganization that would involve certain transactions to be made available only to certain shareholders who are “Accredited Investors” as defined in the United States securities laws.

Please complete, and, if applicable, have your nominee complete the nominee confirmation of ownership form portion of, this “Accredited Investor Questionnaire”, certifying whether or not you are an accredited investor, and return such executed questionnaire to the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC (the “Subscription Agent”), on or before 5:00 p.m. (prevailing Eastern Time) on [August 6], 2012 (the “Accredited Investor Deadline”) at the following address:

*By First Class, Registered, Certified, or Express Mail,
Overnight Courier, Electronic Mail or via Facsimile:*

Syms Corp.
c/o Kurtzman Carson Consultants LLC
599 Lexington Avenue, 39th Floor
New York, NY 10022
E-mail: Symsinfo@kccllc.com
Fax: (212) 702-0864

Accredited Investor Questionnaires will be deemed to be timely returned only when actually received by the Subscription Agent on or before the Accredited Investor Deadline.

IF YOU DO NOT PROPERLY MAKE EITHER OF THE TWO POSSIBLE CERTIFICATIONS IN THE ACCREDITED INVESTOR QUESTIONNAIRE AND CAUSE ITS RETURN TO THE SUBSCRIPTION AGENT PRIOR TO THE [AUGUST 6], 2012 ACCREDITED INVESTOR DEADLINE YOU WILL NOT BE ENTITLED TO PARTICIPATE IN THE RIGHTS OFFERING.

This questionnaire shall not constitute an offer to sell or the solicitation of any offer to buy any securities.

IMPORTANT: If you hold your shares through a bank, broker or other nominee (collectively, the “Nominee”), you MUST return the completed Accredited Investor Questionnaire to your Nominee so they may complete the confirmation of ownership section on your behalf.

If you have any questions about the Accredited Investor Questionnaire or the procedures described herein, please contact the Subscription Agent, Kurtzman Carson Consultants LLC, at (877) 833-4150.

SIGNATURE PAGE TO ACCREDITED INVESTOR QUESTIONNAIRE

The undersigned hereby represents for the benefit of Syms Corp., a New Jersey corporation (the “Company”) and each of its subsidiaries (collectively, the “Debtors”) that, as of the date set forth below, it is the beneficial owner, or is acting on behalf of a beneficial owner, as of July 12, 2012 (the “Record Date”), of the number of shares of common stock, par value \$0.05 per share (“Common Stock”), set forth below.

The undersigned also hereby represents for the benefit of the Debtors that it:

- ☐ Is an “Accredited Investor” under the definition attached as Annex A. ☐ Is NOT an “Accredited Investor” under the definition attached as Annex A.

The undersigned understands that it is providing the information contained herein to the Company solely for purposes of enabling it to consider undertaking a transaction with respect to its shares of Common Stock. This letter neither is an offer with respect to the Common Stock nor creates any obligations whatsoever on the part of the Company to make any offer or on the part of the undersigned to participate if an offer is made.

The undersigned agrees that it will promptly notify the Subscription Agent in writing at either of the addresses indicated above if any of the representations it makes in this letter cease to be correct.

PLEASE COMPLETE AND RETURN THIS QUESTIONNAIRE AT THE ADDRESS INDICATED ABOVE SO THAT IT IS ACTUALLY RECEIVED BY THE SUBSCRIPTION AGENT ON OR PRIOR TO [AUGUST 6], 2012. THIS QUESTIONNAIRE MAY BE RETURNED BY ELECTRONIC MAIL, FIRST CLASS, REGISTERED, CERTIFIED, OR EXPRESS MAIL, OVERNIGHT COURIER OR VIA FACSIMILE.

Dated: _____, 2012

Name of Holder:

Number of Shares of Common Stock held as of the
Record Date:

By: _____
(Name)

Signature: _____

Title: _____

(Address)

(City/State/Zip Code)

(Phone)

(Facsimile)

(E-Mail Address)

NOMINEE'S CONFIRMATION OF OWNERSHIP

Your ownership of Common Stock must be confirmed to participate in the Rights Offering.

The Nominee holding your Common Stock as of the Record Date must complete Box A on your behalf. Box B is only required if any or all of your Common Stock was on loan as of the Rights Offer Record Date (as determined by your Nominee).

Box A	
For Use Only by the Nominee	
DTC Participant Name: _____	
DTC Participant Number: _____	
Number of Shares of Common Stock (CUSIP 871551 10 7) held by this account as of the Record Date: _____ shares of Common Stock	
Medallion Guarantee:	
Nominee contact name and telephone number:	
Contact name:	_____
Contact telephone number:	_____

Box B	
Nominee Proxy - Only if Needed	
DTC Participant Name:	_____
DTC Participant Number:	_____
Number of Shares of Common Stock (CUSIP 871551 10 7) held on behalf of, and hereby assigned to, the Nominee listed above in Box A as of the Record Date: _____ shares of Common Stock	
Medallion Guarantee: 	
Nominee contact name and telephone number: Contact name: _____ Contact telephone number: _____	

(TO BE COMPLETED ONLY IF YOUR SHARES ARE HELD IN A BANK OR
BROKERAGE ACCOUNT)

Definition of an “Accredited Investor”

“Accredited Investor” (pursuant to Rule 501 promulgated under the Securities Act of 1933, as amended (the “Act”)) means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

- (i) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- (ii) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
- (iii) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- (iv) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
- (v) Any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of his purchase exceeds \$1,000,000;¹
- (vi) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- (vii) Any trust, with total assets in excess of \$5,000,000, not formed for the specific

¹ Net worth for this purpose means total assets (excluding primary residence but including personal property and other assets) in excess of total liabilities. (In calculating net worth, the related amount of indebtedness secured by the primary residence up to its fair market value may also be excluded. Indebtedness secured by the residence in excess of the value of the home should be considered a liability and deducted from net worth.)

purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii); and

- (viii) Any entity in which all of the equity owners are accredited investors.