

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11 Case Nos.
	:	96 B 40113 (JLG)
BARNEY'S, INC., <u>et al.</u>	:	
	:	(Jointly Administered)
Debtors.	:	

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ORDER (A) PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3017(b) APPROVING THE SECOND AMENDED JOINT DISCLOSURE STATEMENT AND SOLICITATION AND SUBSCRIPTION PROCEDURES, (B) PURSUANT TO BANKRUPTCY RULE 3017(c) FIXING THE TIME WITHIN WHICH CLAIM HOLDERS AND EQUITY INTEREST HOLDERS MAY VOTE TO ACCEPT OR REJECT THE SECOND AMENDED JOINT PLAN OF REORGANIZATION, (C) FIXING THE TIME WITHIN WHICH SUBSCRIPTION RIGHTS MAY BE EXERCISED, (D) APPROVING THE EMPLOYMENT OF THE ALTMAN GROUP, INC AS BALLOT SOLICITATION AGENT AND VOTE TABULATION AGENT, (E) PURSUANT TO BANKRUPTCY RULE 3017(c) FIXING THE DATE, TIME AND PLACE OF HEARING ON CONFIRMATION OF THE JOINT PLAN OF REORGANIZATION, (F) APPROVING THE FORM OF BALLOT AND THE SUBSCRIPTION FORMS, AND (H) APPROVING THE NOTICE OF (i) THE LAST DAY FOR RECEIPT OF BALLOTS WITH RESPECT TO THE JOINT PLAN OF REORGANIZATION, (ii) THE LAST DAY FOR FILING OBJECTIONS TO CONFIRMATION OF THE SECOND AMENDED JOINT PLAN OF REORGANIZATION, (iii) THE LAST DAY FOR EXERCISING SUBSCRIPTION RIGHTS, AND (iv) THE HEARING ON CONFIRMATION OF THE SECOND AMENDED JOINT PLAN OF REORGANIZATION.

A hearing has been held on November 13, 1998, (the "Disclosure Statement Hearing") to consider the joint application of the Official Committee of Unsecured Creditors, Whippoorwill Associates, Inc., Bay Harbour Management L.C. (together, the "Plan Proponents"), and the Debtors in the above-captioned Chapter 11 case (collectively with the Plan Proponents, the "Joint Applicants"), pursuant to section 1125 of the Bankruptcy Code, seeking entry of an order approving the second amended

joint disclosure statement dated November 13, 1998 (the “Joint Disclosure Statement”) as containing information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtors and the condition of the Debtors’ books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the second amended joint plan of reorganization dated November 13, 1998 (the “Plan”), as filed by the Plan Proponents, and upon the proceedings had at the Disclosure Statement Hearing; and each of the objections filed with respect to the Joint Disclosure Statement having been withdrawn, overruled by the Court at the Disclosure Statement Hearing, or rendered moot by reason of modifications made to the Joint Disclosure Statement; and the Joint Applicants having amended and modified the Joint Disclosure Statement in accordance with the Court’s direction at the Disclosure Statement Hearing; and due notice of the Disclosure Statement Hearing having been provided by the Joint Applicants as directed by the Court pursuant to a Scheduling Order dated September 4, 1998 and the amended Scheduling Order dated November 3, 1998, as further amended by the Court on November 9, 1998 (collectively, the “Scheduling Order”); and it appearing that no further notice is required; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017(b), the Joint Disclosure Statement (and all exhibits and schedules thereto), as the same may be amended and modified from time to time to incorporate immaterial modifications and reflect any modifications that the Joint Applicants determine to be appropriate which do not materially change the Joint

Disclosure Statement or materially affect any rights of a party in interest, be, and it hereby is, approved as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code; and it is further

ORDERED that, the ballots pursuant to Bankruptcy Rule 3018(c), substantially in the form annexed hereto as Exhibit “A” (the “Ballots”) be, and they hereby are, approved in all respects as conforming with Official Form No. 14; and it is further

ORDERED that, pursuant to Bankruptcy Rule 3018(a), the record date for determining the equity interest holders and holders of claims who may vote to accept or reject the Plan shall be the date of execution of this Order (the “Record Date”); and it is further

ORDERED that only the holders of claims and equity interests in and against the Debtors as of the Record Date that are impaired under the Plan may vote to accept or reject the Plan by indicating their acceptance or rejection of the Plan on the Ballots provided therefor; and it is further

ORDERED that, for purposes of calculating the number of claims in a class that votes to accept or reject the Plan, all claims in a class held by one entity or any affiliate thereof (as defined in the Securities Act of 1933 and the rules and regulations promulgated thereunder), including any entity that acquired record ownership of such claims after the date that each of the Debtors filed its respective chapter 11 petition (the “Petition Date”), be and they hereby are, treated as separate claims in such class for voting purposes; and it is further

ORDERED that, the Joint Applicants’ appointment of the Altman Group,

Inc., as ballot solicitation agent and vote tabulation agent (the “Ballot Solicitation Agent”) in connection with (i) the accommodation of requests for information concerning the Plan, Joint Disclosure Statement, Ballots, Subscription Forms (as defined in the Plan) or other related matters; (ii) the distribution of copies of the Plan, Joint Disclosure Statement, Ballots, Subscription Forms and this Order; (iii) the solicitation of Ballots and Subscription Forms in respect of the Plan and Subscription Rights Offering (as defined in the Plan), respectively; and (iv) the review, determination of validity, and tabulation of votes for acceptance and rejection of the Plan as well as reporting with respect thereto, in a reasonable and customary manner, and (v) the review and determination of the validity and calculation of exercised Subscription Rights (as defined in the Plan) pursuant to the Subscription Rights Offering, is hereby approved; and it is further

ORDERED that, pursuant to Bankruptcy Rule 3017(c) in order to be considered as acceptances or rejections of the Plan, all Ballots must be properly completed and received by the Ballot Solicitation Agent on or before 5:00 p.m. (New York City Time) on December 16, 1998 (the “Voting Deadline); and it is further

ORDERED that, any Ballot that is properly completed and timely returned to the Ballot Solicitation Agent but does not indicate an acceptance or a rejection of the Plan be, and it hereby is, deemed to be a vote to accept the Plan; and it is further

ORDERED that if a claim holder or equity security holder casts more than one Ballot voting the same claim or equity interest, as applicable, prior to the Voting Deadline, the last Ballot received prior to the Voting Deadline shall be deemed to reflect the voter’s intent and thus to supersede any prior Ballots; and it is further

ORDERED that, pursuant to Bankruptcy Rule 3018(a), in the event an objection to a claim or equity interest has been filed in the time and manner specified in the Scheduling Order, any motion for: (a) temporary allowance of a claim or equity interest for purposes of accepting or rejecting the Plan (a "Temporary Allowance Motion") or (b) estimation of a claim pursuant to Section 502(c) of the Bankruptcy Code for purposes of participating in the Subscription Rights Offering (the "Estimation Motion") shall be made by the claimholder or equity interest holder in writing, indicate the legal basis for such request, and be filed with and received by the Bankruptcy Court, with one (1) copy to Chambers, and served upon and received by the Abbreviated Service List, together with proof of service, on or before December 2, 1998 at 5:00 p.m. (New York City Time) (the "Temporary Allowance Motion/Estimation Motion Deadline"); and it is further

ORDERED that all responsive papers filed by the Debtors or Plan Proponents with respect to the Temporary Allowance and Estimation Motions shall be filed with and received by the Bankruptcy Court, with one copy to Chambers and served upon the movant no later than December 9, 1998, at 5:00 p.m. (New York City Time); and it is further

ORDERED that, pursuant to Bankruptcy Rule 3018(a), a hearing to consider all Temporary Allowance Motions and Estimation Motions shall be held on December 11, 1998, at 11:00 a.m. (New York City Time), or such other date and time as the Court may set; and it is further

ORDERED that pursuant to section 1125 of the Bankruptcy Code the Subscription Forms substantially in the form annexed hereto as Exhibit "B" be and they

hereby are approved; and it is further

ORDERED that pursuant to section 1145 of the Bankruptcy Code the Subscription Rights Offering, the distribution of the Subscription Rights, and Subscription Forms be and they hereby are approved in all respects; and it is further

ORDERED that each election to exercise Subscription Rights must be made by the holder of such Subscription Rights on the Subscription Form distributed to such holder by indicating the number of Subscription Rights, if any, that the holder elects to exercise; and it is further

ORDERED that for any election to exercise the Subscription Rights to be effective, each holder of Subscription Rights electing to exercise any or all of its Subscription Rights must, with its Subscription Form, tender to New Barneys c/o the Ballot Solicitation Agent (or such other party as selected by the Plan Proponents), a certified check or bank check in an amount equal to the product by multiplying the Offered Share Price by the number of Subscription Rights that such holder elects to exercise; and it is further

ORDERED that pending the sale and issuance of Offered Shares, such funds shall be held by New Barneys, or its designee, in a separate, interest bearing account; and it is further

ORDERED that the Subscription Rights Offering will expire and become void for all purposes at 5:00 p.m. (New York City Time) on December 22, 1998 or the first business day after the scheduled confirmation hearing (the "Subscription Deadline"); and it is further

ORDERED that the sale of Offered Shares pursuant to the Subscription Rights Offering shall be limited to beneficial owners of Allowed General Unsecured Claims (as defined in the Plan) and in accordance with Section 30.7 of the Plan Allowed General Unsecured Claims and shall include those disputed claims estimated by this Court on or before the Subscription Deadline to be Allowed Claims; and it is further

ORDERED that objections, if any, to confirmation of the Plan shall be in writing, and shall (a) state the name and address of the objecting party and the nature of the claim or interest of such party, (b) state with particularity the basis and nature of each objection and the specific grounds therefor and (c) be filed, together with proof of service, with the Court (with a copy to Chambers) and served so that the objection is received no later than 5:00 P.M., December 14, 1998 (New York City Time) (the “Objection Deadline”), by the Court, Chambers and the following parties:

**WEIL, GOTSHAL & MANGES LLP**

767 Fifth Avenue  
New York, New York 10153  
Attn: John J. Rapisardi, Esq.  
Attorneys for Whippoorwill Associates, Inc.  
and Bay Harbour Management L.C.

**LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.**

125 West 55th Street  
New York, New York 10019  
Attn: John P. Campo, Esq.  
Attorneys for the Debtors

**STROOCK & STROOCK & LAVAN LLP**

180 Maiden Lane  
New York, New York 10038  
Attn: Lawrence M. Handelsman, Esq.  
Attorneys for the Official Committee  
of Unsecured Creditors

**WACHTELL, LIPTON, ROSEN & KATZ**  
51 West 52nd Street  
New York, New York 10019  
Attn: Chaim J. Fortgang, Esq.  
Attorneys for Bi-Equipment Lessors, LLP

**BLANK, ROME, COMISKY & McCAULEY LLP**  
One Logan Square  
Philadelphia, Pennsylvania 19103  
Attn: Raymond L. Shapiro, Esq.  
Mediator

**HUGHES HUBBARD & REED LLP**  
One Battery Park Plaza  
New York, New York 10004  
Attn: David M. LeMay, Esq.  
Attorneys for Isetan of America, Inc.

**OFFICE OF THE UNITED STATES TRUSTEE**  
80 Broad Street  
New York, NY 10004  
Attn: Diana Adams, Esq.;

and it is further

ORDERED that responses to objections, if any, to confirmation of the Plan by any party in interest be filed with the Court together with proof of service, and served in a manner so as to be received on or before 5:00 p.m., New York City Time on December 17, 1998 by the Abbreviated Service List; and it is further

ORDERED that a hearing to consider confirmation of the Plan and any amendments thereto (the "Confirmation Hearing") shall be held before the Court in Room 610-2 of the United States Bankruptcy Court, Alexander-Hamilton Customs House, One Bowling Green, New York, New York on December 21, 1998, at 11:00 a.m. (New York City Time) or as soon thereafter as counsel may be heard; and it is further

ORDERED that, the Confirmation Hearing may be adjourned from time to

time without prior notice to holders of claims, holders of equity interests or parties in interest other than the announcement of the adjourned hearing date at the Confirmation Hearing; and it is further

ORDERED that, pursuant to Bankruptcy Rule 3017(d), the form of the notice of, among other things, the Voting Deadline, the Objection Deadline, the Subscription Deadline and the Confirmation Hearing (the "Notice") annexed hereto as Exhibit "C" be, and it hereby is, approved in all respects; and it is further

ORDERED that, the Joint Applicants be, and hereby are, authorized and directed to mail or cause to be mailed by first-class mail no later than November 19, 20 1998, a copy of the Notice and the Joint Disclosure Statement and all exhibits and attachments thereto (collectively, the "Disclosure Package"), to the following persons or entities, unless such person or entity is otherwise to receive a Solicitation Package (as hereinafter defined) pursuant to this Order:

(1) all persons or entities that have filed proofs of claim or equity interests with the Court on or before the Record Date, other than any person or entity that has filed with the Court a notice (or notices) of transfer of claim under Bankruptcy Rule 3001(e) on or before the

Record Date reflecting the transfer of all of such holder's claims;

(2) all persons or entities listed in the Schedules and lists of equity security holders and all amendments thereto through the Record Date, other than any person or entity that has filed with the Court a notice (or notices) of transfer of claim under Bankruptcy Rule 3001(e) on or before the Record Date reflecting the transfer of all of such holder's claims;

(3) all other known holders of record of claims or equity interests against the Debtors, if

any, as of the Record Date,

(4) all persons or entities that have acquired a claim pursuant to a notice of the transfer of a claim under Bankruptcy Rule 3001(e) filed with the Court on or before the Record Date, and

(5) all parties in interest that have filed a notice pursuant to Bankruptcy Rule 2002 in the Debtors' chapter 11 cases on or before the Record Date; and it is further

ORDERED that the Joint Applicants be, and hereby are, authorized and directed to mail or cause to be mailed by first-class mail no later than November 19 20, 1998 to the holders of record on the Record Date of all claims and equity interests that are entitled to vote on the Plan as specified herein in accordance with Bankruptcy Rule 3018(a), (a) the Notice, (b) the Joint Disclosure Statement and all exhibits and attachments thereto, (c) an appropriate form of Ballot and (d) the appropriate Subscription Form (collectively, a "Solicitation Package"); provided, however, that Solicitation Packages for (i) holders of claims against or interests in any Debtor placed within a class under the Plan that is deemed to accept or reject the Plan under section 1126(f) or 1126(g) of the Bankruptcy Code and (ii) holders of claims or equity interests that have been objected to in accordance with the Scheduling Order shall not include a Ballot, Subscription Form and a Ballot return envelope; and it is further

ORDERED that, the Joint Applicants be, and hereby are, directed to cause the Notice to be published in each of the national and international editions of The Wall Street Journal, the national edition of The New York Times and Women's Wear Daily, once during the week of November 30, 1998, and once during the week of December 7,

1998, which publication is hereby approved in all respects and which shall be deemed good, adequate and sufficient publication; and it is further

ORDERED that the provision of notice in accordance with the procedures set forth in this Order shall be deemed good, adequate and sufficient notice of (i) the Confirmation Hearing; (ii) the time fixed for filing objections to the Plan; (iii) the time within which holders of claims may vote to accept or reject the Plan; (iv) the time fixed for exercising subscription rights; and (v) the time fixed for estimating claims for voting purposes and for purposes of participating in the Subscription Rights Offering; and it is further

ORDERED that, those exhibits and schedules to the Joint Disclosure Statement which were not annexed to the Joint Disclosure Statement as of the Disclosure Statement Hearing shall be filed with the Clerk of the Bankruptcy Court on or before November 25, 1998, thereby allowing for (i) inspection of the Exhibits during normal court hours and (ii) interested parties to receive copies of the Exhibits upon written request which is hereby deemed good, adequate and sufficient notice of the contents of the Exhibits; and it is further

ORDERED that, those exhibits and schedules to the Plan which were not annexed thereto , including the Plan Supplement (collectively, the "Exhibits") by the Plan Proponents prior to the Disclosure Statement Hearing shall be filed with the Clerk of the Bankruptcy Court on or before November 25, 1998, thereby allowing for (i) inspection of the Exhibits during normal court hours and (ii) interested parties to receive copies of the Exhibits upon written request is deemed good, adequate and sufficient notice of the

contents of the Exhibits and no other further notice of the Exhibits need be given; and it is further

ORDERED that the Joint Applicants be, and hereby are, authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate this Order; and it is further

ORDERED that, the requirement of Local Bankruptcy Rule 9013-1(b) with respect to the filing of a memorandum of law is hereby dispensed with and waived.

Dated: New York, New York  
November 13, 1998

/s/ James L. Garrity, Jr.  
United States Bankruptcy Judge