

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re:

**eCOM eCOM.COM, INC.
Debtor.**

Chapter 11

Case No. 04-35435-BKC-SHF

**PLAN PROPONENTS' MOTION FOR ENTRY OF ORDER
(A) APPROVING THE FORM OF BALLOTS, AND
(B) ESTABLISHING RECORD DATE FOR VOTING PURPOSES
(Emergency Hearing Requested)**

COME NOW eComeCom.com, Inc. ("Debtor") and American Capital Holdings, Inc. ("ACH"), by and through their respective undersigned counsel, and move the Court for the entry of an order (a) approving the form of ballots attached hereto as Composite Exhibit "A," and (b) establishing a "record" date for voting purposes, and in support hereof, state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and (b), 1334 and the United States District Court's general order of reference.
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate in support of the relief requested is 11 U.S.C. §§ 105, 1125 and 1126.

BACKGROUND

4. On November 29, 2004, an involuntary petition under Chapter 11 was filed against the Debtor. Thereafter, on May 16, 2005, the Court entered an order for relief under Chapter 11.

5. The Debtor is a public company and has in excess of 49,000,000 shares issued and outstanding.

6. On August 4, 2005, the Court entered its “Order Granting Debtor-in-Possession’s Motion for Authorization to: (I) Provide Electronic Service Upon Equity Security Holders and (II) Utilize Executive Mail Service for Purposes of Coordinating and Effectuating Service Upon Equity Security Holders” (the “Special Notice Order”).

7. Pursuant to the Special Notice Order, the Debtor was authorized to post any plan of reorganization and disclosure statement filed in this case on the Debtor’s website; *provided, however*, that the Debtor was obligated to serve the order establishing various deadlines relating to consideration of the disclosure statement and plan of reorganization on shareholders by U.S. Mail. Likewise, ballots are to be served on shareholders by U.S. Mail. In this regard, the Debtor was authorized to use the services of Executive Mail Service (“EMS”).

8. The Debtor and ACH filed their “Joint Plan of Reorganization” (“Plan”) and “Disclosure Statement for Joint Plan of Reorganization” (“Disclosure Statement”) with the Court on August 18, 2005 and August 25, 2005, respectively.

9. A copy of the order setting various deadlines relating to consideration of the Disclosure Statement was timely served on shareholders of record in accordance with the Special Notice Order. In further compliance with the Special Notice Order, copies of the Plan and Disclosure Statement were posted on the Debtor’s website.

10. As originally filed, the Plan provided that the class of shareholders was not impaired and, therefore, the Debtor and ACH did not propose soliciting votes from shareholders.

11. However, on or about October 13, 2006, the United States Trustee filed its objections to confirmation of the Plan and to the adequacy of the Disclosure Statement (the “Objections”).

12. The Debtor and ACH met and conferred with counsel for the United States Trustee and the parties were able to resolve the Objections. Modifications to the Plan and Disclosure Statement were provided to the United States Trustee in advance of the hearing to consider approval of the Disclosure Statement, which took place on October 30, 2006.

13. At the conclusion of hearings conducted by the Court on October 30, 2006, the Court approved the Disclosure Statement subject, however, to the Debtor and ACH filing an amended Plan and Disclosure Statement incorporating the changes agreed to with the United States Trustee.

14. Following hearings on October 30, 2006, the Debtor and ACH provided the United States Trustee with the proposed amended Plan and Disclosure Statement. A form of the proposed order approving the Disclosure Statement (as amended) was also provided to the United States Trustee (in final form, and as entered by the Court, the “Disclosure Statement Order”)

15. The Debtor and ACH conferred with representatives of EMS regarding service of copies of the Disclosure Statement Order, ballots, and the notice to shareholders (“Shareholder Notice”) approved by the Court at hearings conducted on October 30, 2006.

16. In discussing the issues, counsel for the Debtor and ACH were reminded that both registered and beneficial shareholders of record will be served. Registered shareholders will be served at their known addresses. As for beneficial owners, who are shareholders whose identity

is not known by the Debtor, notice is afforded to brokers, banks, dealers and other agents or nominees (the “Beneficial Agents”).

RELIEF REQUESTED

A. Form of Ballots

16. The Debtor and ACH seek entry of an order approving the form of ballots attached hereto as Composite Exhibit “A”.

17. Since the class of equity interests is now impaired under the Plan, holders of equity interests are entitled to vote on the Plan.

18. Ballots will be served upon registered shareholders at their known addresses. As for beneficial owners, EMS will serve the ballots on the Beneficial Agents, who, in turn, will serve the ballots on beneficial owners. The beneficial owners will then provide the return ballot to the Beneficial Agents. Thereafter, the Beneficial Agents will each cast a single “master ballot” evidencing the total number of holders and shares voting, which will then be used in calculating the numerosity requirements under section 1126 of the Bankruptcy Code.

19. In light of the foregoing, the Debtor and ACH respectfully request approval of the form of ballots attached hereto as Composite Exhibit “A”.

B. Record Date

20. In connection with serving shareholders and, in particular, the beneficial owners, EMS must contact the Beneficial Agents in order to determine how many ballots and copies of the Disclosure Statement Order to be provided. Thereafter, the Beneficial Agents send these items to the beneficial owners, who complete a ballot and return it to the Beneficial Agents. The Beneficial Agents then complete a “master ballot” and file same with the clerk of the Court.

21. In order to effectuate the foregoing, a record date must be selected, which will be the date on which EMS will obtain a list of registered and beneficial owners of stock, who will then be entitled to vote on the Plan. In light of the time associated with obtaining this information and effectuating service, the Debtor and ACH propose the following timeline (all selected dates are business days; if a date selected falls on a weekend or holiday, the next business day is proposed):

- (a) Day 1 - Disclosure Statement Order entered by the Court;
- (b) Day 5 - Record Date;
- (c) Day 20- Deadline to Serve Ballots and Disclosure Statement Order;
- (d) Day 74 - Confirmation Hearing.

22. The Debtor and ACH respectfully request that the Court implement the foregoing timeline in completing the Disclosure Statement Order. By implementing the suggested timeline, EMS will have sufficient time to obtain the list of the registered and beneficial owners of stock, obtain sufficient copies of ballots and the Disclosure Statement Order, and to serve the ballots and Disclosure Statement a sufficient number of days in advance of the confirmation hearing to be scheduled by the Court.

RELIEF SOUGHT IS UNOPPOSED

23. The relief sought herein is unopposed by the United States Trustee.¹ Moreover, counsel for the Securities and Exchange Commission has no objection to the form of ballots attached hereto as Composite Exhibit “A” or to the timeline set forth in paragraph 21 hereof.

¹ The Plan Proponents and the United States Trustee disagree over whether the ballot should be used to solicit votes on the proposed Releases under the Plan. Nevertheless, the Plan Proponents have agreed to provide creditors and equity security holders with an opportunity to vote on the Releases. However, the Plan Proponents and the United States Trustee have agreed that the parties reserve all rights to argue the issue before the Court and the Ballot and resulting vote is without prejudice or waiver of any rights of the parties to do so.

CERTIFICATE OF EXIGENT CIRCUMSTANCES

24. The Debtor and ACH respectfully request that the Court consider relief on an emergency basis. In support of an emergency hearing, the Debtor and ACH submit that the Disclosure Statement was approved following hearings on October 30, 2006 and, therefore, the parties wish to commence the solicitation process.²

WHEREFORE, the Debtor and ACH respectfully request that the Court grant the instant Motion, and enter an order approving the form of the ballots attached hereto as Composite

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² Following the disclosure statement hearing, the Plan Proponents were advised by staff of the Securities and Exchange Commission of a potential post-confirmation issue that could arise with respect to shares of common stock held in eCom. This issue is fairly complex and required additional disclosure for the benefit of all parties. Consequently, the Plan Proponents experienced unanticipated delay in revising the Plan and Disclosure Statement accordingly.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Plan Proponents' Motion For Entry of Order (A) Approving the Form of Ballots, and (B) Establishing Record Date for Voting Purposes* was served via U.S. Mail to all interested parties on the attached Service List, and to Dennis Heffner, Office of the US Trustee, via facsimile, this 19th day of December, 2006.

By: /s/ Michael D. Seese

SERVICE LIST

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