

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, <i>et al.</i> , ¹	§	Case No. 24-90448(ARP)
	§	
Debtors.	§	
	§	
	§	(Jointly Administered)
	§	

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

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXSB.USCOURTS.GOV/](https://ecf.txsb.uscourts.gov/) WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned counsel, pursuant to section 1121 of title 11 of the United States Code (the “Bankruptcy Code” or “Code”), hereby file the *Debtors’ Motion for Entry of an Order (I) Extending the Debtors’ Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances*

¹ The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



Thereof Pursuant to Section 1121 of the Bankruptcy Code and (II) Granting Related Relief (the “Motion”) and in support state as follows:

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order extending by 90 days (i) the period during which the Debtors have the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”) through and including March 24, 2025, and (ii) the period during which the Debtors have the exclusive right to solicit a plan (the “Exclusive Solicitation Period” and, together with the Exclusive Filing Period, the “Exclusive Periods”) through and including May 21, 2025.² The Debtors’ initial Exclusive Filing Period and Exclusive Solicitation Period are currently set to expire on December 23, 2024 and February 20, 2025, respectively. The requested extensions would be without prejudice to the right of the Debtors to seek further extension of the Exclusive Periods.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. The Debtors confirm their consent to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory basis for the relief requested herein is section 1121 of title 11 of the United States Code, 11 U.S.C. §§ *et seq.* (the “Bankruptcy Code”).

² Pursuant to Section K ¶ 30 of the Procedures for Complex Cases in the Southern District of Texas (Effective September 18, 2024), the filing of this Motion automatically extends the deadline until the Court rules on the Motion.

BACKGROUND

I. General Background

5. On August 24, 2024 (the “Petition Date”) and August 29, 2024 (together, the “Petition Dates”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors’ cases are jointly administered for procedural purposes only.

6. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases.

7. Further details of the Debtors’ business, capital structure, governing bodies, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* (the “First Day Declaration”) (ECF No. 35).

II. The Sale Process

8. On September 24, 2024 the Court entered the *Order Establishing (A) Bidding Procedures for the Sale of a Portion of the Debtors’ Assets, (B) Procedures for the Debtors’ Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (C) the Form and Manner of Notice of the Sale Hearing and Assumption Procedures, (D) Procedures for Selection of One or More Stalking Horse Bidders, and (E) Dates for an Auction and Sale Hearing* (“the Bid Procedures Order”) (ECF No. 151).

9. Pursuant to the Bid Procedures Order, the Debtors conducted an auction of certain Debtors’ assets (the “Temple Assets”) on November 18, 2024. A hearing before the Court to approve the sale is scheduled for November 26, 2024.

III. The Debtors' Motions to Assume and the Whinstone Litigation

10. On August 24, 2024, the Debtors filed the *Motion to Assume Certain Executory Contracts with Whinstone US, Inc.* (the "Motion to Assume") (ECF No. 7). By that motion, the Debtors sought to assume certain executory contracts with Whinstone US, Inc. ("Whinstone") essential to the Debtors' operations at the Rockdale facility.

11. On August 29, 2024, the Debtors filed the *Debtors' Supplemental Motion to Assume Certain Executory Contracts with Whinstone US, Inc.* (ECF No. 32) (the "Supplemental Motion" and, together with the Motion to Assume, the "Motions to Assume."). By these two motions, the Debtors seek to assume twenty-five executory contracts with Whinstone US, Inc. ("Whinstone"). These contracts are essential to the Debtors' bitcoin operations at Rockdale which form the foundation of their operations at that location.

12. On September 16, 2024, Whinstone filed *Whinstone US, Inc.'s Preliminary Response and Objection to Debtors' Motion and Supplemental Motion to Assume Certain Executory Contracts with Whinstone US, Inc.* (the "Objection") (ECF No. 144).

13. On October 28, 2024, the Court approved a bifurcated trial on the Motions to Assume, with the first phase of issues already heard by the Court on November 12–15, 2024, and the second phase to be heard December 2–4, 2024, if needed. Resolution of the Whinstone contract issues must occur before the Debtors can responsibly propose a plan of reorganization. Further, the Sale of the Temple Assets further affects a potential plan to repay the Debtors' creditors and stakeholders.

BASIS FOR RELIEF

14. Section 1121(b) of the Bankruptcy Code provides for an initial period of one hundred and twenty (120) days after commencement of a chapter 11 case during which a debtor

has the exclusive right to propose and file a chapter 11 plan (the “Plan Period”). 11 U.S.C. § 1121(b) (“Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.”). If a debtor files a plan during the Plan Period, section 1121(c)(3) of the Bankruptcy Code provides a debtor with an additional ninety (90) days following the expiration of such Plan Period (or 180 days following the commencement of the case) to solicit acceptances of the plan without competing plan filings (the “Solicitation Period,” and together with the Plan Period, the “Exclusive Periods”). 11 U.S.C. § 1121(c)(3). Section 1121(d) permits the Court to extend the Exclusive Periods for “cause.” For the reasons set forth herein, “cause” exists to extend the Exclusive Periods.

I. Section 1121(d) of the Bankruptcy Code Permits the Court to Extend the Exclusive Periods “for Cause”

15. The Exclusive Periods are designed to provide a debtor with a full and fair opportunity to propose a consensual plan and solicit acceptances of such plan, without disruption to the administration of the estate that may result from the filing of competing plans by non-debtor parties. To this end, where the Exclusive Periods prove to be unfeasible timeframes, section 1121(d) of the Bankruptcy Code allows the Court to extend such Exclusive Periods for cause. 11 U.S.C. § 1121(d).³ Although the Bankruptcy Code does not define the term “cause,” the legislative history indicates that it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. *See* H.R. REP. NO. 95–595, at 231–32 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6191 (noting that Congress intended to give bankruptcy courts flexibility to

³ Pursuant to section 1121(d)(2)(A) of the Bankruptcy Code, the Plan Period may not be extended beyond a date that is eighteen (18) months after the commencement of a chapter 11 case. Pursuant to section 1121(d)(2)(B) of the Bankruptcy Code, the Solicitation Period may not be extended beyond a date that is twenty (20) months after the commencement of a chapter 11 case.

protect a debtor's interests by allowing unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest).

16. Congress built flexibility into section 1121 of the Bankruptcy Code to give a debtor sufficient opportunity to stabilize its business operations at the outset of its chapter 11 case and to negotiate an effective plan with its creditors. *In re Newark Airport/Hotel Ltd. P'ship*, 156 B.R. 444, 451 (Bankr. D. N.J.), *aff'd*, 155 B.R. 93 (D.N.J. 1993) (noting that Congress designed chapter 11 provisions to enable a debtor to remain in control for some period of time, thereby making reorganization an attractive alternative to financially troubled companies); *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297–98 (W.D. Tenn. 1987) (Congress designed section 1121 to give the debtor time to reach an agreement with its creditors regarding a plan of reorganization).

17. Bankruptcy courts have discretion to extend exclusivity to promote the orderly, consensual, and successful reorganization of a debtor's affairs. *See In re Timbers of Inwood Forest Assocs., Ltd.*, 808 F.2d 63, 372 (5th Cir. 1987) (noting that the meaning of “cause” under section 1121 should be viewed in context of the Bankruptcy Code's goal of fostering reorganization); *In re Mirant Corp.*, No. 4-04-CV-476-A, 2004 WL 2250986, at *2 (N.D. Tex. Sept. 30, 2004) (noting that an extension of exclusivity is typically granted where “the debtor has shown substantial progress toward reorganization”).

18. In making the determination to affirm or deny a request to extend the Exclusive Periods for “cause,” courts have considered a variety of factors, including:

- a. the size and complexity of the case;
- b. the need for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- c. whether the debtor has made progress in negotiations with its creditors;
- d. the existence of good-faith progress toward reorganization;

- e. whether the debtor is seeking to extend exclusivity to pressure creditors to accede to the debtor's reorganization demands;
- f. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- g. the fact that the debtor is paying its bills as they become due;
- h. the amount of time which has elapsed in the case; and/or
- i. whether an unresolved contingency exists.

See, e.g., In re New Millennium Mgmt., LLC, No. 13-35719 (LZP), 2014 WL 792115, at *6 (Bankr. S.D. Tex. Feb. 25, 2014) (listing factors relevant to whether “cause” exists to extend exclusivity periods) (citing *In re GMG Cap. Partners III, L.P.*, 503 B.R. 596 (Bankr. S.D.N.Y. 2014)).

19. Not all of these factors are relevant to every case, and courts use only the relevant subset of the above factors to determine whether cause exists to grant an exclusivity extension in a particular chapter 11 case. *See, e.g., In re Express One Int'l Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (identifying four of the factors as relevant in determining whether “cause” exists to extend exclusivity); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (finding that the debtor showed “cause” to extend exclusivity based upon three of the factors); *In re Texaco Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987) (holding that size and complexity of the chapter 11 case provided sufficient cause to extend exclusivity).

20. Moreover, courts regularly grant a debtor's first request for an extension of the debtor's exclusive period to file a chapter 11 plan. *See In re Apex Pharm., Inc.*, 203 B.R. 432, 441 (N.D. Ind. 1996) (“It is true that during the initial 120-day period in which debtors have an exclusive right to file a plan of reorganization . . . the bankruptcy courts apply a lesser standard in determining whether the burden of showing ‘a reasonable possibility of a successful reorganization within a reasonable time’ has been satisfied.” (citation omitted)); *see also In re Borders Grp., Inc.*, 460 B.R. 818, 825 (Bankr. S.D.N.Y. 2011) (same).

21. This is the Debtors' first request for an extension. The Debtors submit that cause exists to extend their Exclusive Periods and that several of the above-listed factors support an extension of the Debtors' Exclusive Periods.

II. Cause Exists for Extension of the Exclusive Periods in the Chapter 11 Cases Based on the Extensive Progress Made in the First Three Months

22. The Debtors have been operating under the protection of chapter 11 for less than three months, during which time they have achieved excellent progress in the Chapter 11 Cases.

23. These cases are complex, involving multiple Debtors and contracts in addition to numerous specialized assets serving in the Debtors' bitcoin mining operations. The Debtors' chapter 11 cases have been pending for less than three months, during which time the Debtors have worked diligently on a number of time-sensitive matters critical to the maximization of the Debtors' assets. The Debtors and their professionals have focused their attention on, among other things, stabilizing their business operations, preparing the schedules of assets and liabilities and statement of financial affairs for each of the Debtors, obtaining approval of the debtor-in-possession financing facility, participating in the ongoing and very active Whinstone Litigation with trial that began on November 12, 2024, and, most importantly, the marketing and sale of the Debtors' assets at their Temple facility.

24. Because the outcomes of both the Sale and the Whinstone Litigation will dictate which assets and contracts will remain with the Debtors, at this time, the Debtors are unable to formulate a plan or reorganization. The Debtors have dedicated all their resources into facilitating the Sale and resolving the Whinstone Litigation, which has involved substantial discovery, motion practice, and multiple hearings even before the trial begins. Furthermore, the second part of the bifurcated trial in the Whinstone Litigation is currently set to conclude a mere three weeks before the current Exclusive Filing Period expires.

25. Accomplishing these tasks since the Petition Date has been a labor-intensive process that has extensively occupied the Debtors' representatives and professionals. In view of all these circumstances, the Debtors respectfully submit that ample cause exists to extend the Exclusive Periods.

III. Other Relevant Factors Favor Extending the Exclusive Periods

A. The Size, Complexity, and Duration of these Chapter 11 Cases

26. The Chapter 11 Cases are sufficiently large and complex to warrant the requested extension of the Exclusive Periods. As discussed in the First Day Declaration, the Debtors and their affiliates are large-scale operators of bitcoin mining operations at data centers located in Texas.

27. During the pendency of these Chapter 11 Cases, the Debtors were stabilizing their business operations, preparing the schedules of assets and liabilities and statements of financial affairs for each of the Debtors, obtaining approval of the debtor-in-possession financing facility, participating in the active Whinstone Litigation with trial set to begin on November 12, 2024, and, most importantly, the marketing and sale of the Debtors' assets.

28. The Debtors are engaged in the Whinstone Litigation that absorbs the Debtors' resources, adds layers of complexity to these Chapter 11 Cases, and whose outcome will ultimately be determinative to any plan of reorganization.

29. The ongoing marketing and sale of the Debtors' Rockdale assets adds further complexity to these cases: aside from being time-and-resources intensive, the sale will determine the assets and contracts available to the estate and delineate the path going forward for the Debtors.

30. The complexity of the issues addressed, and the time, effort, and planning required to obtain the progress made thus far cannot be overstated.

31. The facts and circumstances of these Chapter 11 Cases justify extending the Exclusive Periods.

B. Good Faith Progress Made in the Chapter 11 Cases

32. The Debtors have made significant and material progress in the Chapter 11 Cases. These achievements were the result of the tireless efforts of the Debtors, their management, and their professional advisors, in cooperation with the U.S. Trustee and various other parties in interest in the Chapter 11 Cases, to preserve the value of their estates. Accordingly, the Debtors submit that this factor weighs in favor of extending the Exclusive Periods.

C. The Debtors Are Paying Their Debts as They Come Due

33. The requested extension of the Exclusive Periods will not prejudice the legitimate interests of postpetition creditors, as the Debtors continue to make timely payments on their undisputed postpetition obligations. As such, this factor also weighs in favor of allowing the Debtors to extend the Exclusive Periods.

D. The Debtors Are Not Seeking an Extension to Pressure Creditors

34. The Debtors have no ulterior motive in seeking an extension of the Exclusive Periods. The Debtors have worked diligently over the past few months to preserve their estates during the pendency of the Chapter 11 Cases, and require the extension sought by this Motion to ensure that they are able to seek confirmation of their plan of reorganization without any unnecessary distractions that would be caused by competing plans. The Debtors are not seeking an extension to pressure creditors or other parties in interest.

E. Unresolved contingencies exist in these Chapter 11 Cases

35. The Debtors are engaged in the Whinstone Litigation that will dictate any plan of reorganization by determining whether Debtors' Rockdale location will remain operational and

under which contracts.

36. The Debtors are also pursuing a sale of their Temple assets, which will determine what constitutes the estate, the size of post-emergence operations of the Debtors, the size of distributions available to creditors, and, by allowing the Debtors to formulate a plan of reorganization, the path going forward for the Debtors.

37. The existence of contingencies preventing the formulation of the plan until they are resolved weighs towards granting an extension of the Exclusive Periods.

F. Termination of the Debtors' Exclusive Periods Would Adversely Impact the Chapter 11 Cases

38. Termination of the Exclusive Periods would adversely impact the Debtors' efforts to preserve and maximize value of the estates and the progress of the Chapter 11 Cases. If the Court were to deny the Debtors' request for an extension of the Exclusive Periods, any party in interest would be free to propose a chapter 11 plan for the Debtors. Terminating the Exclusive Periods would only serve to foster a chaotic environment and only add the opportunity for parties to engage in counterproductive self-interested behavior in pursuit of alternatives that are simply not feasible under the circumstances of the Chapter 11 Cases.

39. Based upon the foregoing, the Debtors respectfully submit that cause exists to extend the Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code. Specifically, the Debtors request that the Plan Period and Solicitation Period be extended through and including March 24, 2025 and May 21, 2025, respectively, without prejudice to the Debtors' right to seek further extensions of the Exclusive Periods.

Notice

40. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtors; (c) the

Internal Revenue Service; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

Conclusion

WHEREFORE, the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 19th day of November, 2024.

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

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*Counsel to the Debtors and
Debtors-In-Possession*

Certificate of Service

I, Patricia B. Tomasco, hereby certify that on the 19th day of November, 2024, a copy of the foregoing Motion was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco

Patricia B. Tomasco

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
RHODIUM ENCORE LLC, <i>et al.</i> , ¹	§	Case No. 24-90448(ARP)
Debtors.	§	(Jointly Administered)
	§	
	§	
	§	

**ORDER (I) EXTENDING THE DEBTORS' EXCLUSIVE PERIODS
TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF
PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE
AND (II) GRANTING RELATED RELIEF
(Relates to ECF No. ____)**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order, extending, by 90 days, the Exclusive Filing Period through and including March 24, 2025, and the Exclusive Solicitation Period through and including May 21, 2025, all as more fully set forth in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and it appearing that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion

¹ The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. Pursuant to section 1121(d) of the Bankruptcy Code, the Exclusive Filing Period is extended through and including March 24, 2025.

2. Pursuant to section 1121(d) of the Bankruptcy Code, the Exclusive Solicitation Period is extended through and including May 21, 2025.

3. The extension of the Exclusive Periods granted herein is without prejudice to the Debtors' right to seek further extensions pursuant to section 1121(d) of the Bankruptcy Code.

4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____
Houston, TX

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE