

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

TBAC WIND DOWN, LTD.,

Debtor.

Chapter 11

Case No. 16-13297 (SHL)

NOTICE OF HEARING TO CONSIDER CONFIRMATION OF,  
AND DEADLINE FOR OBJECTING TO, AND VOTING ON,  
THE CIRCUS' CHAPTER 11 PLAN OF LIQUIDATION

TO ALL HOLDERS OF CLAIMS AND PARTIES IN INTEREST:

- Court Approval of the Disclosure Statement and the Solicitation Procedures.** On November 1, 2017, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered its *Order Approving (I) the Adequacy of the Circus’ Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus’ Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* [Docket No. 285] (the “**Disclosure Statement Order**”) that, among other things: (a) approved the *Disclosure Statement for the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* [Docket No. 275] (as may further be amended from time to time and including all exhibits and supplements thereto, the “**Disclosure Statement**”), as containing adequate information, as required under section 1125(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), and (b) authorized the above-captioned debtor and debtor in possession (the “**Circus**”) to solicit votes with regard to the acceptance or rejection of the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* [Docket No. 274] (as may further be amended from time to time and including all exhibits and supplements thereto, the “**Plan**”).
- Voting Record Date.** The Voting Record Date for purposes of determining (a) which holders of claims are entitled to vote on the Plan and (b) 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 the claim was **October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)**.
- Voting Deadline.** If you held a claim against the Circus as of the Voting Record Date and are entitled to vote on the Plan, you have received a ballot and voting instructions appropriate for your claim(s). For your vote to be counted in connection with confirmation of the Plan, you must follow the appropriate voting instructions, complete all required information on the ballot, and execute and return the completed ballot so that it is **actually received** by **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the “**Voting Deadline**”). Any failure to follow the voting instructions included with the

ballot may disqualify your ballot and your vote on the Plan.

4. **Objections to the Plan.** The Court has established **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)**, as the deadline for filing and serving objections to the confirmation of the Plan (the “**Plan Objection Deadline**”). Any objection to the Plan must (a) be in writing, (b) conform to the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), (c) state the name and address of the objecting party and the amount and nature of the claim, (d) state with particularity the basis and nature of any objection to the Plan, (e) propose a modification to the Plan that would resolve such objection (if applicable), and (f) be filed, contemporaneously with a proof of service, with the Court and served so that it is **actually received** by each of the notice parties identified herein by the Plan Objection Deadline:

<b>The Circus</b>	<b>Counsel for the Circus</b>
TBAC Wind Down, Ltd. One MetroTech North, 3rd Floor Brooklyn, New York 11201	Debevoise & Plimpton LLP 919 Third Avenue New York, New York 10022 Attn: M. Natasha Labovitz, Esq. and Christopher Updike, Esq.
<b>U.S. Trustee</b>	<b>Counsel for the Creditors’ Committee</b>
Office of the United States Trustee for the Southern District of New York U.S. Federal Office Building 201 Varick Street, Suite 1006 New York, New York 10014 Attn: Richard C. Morrissey	Pachulski Stang Ziehl & Jones LLP 780 Third Avenue New York, New York 10017 Attn: Robert J. Feinstein, Esq.
<b>Administrative Agent</b>	<b>New York City Department of Cultural Affairs</b>
Donlin, Recano & Company, Inc. P.O. Box 199043 Blythebourne Station Brooklyn, New York 11219 Attn: TBAC Wind Down, Ltd.	NYC Department of Cultural Affairs 31 Chambers Street, Floor 2 New York, New York 10007 Attn: General Counsel
<b>New York State Attorney General</b>	
Office of the New York State Attorney General Division of Social Justice Charities Bureau 120 Broadway New York, New York 10271 Attn: James Sheehan	

5. **Confirmation Hearing.** A hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”) will commence on **December 12, 2017 at 2:00 p.m. (prevailing Eastern Time)** before the Honorable Sean H. Lane, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York. Please be advised that the Confirmation Hearing may be continued from time

to time by the Court or the Circus without further notice other than by such adjournment being announced in open court or by a notice of adjournment being filed with the Court and served on parties entitled to notice under Bankruptcy Rule 2002, the Local Bankruptcy Rules or otherwise. In accordance with the Plan, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing without further action by the Circus and without further notice to or action, order, or approval of the Court or any other entity.

6. **Solicitation Packages.** Solicitation packages may be obtained at no charge from the administrative agent retained by the Circus in this chapter 11 cases (the “**Administrative Agent**”) by: (a) accessing the Administrative Agent’s website at [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus); (b) writing to the Administrative Agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd.; (c) calling the Administrative Agent at (212) 771-1128; or (d) emailing [drcvote@donlinrecano.com](mailto:drcvote@donlinrecano.com). You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). The Administrative Agent will answer questions regarding the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, provide additional copies of all materials, and oversee the voting tabulation.
7. **Temporary Allowance of Claims for Voting Purposes.** Holders of claims that are subject, at least 14 days prior to the Voting Deadline, to a pending objection by the Circus cannot vote on the Plan; provided that if the Circus objects to only a portion of a claim, such claim may be voted in the undisputed amount. Moreover, a holder of a disputed claim cannot vote any disputed portion of its claim unless one or more of the following events (each, a “**Resolution Event**”) has taken place by at least three 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 Circus temporarily or permanently allowing such claim in an agreed upon amount; or
  - (d) the pending objection to such claim is voluntarily withdrawn by the objecting party.
8. **Release, Exculpation, and Injunction Language in the Plan.** Please be advised that Article VIII of the Plan contains the following release, exculpation, and injunction provisions:

**RELEASES BY DEBTOR.** Pursuant to section 1123(b) of the Bankruptcy Code, as of the Effective Date, except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted under applicable law, the Released Parties are deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor, the Estate, and the Reorganized Debtor from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, the Estate, or the Reorganized Debtor would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual agreements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

**RELEASES BY HOLDERS OF CLAIMS.** As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or

liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

**EXCULPATION.** Except as otherwise specifically provided in the Plan or the Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any obligation, Cause of Action or liability for any Exculpated Claim, except for gross negligence, willful misconduct, or fraud, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of the Plan and distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

**INJUNCTION.** The satisfaction, release, exculpation, and discharge pursuant to this Article shall act as an injunction against any entity commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied, released or to be released, exculpated or to be exculpated, or discharged under the Plan or pursuant to the Confirmation Order to the fullest extent permitted by applicable law, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 of the Bankruptcy Code.

**Defined terms.** As used in the Plan, the terms “Released Parties” and “Releasing Parties” have the meanings set forth below.

“**Released Parties**” means each of: (a) the Debtor, (b) the current and former directors and officers of the Debtor, (c) the Reorganized Debtor, and (d) any of the representatives, agents, officers, directors, employees, professionals, advisors, attorneys, successors, or assigns of the foregoing (in their capacities as such).

“**Releasing Parties**” means, collectively, (a) all holders of Claims or (b) solely if the Court finds that the Third Party Release may only be approved with the consent of the applicable holder of a Claim, all holders of Claims who, with respect to such Claims, (i) vote to accept the Plan, (ii) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (iii) receive a ballot providing them with the potential right to opt out of the Third Party release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (iv) are not entitled to vote on the Plan but receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release.

**YOU ARE ADVISED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AS YOUR RIGHTS MIGHT BE AFFECTED.**

Dated: November 3, 2017  
New York, New York

/s/ Christopher Updike  
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