

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

TBAC WIND DOWN, LTD.,

Debtor.

Chapter 11

Case No. 16-13297 (SHL)

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 adequacy of the *Disclosure Statement for Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* [Docket No. 275] (as amended and including all exhibits and supplements thereto, the “**Disclosure Statement**”) filed in support of the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* [Docket No. 274] (as amended and including all exhibits thereto, the “**Plan**”) and (b) authorized the above-captioned debtor and debtor in possession (the “**Circus**”) to solicit acceptances or rejections of the Plan from holders of impaired claims who are (or may be) entitled to receive distributions under the Plan.¹

A. The Voting Record Date

The Court has approved **October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)** as the record date for purposes of determining which holders of claims in the Voting Class are entitled to vote on the Plan (the “**Voting Record Date**”).

B. The Voting Deadline

The Court has approved **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)** as the voting deadline (the “**Voting Deadline**”) for the Plan. The Circus may extend the Voting Deadline, in its discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots sent to registered holders of claims (“**Ballots**”) must be properly executed, completed, and delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) electronic mail in PDF format so that they are **actually received**, in any case, no later than the Voting Deadline by the Administrative Agent. All Ballots should be sent to the following addresses: if by U.S. Postal Service mail, Donlin Recano & Company, Inc.,

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. Copies of the Plan and the Disclosure Statement may be obtained free of charge by visiting the case website maintained by Donlin, Recano & Company, Inc., the Debtor’s administrative agent for this chapter 11 case (the “**Administrative Agent**”), available at www.donlinrecano.com/bigapplecircus. You may also obtain copies of any pleadings by visiting the Court’s website at www.nysb.uscourts.gov in accordance with the procedures and fees set forth therein.

P.O. Box 192016, Blythebourne Station, Brooklyn, NY 11219, Re: TBAC Wind Down, Ltd, if by overnight delivery or personal delivery by hand, Donlin Recano & Co. Inc., Re: TBAC Wind Down, Ltd., 6201 15th Avenue, Brooklyn, NY 11219, and if by electronic mail, in PDF format, to tbacballots@donlinrecano.com. Delivery of a Ballot to the Administrative Agent by facsimile will not be valid.

C. Form, Content, and Manner of Notices

1. The Solicitation Package

The following materials will constitute the solicitation package (the “**Solicitation Package**”):

- (a) a copy of these Solicitation Procedures;
- (b) the *Notice of Hearing to Consider Confirmation of, and Deadline for Objecting to, and Voting on, the Circus’ Chapter 11 Plan of Liquidation*, in substantially the form annexed as **Exhibit 3** to the Disclosure Statement Order (the “**Confirmation Hearing Notice**”);
- (c) a cover letter, in substantially the form annexed as **Exhibit 4** to the Disclosure Statement Order, (i) describing the contents of the Solicitation Package and (ii) urging the holders of claims in the Voting Class to vote to accept the Plan;
- (d) a form of ballot, in substantially the form of the ballot annexed as **Exhibit 5** to the Disclosure Statement Order;
- (e) the approved Disclosure Statement (together with the Plan and other exhibits attached thereto); and
- (f) any supplemental documents the Circus files with the Court and any documents that the Court orders to be made available.

2. Distribution of the Solicitation Package

The Solicitation Package will provide the Disclosure Statement, the Plan, and the Solicitation Procedures in CD-ROM format and the Ballot and all other contents of the Solicitation Package in paper format. Any holder of a claim may obtain at no charge a copy of the documents otherwise provided by: (a) accessing the Administrative Agent’s website at 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. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at www.nysb.uscourts.gov.

The Circus will serve, or cause to be served, all of the materials in the Solicitation Package on: (a) the U.S. Trustee; (b) counsel to the Creditors’ Committee; and (c) all parties who have requested service of papers in these chapter 11 cases pursuant to Bankruptcy Rule

2002. In addition, the Circus will mail, or cause to be mailed, the Solicitation Package to the Voting Creditors (as defined below) on or before November 3, 2017.

3. Resolution of Disputed Claims for Voting Purposes

(a) The holder of a claim in the Voting Class that is the subject of a pending objection on a “reduce and allow” basis will be entitled to vote such claim in the reduced amount contained in such objection.

(b) If a claim in the Voting Class is subject to an objection, other than a “reduce and allow” objection, that is filed with the Court on or prior to 14 days before the Voting Deadline: (i) the Circus will cause the applicable holder to be served with a “**Disputed Claim Notice**” substantially in the form annexed as **Exhibit 8** to the Disclosure Statement Order; and (ii) the applicable holder will not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined below) occurs as provided herein.

(c) If a claim in the Voting Class is subject to an objection, other than a “reduce and allow” objection, that is filed with the Court less than 14 days prior to the Voting Deadline, the applicable claim will be deemed temporarily allowed for voting purposes only, without further action by the holder of such claim and without further order of the Court, unless the Court orders otherwise.

(d) A “**Resolution Event**” means the occurrence of one or more of the following events no later than three days prior to the Voting Deadline:

(i) an order of the Court is entered allowing such claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;

(ii) 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;

(iii) 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

(iv) the pending objection is voluntarily withdrawn by the objecting party.

(e) No later than two days following the occurrence of a Resolution Event, the Circus will cause the Administrative Agent to distribute via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant holder.

4. Notice of Non-Voting Status with Respect to Unclassified Claims and Unimpaired Classes

Certain holders of claims that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are not Impaired

or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the Notice of Non-Voting Status, substantially in the form annexed as **Exhibit 6** to the Disclosure Statement Order, and the Confirmation Hearing Notice, as soon as reasonably practicable after entry of the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package.

D. Voting and Tabulation Procedures

1. Holders of Claims Entitled to Vote

Only the following holders of claims in the Voting Class (the “**Voting Creditors**”) will be entitled to vote on the Plan with regard to such claims:

(a) all entities who, on or before the Voting Record Date, have filed a proof of claim that: (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection other than a “reduce and allow” objection, filed with the Court 14 days prior to the Voting Date; provided that the holder of a claim that is the subject of a pending objection on a “reduce and allow” basis will receive a Solicitation Package and be entitled to vote such claim in the reduced amount contained in such objection;

(b) all entities listed in the Circus’ Schedules as holding a noncontingent, liquidated, undisputed claim as of the Voting Record Date, except to the extent that such claim was paid, expunged, disallowed, disqualified, or superseded by a timely filed proof of claim prior to the Voting Record Date;

(c) all entities that hold claims pursuant to an agreement or settlement with the Circus executed prior to the Voting Record Date, as reflected in a document filed with the Court, in an order entered by the Court, or in a document executed by the Circus pursuant to authority granted by the Court, regardless of whether a proof of claim has been filed;

(d) holders of any Disputed Claims that have been temporarily allowed to vote; and

(e) with respect to any entity described in subparagraphs (a) through (d) above who, on or before the Voting Record Date, has transferred that entity’s claim to another entity, the assignee of that claim; provided that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the claims register on the Voting Record Date.

2. Establishing Claim Amounts for Voting Purposes

The claim amount established herein will control for voting purposes only and will not constitute the allowed amount of any claim. Moreover, any amounts filled in on Ballots by the Circus through the Administrative Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy will be used to determine the amount of the claim associated with each claimant’s vote:

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

(b) the claim amount allowed (temporarily or otherwise) pursuant to a Resolution Event;

(c) the claim amount contained in a proof of claim that has been filed, except for any amounts asserted on account of any interest accrued after the Petition Date; provided, however, that Ballots cast by holders of claims who file a proof of claim in respect of a contingent claim or in a wholly-unliquidated or unknown amount that is 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, and, if a proof of claim is filed as partially liquidated and partially unliquidated, such claim will be allowed for voting purposes only in the liquidated amount; 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 subparagraph (a) above, the claim amount in the document filed with the Court will 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/or has not been paid; and

(e) in the absence of any of the foregoing, such claim will be disallowed for voting purposes.

3. General Voting and Ballot Tabulation Procedures

The following voting procedures and standard assumptions will be used in tabulating Ballots, subject to the Circus's right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Bankruptcy Rules:

(a) except as otherwise provided herein, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Circus), the Circus will reject such Ballot as invalid and, therefore, will not count it in connection with confirmation of the Plan;

(b) the Administrative Agent will date-stamp all Ballots when received and will retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court;

(c) consistent with the requirements of Local Bankruptcy Rule 3018-1, the Circus will file with the Court, at least seven days prior to the Confirmation Hearing, a certification of votes (the "**Voting Report**"). The Voting Report will, among other things, certify to the Court in writing the amount and number of allowed claims of the Voting Class accepting or rejecting the Plan, and delineate every Ballot that does not conform to the voting instructions or

that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile, or damaged (“**Irregular Ballots**”). The Voting Report will indicate the Circus’ intentions with regard to each such Irregular Ballot. The Voting Report will be served upon the Creditors’ Committee and the U.S. Trustee;

(d) the method of delivery of Ballots to be sent to the Administrative Agent is at the election and risk of each holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Administrative Agent actually receives the original executed Ballot;

(e) an executed Ballot is required to be submitted by the entity submitting such Ballot. Subject to the other procedures and requirements herein, completed, executed Ballots may be submitted via electronic mail, in PDF format, to the Administrative Agent via electronic mail to tbacballots@donlinrecano.com. However, Ballots submitted by facsimile will not be accepted;

(f) no Ballot should be sent to the Circus, the Circus’ agents (other than the Administrative Agent), the Circus’ financial or legal advisors, the Creditors’ Committee, or the Creditors’ Committee’s advisors, and if so sent will not be counted;

(g) if multiple Ballots are received from the same holder with respect to the same claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter’s intent and will supersede and revoke any prior Ballot;

(h) holders must vote all of their claims within the Voting Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, the Circus may, in its discretion, aggregate the claims of any particular holder within the Voting Class for the purpose of counting votes;

(i) a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a claim holder must indicate such capacity when signing;

(j) the Circus, subject to contrary order of the Court, may waive any defects or irregularities as to any Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;

(k) neither the Circus, nor any other entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;

(l) unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;

(m) in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any

vote to accept or reject the Plan cast with respect to that claim will be counted for purposes of determining whether the Plan has been accepted or rejected. Subject to any order of the Court, the Circus reserves the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Circus, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; provided that any such rejections will be documented in the Voting Report;

(n) if a claim has been estimated or otherwise allowed for voting purposes only by order of the Court, such claim will be temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

(o) if an objection to a claim is filed, such claim will be treated in accordance with the procedures set forth herein;

(p) the following Ballots will not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of such claim; (ii) any Ballot cast by an entity that does not hold a claim in a Voting Class; (iii) any Ballot cast for a claim scheduled as unliquidated, contingent, or disputed for which no proof of claim was timely filed; (iv) any unsigned Ballot or Ballot lacking an original signature; (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any entity not entitled to vote pursuant to the procedures described herein;

(q) after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Circus; and

(r) the Circus is authorized to enter into stipulations with the holder of any claim agreeing to the amount of a claim for voting purposes.

E. Amendments to the Plan and Solicitation Procedures

The Circus reserves the right to make non-substantive or immaterial changes to the Disclosure Statement, the Plan, the Ballots, the Confirmation Hearing Notice, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package before their distribution.