

HEARING DATE AND TIME: November 21, 2017 at 10:00 AM EST

OBJECTION DEADLINE: November 14, 2017 at 5:00PM EST

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: :
: Chapter 11
BICOM NY, LLC, *et al.*,¹ :
: Case No. 17-11906 (MEW)
Debtors. :
: (Jointly Administered)
----- X

**DEBTORS' MOTION FOR ENTRY OF AN ORDER EXTENDING EXCLUSIVE
PERIODS TO FILE CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES
THEREOF PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE**

BICOM NY, LLC d/b/a Jaguar Land Rover Manhattan ("BICOM"), ISCOM NY, LLC
f/d/b/a Maserati of Manhattan, and Bay Ridge Automotive Company, LLC d/b/a Bay Ridge Ford
(collectively, the "Debtors") debtors and debtors in possession in the above-captioned chapter 11
cases, by and through their counsel, Wilk Auslander, LLP, submit this motion (the "Motion")
pursuant to section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code")
requesting entry of an order in substantially the same form as the proposed order (the "Proposed
Order") attached hereto Exhibit A, extending the Debtors' exclusive periods to file a chapter 11
plan and solicit acceptances thereof. In support of the Motion, the Debtors respectfully states as
follows:

¹ The last four digits of each Debtor's taxpayer identification number are as follows: BICOM NY, LLC (9990);
ISCOM NY, LLC (1589); and Bay Ridge Automotive Company, LLC (0694).

BACKGROUND

a. General Background

1. On July 10, 2017 (the “Petition Date”), the Debtors filed voluntary petitions pursuant to Chapter 11 of the Bankruptcy Code and are authorized to continue to operate their businesses and manage their properties as debtors in possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. On July 31, 2017, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Creditors’ Committee”). No trustee or examiner has been appointed in this case.

3. On August 8, 2017, the Court entered a final order [ECF No. 123] authorizing the Debtors to enter into a debtor-in-possession financing facility (the “DIP Facility”) from JPMorgan Chase Bank, N.A. (the “DIP Lender” or “Chase”).

4. BICOM owns and operates a “dual” Jaguar/Land Rover vehicle franchise, pursuant to franchise agreements by and between BICOM and Jaguar Land Rover North America, LLC (“JLRNA”), the manufacturer and franchisor of the Jaguar and Land Rover brands.

5. BRAC owns and operates a Ford vehicle franchise pursuant to a franchise agreement (the “Ford Dealer Agreement”) by and between BRAC and Ford Motor Company (“Ford”), the manufacturer and franchisor of the Ford brand of vehicles.

6. ISCOM owned and operated a Maserati franchise pursuant to a franchise agreement by and between ISCOM and Maserati North America, Inc. (“MNA”, with JLRNA and Ford, collectively as the “Manufacturers”), the manufacturer and franchisor of the Maserati brand of vehicles. As further explained below, ISCOM no longer operates a Maserati dealership.

7. On October 19, 2017, the Court entered an order establishing November 30, 2017 (the “General Bar Date”), as the deadline for non-governmental units to file proofs of claim in these Chapter 11 cases [ECF No. 303].

b. Sale of Substantially All of the Movants’ Assets

8. On July 27, 2017, the Debtors filed their *Motion For, Inter Alia: (I) An Order (A) Scheduling a Sale and Auction Of Certain Assets of the Debtor; (B) Approving Bidding Procedures; and (C) Approving Form And Manner of Notice; and (II) A Second Order Approving (A) the Sale of Said Assets Pursuant to Section 363 of the Bankruptcy Code and (B) the Assumption Of Assumed Contracts Pursuant to Section 365 of the Bankruptcy Code* [ECF No. 78] (the “Bidding Procedures Motion”). On August 10, 2017, the Court entered an *Order Approving Sales Procedure Notice and Bidding Procedures* [ECF No. 142] (the “Bidding Procedures Order”) with respect to the Bidding Procedures Motion.

9. In accordance with the Bidding Procedures Order, on September 26, 2017, the Debtors held an auction for substantially all of their assets (the “Assets”). At the auction, the Debtors’ Chief Restructuring Officer (the “CRO”) selected Successful Bidders and Back-Up Bidders (as those terms are defined in the Bidding Procedures Order) for the Assets [ECF No. 234].

10. On October 6, 2017, the Court entered an order which, *inter alia*, authorized the sale of BICOM’s assets to the Successful Bidder for its assets, At the Beach, LLC (“ATB”) [ECF No. 271]. The sale to ATB is expected to close on or about November 14, 2017.

11. On October 11, 2017, the Court entered an order which, *inter alia*, authorized the sale of ISCOM’s assets to the Successful Bidder for its assets, MNA [ECF No. 284]. The sale to MNA has closed and ISCOM has ceased operating as a going concern.

12. On October 31, 2017, BRAC held a renewed auction for the sale of substantially all of its assets. At this auction, the CRO selected Plante Consulting, LLC (“Plante”) as the Successful Bidder and SMG Auto Group as the Back-Up Bidder. During a hearing on November 2, 2017, the Court authorized the sale to Plante.

RELIEF REQUESTED

13. Under § 1121(b) of the Bankruptcy Code the Debtors’ exclusive period to file a plan currently expires on November 7, 2017 (the “Exclusive Filing Period”) and under § 1121(c)(3) the period for the Debtors to solicit acceptances of a plan filed within the Exclusive Filing Period (the “Exclusive Solicitation Period,” and together with the Exclusive Filing Period, the “Exclusive Periods”) currently expires on January 6, 2018. By this Motion, the Debtors seek entry of an order, substantially in the form of the Proposed Order, extending the Exclusive Periods by ninety (90) days, as follows:

<u>Period</u>	<u>Current Deadline</u>	<u>Extension Request</u>
Exclusive Filing Period	November 7, 2017	February 5, 2018
Exclusive Solicitation Period	January 6, 2018	April 6, 2018

14. The Debtors also request that such an extension be without prejudice to the Debtors’ rights to request further extensions of the Exclusive Periods or to seek other appropriate relief.

BASIS FOR RELIEF REQUESTED

15. The Bankruptcy Code grants a debtor the exclusive right to file a plan during the first 120 days after the order granting relief. 11 U.S.C. § 1121(b). Once the 120–day period expires or is terminated, any party in interest may file a plan of reorganization. 11 U.S.C. §

1121(c)(2). If, however, a debtor proposes a plan within the 120 day exclusive period, the debtor has a period of 180 days after the commencement of the case to obtain acceptances of such plan. 11 U.S.C. § 1121(c)(3)

16. The Bankruptcy Code allows a court, for cause, on request of any party in interest, to reduce or increase the exclusivity periods. Specifically, § 1121(d) of the Bankruptcy Code provides:

(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(2) (A) the 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121(d).

17. It is well established that the decision to extend the Exclusive Periods is left to the sound discretion of the bankruptcy court and should be based upon the facts and circumstances of the particular case. *See In re Borders Group, Inc.*, 460 B.R. 818, 821-22 (Bankr. S.D.N.Y. 2011) (citations omitted) (“The determination of cause under section 1121(d) is a fact-specific inquiry and the court has broad discretion in extending or terminating exclusivity.”); *In re Adelphia Commc’ns Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006) (citations omitted) (“A decision to extend or terminate exclusivity for cause is within the discretion of the bankruptcy court, and is fact specific.”). Although the Bankruptcy Code does not define “cause” for the purpose of an extension of the Exclusive Periods, courts

have looked to the legislative history of section 1121(d) of the Bankruptcy Code for guidance. *See In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989).

18. Congress intended that the Exclusive Periods be of an adequate length, given the circumstances, for a debtor to formulate, negotiate and draft a viable plan of reorganization which by definition means one supported by some or all of a debtor's key constituents, without the disruption that would occur with the filing of competing plans. *See Geriatrics Nursing Home, Inc. v. First Fidelity Bank, N.A. (In re Geriatrics Nursing Home, Inc.)*, 187 B.R. 128, 133 (D.N.J. 1995) ("The opportunity to negotiate its plan unimpaired by competition . . . is meant to allow the debtor time to satisfy all creditors and win support for its restructuring scheme and thus ensure its survival as a business.").

19. When determining whether cause exists for an extension of the Exclusive Periods, courts have relied on a variety of factors, each of which may provide sufficient grounds for granting such extension. Factors considered by courts in making such a determination have included: (a) the size and complexity of the case; (b) the necessity of sufficient time to negotiate and prepare adequate information; (c) the existence of good-faith progress toward reorganization; (d) whether the debtor is paying its debts as they come due; (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (f) whether the debtor has made progress in negotiating with its creditors; (g) the length of time the case has been pending; (h) whether the debtor is seeking the extension to pressure creditors; and (i) whether unresolved contingencies exist. *See, e.g., Adelphia*, 352 B.R. at 587.

20. The factors enumerated above overwhelmingly support a finding of cause to extend the Exclusive Periods. *First*, the Debtors require additional time to negotiate and prepare

a plan and disclosure statement that provide adequate information. The General Bar Date is November 30, 2017. The Debtors cannot possibly provide “adequate information” in a disclosure statement as required by § 1125(a) of the Bankruptcy Code without “understand[ing] the number, nature, and amount of valid claims against the estate.” *In re Borders Grp., Inc.*, 460 B.R. 818, 826 (Bankr. S.D.N.Y. 2011); *see In re McLean Indus.*, 87 B.R. 830, 835 (Bankr. S.D.N.Y. 1987) (“If there is anything that falls under the rubric of ‘adequate information’ required by § 1125(a) of the Bankruptcy Code to be contained in a disclosure statement, it is an approximation of the dividend payable to each unsecured creditor.”). Moreover, once the General Bar Date passes, the Debtor will need a reasonable amount of time to review and evaluate those claims. *See In re Borders Grp., Inc.*, 460 B.R. at 826.

21. *Second*, the Debtors have made substantial progress in negotiations with creditors and towards a reorganization. As was conveyed early and often in this case, *see, e.g., Declaration of Gary B. Flom (I) in Support of First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* [ECF No. 12], the Debtors filed these cases in order to stay individual creditor action that would have harmed the collective creditor body, and to preserve and maximize the value of the Debtors’ estates, while pursuing a sale of their businesses.

22. Prior to the filing of this Motion, the sale of ISCOM closed and it is expected that, prior to the hearing on this Motion, the sale of BICOM will close and the Court will enter an order approving the sale of BRAC. In addition, the Debtors’ negotiations with creditors and the key stakeholders have yielded consensual resolutions (mostly reached within the first month of these cases) that were indispensable to allowing the Debtors to pursue their sales process. The outcomes of some of these negotiations include:

- Securing access to the DIP Facility, including subsequent extensions of the maturity date;

- Negotiating the Bidding Procedures Order with JLRNA and MNA (and other interested parties) which narrowed the grounds on which the Manufacturers could object to the assumption and assignment of the franchise agreements and which reduced uncertainty to the Debtors, the Manufactures, and buyers during the sale process;
- Entering into a stipulation with BICOM's landlord, Georgetown Eleventh Avenue Owners, LLC ("Georgetown"), whereby Georgetown agreed to defer rent in the approximate monthly amount of \$800,000, BICOM's largest administrative expense, through September 30, 2017, which rent deferral was later extended to November 17, 2017. The parties have also compromised Georgetown's cure claim and have reached a global settlement;
- Resolving the motions of Nissan North America, Inc. and Nissan Motor Acceptance Corporation for relief from the automatic stay to permit continuation of an action pending with the District Court for the Southern District Court; and
- Obtaining agreement from ISCOM's landlord to permit ISCOM to continue using its space during the case despite the termination of the lease prior to the Petition Date.

23. The foregoing is by no means an exhaustive list of the results of all negotiations with creditors or the Debtors' accomplishment during these Chapter 11 cases. Moreover, the Debtors have worked cooperatively with Chase and the Creditors' Committee throughout these cases in an effort to maximize the value of the estates.

24. *Third*, the Debtors continue to timely pay their undisputed post-petition obligations as they become due and anticipate providing in their chapter 11 plan that any unpaid administrative claims will be satisfied in cash upon the effective date of such plan.

25. *Fourth*, the Debtors intend to file a viable plan of liquidation within the next thirty days that will receive the support of Chase and the Creditors' Committee (or that will be jointly proposed with the committee). The process of developing and obtaining approval of a chapter 11 liquidation plan will not be a protracted or controversial. *See In re Borders Grp., Inc.*, 460 B.R.

at 824 (“Any section 363 sale of substantially all of the Debtors' business as a going concern is likely to be followed by a chapter 11 liquidation plan, usually not a time-consuming process to develop.”).

26. *Fifth*, the Chapter 11 cases have been pending for only four months. *Cf. Adelphia*, 352 B.R. at 589 (extending exclusivity in a case that had been pending for over four years); *McLean Indus.*, 87 B.R. at 835 (extending exclusivity in case that was pending for ten months). This is the first request that Debtors have made for an extension of the Exclusive Periods.

27. *Sixth*, there is no reason to believe that the Debtors are seeking the extension to pressure or coerce creditors. As shown above, the Debtors have proactively engaged with creditors in good faith and other interested parties and have received the support of the DIP Lender and the Creditors’ Committee throughout these cases.

28. *Seventh*, the closing of the sale to BRAC constitutes an unresolved contingency that weighs in favor of extending the Exclusive Periods. “[A]n unresolved contingency refers to some event external to the case that must occur or not occur in order for the case to succeed.” *In re GMG Capital Partners III, L.P.*, 503 B.R. 596, 603 (Bankr. S.D.N.Y. 2014). Under the Bidding Procedures Order, the Ford Dealer Agreement cannot be assumed and assigned without the consent of Ford, which is not to be unreasonably withheld. (Or. ¶ 11.) Therefore, in addition to ordinary closing risks, BRAC is faced with the possibility that Ford will not approve Plante as a franchisee and not consent to the assignment of the Ford Dealer Agreement. This risk represents an unresolved contingency that will directly affect potential distributions to unsecured creditors and may influence the drafting and negotiation of a plan of liquidation. *See In re Trainer's, Inc.*, 17 B.R. 246 (Bankr.E.D.Pa.1982) (holding that the debtor's negotiations to sell its

main asset, a restaurant, as a going concern, was a contingency which warranted a short extension).

29. *Lastly*, the termination of the Debtors' exclusivity is an Event of Default under the DIP Facility. (Or. ¶ 26(i).) *See In re Borders Grp., Inc.*, 460 B.R. at 827 (finding that fact that termination of exclusivity would cause the debtors to default under their debtor-in-possession law weighed in favor of extending exclusivity).

AUTOMATIC EXTENSION OF THE EXCLUSIVE PERIODS

30. The Debtors' Exclusive Filing Period expires on November 7, 2017. However, Local Bankruptcy Rule 9006-2 provides that "[u]nless otherwise provided in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or order of the Court, when a motion to extend the time to take any action is filed before the expiration of the period prescribed by the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules, or order of the Court . . . the time shall automatically be extended until the Court resolves the motion to extend the time." Therefore, as this Motion was filed on or before November 7, 2017, the Debtors' Exclusive Periods have been automatically extended until the time that the Motion is resolved.

NOTICE

31. The Debtors have provided notice of this Motion to: (a) the United States Trustee for Region 2; (b) counsel for the Creditors' Committee; (c) counsel for Chase; (d) the United States Attorney for the Southern District of New York; (e) the United States Securities and Exchange Commission; (f) the Internal Revenue Service; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Movant respectfully submit that no further notice is necessary.

NO PRIOR REQUEST

32. No prior request for the relief sought in the Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit A, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: New York, New York
November 7, 2017

WILK AUSLANDER LLP

By: /s/ Eric J. Snyder
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*Counsel for the Debtors and
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EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: :
: Chapter 11
BICOM NY, LLC, *et al.*,² :
: Case No. 17-11906 (MEW)
Debtors. :
: (Jointly Administered)
----- X

**ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF AN ORDER EXTENDING
EXCLUSIVE PERIODS TO FILE CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES
THEREOF PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE**

UPON the motion (the "Motion") of BICOM NY, LLC d/b/a Jaguar Land Rover Manhattan ("BICOM"), ISCOM NY, LLC f/d/b/a Maserati of Manhattan, and Bay Ridge Automotive Company, LLC d/b/a Bay Ridge Ford (collectively, the "Debtors") debtors and debtors in possession in the above-captioned chapter 11 cases, pursuant to section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code") requesting entry of an order extending the Debtors' exclusive periods to file a chapter 11 plan and solicit acceptances thereof; and it appearing that proper and sufficient notice of the relief sought in the Motion has been given; and it further appearing that the requested relief is reasonable and proper and a hearing on the Motion having been held on_____; and sufficient cause appearing to me therefor and due consideration having been given; it is HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. The Debtors' Exclusive Filing Period³ is extended through and including February 5, 2018.

² The last four digits of each Debtor's taxpayer identification number are as follows: BICOM NY, LLC (9990); ISCOM NY, LLC (1589); and Bay Ridge Automotive Company, LLC (0694).

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

3. The Debtors Exclusive Solicitation Period is extended through and including April 6, 2018.

4. The entry of this Order shall be without prejudice to the rights of the Debtors to request further extensions of the Exclusive Periods or to seek other appropriate relief.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York
November__, 2017

HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE