The New Bankruptcy Rules and Claims Forms

Concurrent Session

Lisa K. Mullen, Moderator
Chapter 13 Trustee Office; Southfield, Mich.

Kim M. Rattet
Trott & Trott, PC; Farmington Hills, Mich.

Hon. Phillip J. Shefferly
U.S. Bankruptcy Court (E.D. Mich.); Detroit

December 1, 2011 Amendments to Federal Rules of Bankruptcy Procedure

Lisa K. Mullen
Office of the Standing
Chapter 13 Trustee, David William Ruskin
Southfield, Michigan

Kim M. Rattet
Trott & Trott PC
Farmington Hills, Michigan

and

Hon. Phillip J. Shefferly
Chief Bankruptcy Judge for the
United States Bankruptcy Court,
Eastern District of Michigan
Detroit, Michigan

I.

The process for making the amendments

On December 1, 2011, certain amendments to the Federal Rules of Bankruptcy Procedure will become effective. The amendments pertain to existing Rules 2003, 2019, 3001, 4004 and 6003. In addition, the amendments provide for new Rules 1004.2 and 3002.1. New official forms will also go into effect at that time to conform to the amendments made to the Federal Rules of Bankruptcy Procedure.

The following is a brief summary of the time line and the steps taken to effectuate the amendments to the Federal Rules of Bankruptcy Procedure. After that time line is a summary of the amendments themselves, followed by a blacklined version of the amendments and the Committee Notes on each of the amendments.

In August, 2009, the Advisory Committee on Bankruptcy Rules published a draft of proposed amendments to the Federal Rules of Bankruptcy Procedure, and submitted them for public comment. More than 150 comments were submitted in response to the publication. The period for public comment closed in February, 2010.

In February, 2010, the Advisory Committee conducted hearings with respect to the proposed amendments and proposed new rules. In April, 2010, the Advisory Committee then met to consider the proposed amendments, the proposed new rules, and all of the comments that had been received from the public, as well as the testimony that had been taken at the hearings regarding the proposed amendments and proposed new rules.

On May 27, 2010, the Advisory Committee issued its report. That report recommended that the Standing Committee on Rules of Practice and Procedure approve the proposed amendments and proposed new rules, with certain revisions that had been made to the original

draft by the Advisory Committee based upon the comments received and the hearings that were held.

On September 14, 2010, the Standing Committee on Rules of Practice and Procedure recommended to the Judicial Conference of the United States that the proposed amendments to the Federal Rules of Bankruptcy Procedure be approved by the Judicial Conference of the United States. On September 14, 2010, the Judicial Conference of the United States approved the proposed amendments and authorized their transmittal to the Supreme Court of the United States, with a recommendation to adopt the amendments and transmit them to Congress for further action.

On December 16, 2010, the Judicial Conference of the United States transmitted the proposed amendments to the Federal Rules of Bankruptcy Procedure to the United States Supreme Court, recommending that the amendments and new rules be approved by the Supreme Court and transmitted to Congress pursuant to law.

On April 26, 2011, the United States Supreme Court approved the amendments to the Federal Rules of Bankruptcy Procedure and submitted them to Congress for its consideration pursuant to § 331 of Title 28 of the United States Code.

By statute, Congress is permitted until December 1, 2011 to enact legislation to reject, modify or defer the proposed amendments. Absent Congressional action, the proposed amendments approved by the United States Supreme Court, become effective December 1, 2011.

II.

Summary of the amendments and the new rules

Rule 1004.2. Rule 1004.2 is an entirely new rule. It applies only in Chapter 15 cases under the Bankruptcy Code. It has no application in Chapter 7, 11 or 13 of the Bankruptcy

Code. The rule has certain notice requirements for debtors filing a Chapter 15 bankruptcy petition for recognition of a foreign proceeding.

Rule 2003. Rule 2003 governs meetings of creditors. This rule is amended with respect to adjournments of a meeting of creditors. Currently, Rule 2003(e) provides that a meeting of creditors may be adjourned from time to time simply by announcement at the meeting of creditors of the adjourned date and time. Rule 2003(e) is now amended to require the presiding official at the meeting of creditors to promptly file a statement specifying the date and time to which the meeting is adjourned. This amendment ensures that the court file clearly reflects whether the meeting of creditors was concluded or extended to another day. This new requirement will provide notice to all parties in interest in the case, not just those parties in interest who appeared at the initial meeting of creditors.

The amendment to Rule 2003(e) regarding adjournments of meetings of creditors has a specific and important application in Chapter 13 cases. Under § 1308(a) of the Bankruptcy Code, a Chapter 13 debtor is required to file certain tax returns "not later than the day before the date on which the meeting of creditors is first scheduled to be held." Under § 1307(e) of the Bankruptcy Code, the debtor's failure to file the required tax returns under § 1308 of the Bankruptcy Code requires the court, upon request of a party in interest or the United States Trustee, to either dismiss the Chapter 13 case or convert the Chapter 13 case to Chapter 7. Section 1308(b)(1) of the Bankruptcy Code provides that if the debtor has not filed the required tax returns by the date on which the meeting of creditors is first scheduled, the trustee may "hold open that meeting for a reasonable period of time" to file any unfiled tax returns, but this additional time may not extend beyond (i) 120 days after the date of that meeting for any tax return that is past due on the petition date; and (ii) the later of 120 days after the date of that

meeting or the date on which a tax return that is not past due on the petition date becomes due after the last automatic extension to file such tax return under applicable nonbankruptcy law. This provision in § 1308(b) of the Bankruptcy Code gives the debtor additional time to file the required tax returns. The Committee Note to the amendment to Rule 2003(e) makes it clear that an adjournment of a meeting of creditors to a specific date is the equivalent of holding that meeting "open" for purposes of § 1308(b) of the Bankruptcy Code. Therefore, the Committee Note states that the filing of the Rule 2003(e) statement of adjournment should discourage premature motions to dismiss or convert the case under § 1307(e) of the Bankruptcy Code.

Rule 2019. Rule 2019 was entirely rewritten. This rule only applies in Chapter 9 and Chapter 11 cases. It has no application to Chapter 7 or Chapter 13. This was the most controversial of any of the bankruptcy rule amendments that will go into effect on December 1, 2011. The proposed amendment to this rule attracted by far the most comments and testimony of any of the proposed amendments. The purpose of amending this rule was to greatly expand the disclosure requirements by committees, groups or entities that consist of or represent more than one creditor or equity security holder in Chapter 9 and Chapter 11 cases. This amendment requires committees, groups or entities that consist of or represent creditors or equity security holders who are acting in concert to identify their "disclosable economic interest" relating to the debtor. In other words, they are required to disclose all the economic rights and interests that are affected by the value, acquisition or disposition of a claim or interest in the Chapter 9 or Chapter 11 case. The amendment requires every such group or committee to provide a verified statement of the nature and amount of each of their disclosable economic interests relating to the debtor. Each member of an unofficial group or committee that claims to represent any entity in addition to the members of the group or committee itself must also disclose the acquisition date

of each such disclosable interest by quarter and year, unless the interest in question was acquired more than a year before the bankruptcy case was filed. The information that is required to be disclosed by this amendment is important to parties in interest and to the Court in order to evaluate positions taken by these groups and entities in Chapter 9 and Chapter 11 cases.

While this rule has no application to consumer bankruptcy cases in Chapter 7 and Chapter 13, it is important to note that if you are representing a group, committee or entity consisting of multiple creditors or equity security holders in a Chapter 9 or Chapter 11 case, you must comply with the disclosure requirements set forth in this amended Rule 2019 or face potential sanctions.

Rule 3001 and Rule 3002.1. Rule 3001 is an existing rule that is amended. Rule 3002.1 is a new rule. The amendments to Rule 3001 and the creation of new Rule 3002.1 are the most significant amendments to the bankruptcy rules in consumer bankruptcy cases. Rule 3001, governing proofs of claims, has been substantially rewritten. Rule 3002.1 is an entirely new rule that applies only in Chapter 13 cases, and only to claims that are secured by a debtor's principal residence and that are provided for under § 1322(b)(5) of the Bankruptcy Code in the debtor's Chapter 13 plan. The materials prepared by Lisa Mullen and Kim Rattet cover these two rules in detail.

Rule 4004. Rule 4004 is an existing rule that governs objections to discharge. Rule 4004(b) governs extensions of time to file a complaint objecting to discharge. Currently the rule provides that the Court may, for cause, extend the time to file a complaint objecting to discharge provided that the motion requesting such extension is filed before the time to object to discharge has expired. Rule 4004(b) is amended to permit a party, under limited circumstances,

to seek an extension of time to object to a debtor's discharge, even after the time for objections has expired.

The amendment to this rule is intended to address the circumstance where the time to object to the debtor's discharge has expired, but the discharge has not yet been entered. In many jurisdictions, the discharge is not entered immediately after the objection deadline passes but, due to the volume of cases in such district, may not be entered until a short period of time has elapsed after the deadline to object to discharge has expired. This creates the possibility of a gap period. In some instances, a party may discover information during this gap period that would have provided a basis for objecting to discharge had the information been known in time to make an objection before the time to object had expired. However, where the time to object to discharge has expired, the party discovering the information is not able to use the discovered information to file an objection to discharge. Worse yet, where the party discovers the information after the deadline to object to discharge has expired, but before the discharge has actually been issued, the party discovering such information may also not be able to use such information to seek a revocation of the debtor's discharge under § 727(d) of the Bankruptcy Code. For instance, under § 727(d)(1) of the Bankruptcy Code, a party in interest may seek revocation of a debtor's discharge that was obtained through fraud of the debtor, but only where the "requesting party did not know of such fraud until after the granting of such discharge." In other words, the party discovering information that shows that the debtor obtained the discharge through fraud, may be whipsawed because the time to object to the discharge has expired, but the discharge has not yet been issued, thereby preventing that party from later using that information to seek to revoke the discharge under § 727(d)(1) of the Bankruptcy Code because the party discovered the information prior to the discharge actually being issued.

The amendment in Rule 4004(b) plugs this gap by allowing a party to file a motion for extension of time to object to the debtor's discharge, even though the time to object to discharge has expired, if the objection to be made to the discharge is based upon facts that could have provided a basis for revocation under § 727(d) of the Bankruptcy Code if those facts had been learned by such party after the debtor's discharge was issued. This situation does not occur in those cases where the discharge is issued immediately after the deadline to object to discharge has expired, but the amendment to the rule does provide a remedy in those cases where there is some delay in the entry of the discharge and in the interim a party discovers facts that would support a revocation of discharge under § 727(d) of the Bankruptcy Code had those facts been learned after the discharge was already entered.

Rule 6003. Rule 6003 is an existing rule that applies in all bankruptcy cases. This rule provides for a 21 day waiting period after the filing of a bankruptcy petition before the Court can grant certain relief. Under the current rule, an application approving employment, or a motion to use, sell or lease property of the estate, or incur an obligation regarding property of the estate, may not be granted by the Court during the first 21 days after the filing of the bankruptcy petition, absent a showing that such relief is necessary to avoid an immediate, irreparable harm. This rule has now been changed to make clear that this 21 day waiting period does not prevent the Court from later issuing an order that provides for an effective date that relates back to the time of the filing of the application, motion or other form of requested relief. For example, after the 21 day waiting period, the Court may issue an order that approves the requested relief effective as of a date earlier than the issuance of the order. If an attorney in a Chapter 7 case files an application for employment, the 21 day waiting period does not prevent the Court from later entering an order after the 21 day waiting period that is effective relating back to an earlier

date. The rule, as amended, does not prevent the Court from specifying in the order that the order is effective as of an earlier date.

III.

Blacklined version of the amendments and new rules with the Committee Notes on each of them

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1004.2. Petition in Chapter 15 Cases**

(a) DESIGNATING CENTER OF MAIN INTERESTS. A petition for recognition of a foreign proceeding under chapter 15 of the Code shall state the country where the debtor has its center of main interests. The petition shall also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending.

(b) CHALLENGING DESIGNATION. The United States trustee or a party in interest may file a motion for a determination that the debtor's center of main interests is other than as stated in the petition for recognition commencing the chapter 15 case. Unless the court orders

*New material is underlined; matter to be omitted is lined through.

**In addition to the adoption of Rule 1004.2, Official Form 1 would be amended to include a line on the form where the foreign representative indicates the country of the debtor's center of main interests. The Official Form would also be amended to include a line or lines on which the filer would set out the countries in which cases are pending.

otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition. The motion shall be transmitted to the United States trustee and served on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor was a party as of the time the petition was filed, and such other entities as the court may direct.

COMMITTEE NOTE

This rule is new. Subdivision (a) directs any entity that files a petition for recognition of a foreign proceeding under chapter 15 of the Code to state in the petition the center of the debtor's main interests. The petition must also list each country in which a foreign proceeding involving the debtor is pending. This information will assist the court and parties in interest in determining whether the foreign proceeding is a foreign main or nonmain proceeding.

Subdivision (b) sets a deadline of seven days prior to the hearing on the petition for recognition for filing a motion challenging the statement in the petition regarding the country in which the debtor's center of main interests is located.

Changes Made After Publication

The rule was first published for comment in August 2008. After publication, the deadline in subdivision (b) for challenging the designation of the center of the debtor's main interests was changed from "60 days after the notice of the petition has been given" to "no later than seven days before the date set for the hearing on the petition."

The rule as revised was published in August 2009. Minor stylistic changes were made to the rule's language and the Committee Note following that publication.

No comments were submitted on proposed Rule 1004.2 after its republication in August 2009.

Rule 2003. Meeting of Creditors or Equity Security Holders

* * * * *

(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time ~~without further written notice~~. The presiding official shall promptly file a statement specifying the date and time to which the meeting is adjourned.

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

* * * * *

COMMITTEE NOTE

Subdivision (e) is amended to require the presiding official to file a statement after the adjournment of a meeting of creditors or equity security holders designating the period of the adjournment. The presiding official is the United States trustee or the United States trustee's designee. This requirement will provide notice to parties in interest not present at the initial meeting of the date and time to which the meeting has been continued. An adjourned meeting is "held open" as permitted by § 1308(b)(1) of the Code. The filing of this statement will also discourage premature motions to dismiss or convert the case under § 1307(e).

Changes Made After Publication

No changes were made to the language of the rule following publication. The Committee Note was revised to state more explicitly that adjournment of a meeting of creditors to a specific date constitutes holding it open for purposes of § 1308(b) of the Bankruptcy Code.

~~**Rule 2019. Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases**~~

1 ~~(a) DATA REQUIRED. In a chapter 9 municipality~~

~~or chapter 11 reorganization case, except with respect to a committee appointed pursuant to § 1102 or 1114 of the Code, every entity or committee representing more than one creditor or equity security holder and, unless otherwise directed by the court, every indenture trustee, shall file a verified statement setting forth (1) the name and address of the creditor or equity security holder; (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of the entity or indenture trustee, and, in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of the entity, the~~

~~organization or formation of the committee, or the appearance in the case of any indenture trustee, the amounts of claims or interests owned by the entity, the members of the committee or the indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby the entity, committee, or indenture trustee is empowered to act on behalf of creditors or equity security holders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.~~

~~(b) FAILURE TO COMPLY; EFFECT. On motion of any party in interest or on its own initiative, the court may (1) determine whether there has been a failure to comply with the provisions of subdivision (a) of this rule or with any other applicable law regulating the activities and personnel of any entity, committee, or indenture trustee or any other~~

~~impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit that entity, committee, or indenture trustee to be heard further or to intervene in the case; (2) examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or interest acquired by any entity or committee in contemplation or in the course of a case under the Code and grant appropriate relief; and (3) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by an entity or committee who has not complied with this rule or with § 1125(b) of the Code.~~

Rule 2019. Disclosure Regarding Creditors and Equity Security Holders in Chapter 9 and Chapter 11 Cases

(a) DEFINITIONS. In this rule the following terms have the meanings indicated:

8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(1) "Disclosable economic interest" means any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest.

(2) "Represent" or "represents" means to take a position before the court or to solicit votes regarding the confirmation of a plan on behalf of another.

(b) DISCLOSURE BY GROUPS, COMMITTEES, AND ENTITIES.

(1) In a chapter 9 or 11 case, a verified statement setting forth the information specified in subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests,

and (B) not composed entirely of affiliates or insiders of one another.

(2) Unless the court orders otherwise, an entity is not required to file the verified statement described in paragraph (1) of this subdivision solely because of its status as:

(A) an indenture trustee;

(B) an agent for one or more other entities under an agreement for the extension of credit;

(C) a class action representative; or

(D) a governmental unit that is not a person.

(c) INFORMATION REQUIRED. The verified statement shall include:

(1) the pertinent facts and circumstances concerning:

(A) with respect to a group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the formation of the group or committee, including the

name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or

(B) with respect to an entity, the employment of the entity, including the name of each creditor or equity security holder at whose instance the employment was arranged;

(2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee:

(A) name and address;

(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and

(C) with respect to each member of a group or committee that claims to represent any entity in addition to

the members of the group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the date of acquisition by quarter and year of each disclosable economic interest, unless acquired more than one year before the petition was filed;

(3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group, or committee, other than a committee appointed under § 1102 or § 1114 of the Code:

(A) name and address; and

(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and

(4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.

(d) SUPPLEMENTAL STATEMENTS. If any fact

disclosed in its most recently filed statement has changed materially, an entity, group, or committee shall file a verified supplemental statement whenever it takes a position before the court or solicits votes on the confirmation of a plan. The supplemental statement shall set forth the material changes in the facts required by subdivision (c) to be disclosed.

(e) DETERMINATION OF FAILURE TO COMPLY; SANCTIONS.

(1) On motion of any party in interest, or on its own motion, the court may determine whether there has been a failure to comply with any provision of this rule.

(2) If the court finds such a failure to comply, it may:

(A) refuse to permit the entity, group, or committee to be heard or to intervene in the case;

(B) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or

86 (C) grant other appropriate relief.

COMMITTEE NOTE

The rule is substantially amended to expand the scope of its coverage and the content of its disclosure requirements. Stylistic and organizational changes are also made in order to provide greater clarity. Because the rule no longer applies only to representatives of creditors and equity security holders, the title of the rule has been changed to reflect its broadened focus on disclosure of financial information in chapter 9 and chapter 11 cases.

Subdivision (a). The content of subdivision (a) is new. It sets forth two definitions. The first is the definition of the term "disclosable economic interest," which is used in subdivisions (c)(2) and (c)(3). The definition of the term is intended to be sufficiently broad to cover any economic interest that could affect the legal and strategic positions a stakeholder takes in a chapter 9 or chapter 11 case. A disclosable economic interest extends beyond claims and interests owned by a stakeholder and includes, among other types of holdings, short positions, credit default swaps, and total return swaps.

The second definition is of "represent" or "represents." The definition provides that representation requires active participation in the case or in a proceeding on behalf of another entity – either by taking a position on a matter before the court or by soliciting votes on the confirmation of a plan. Thus, for example, an attorney who is retained and consulted by a creditor or equity security holder to monitor the case, but who does not advocate any position before the court or engage in solicitation activities on behalf of that client, does not represent the creditor or equity security holder for purposes of this rule.

Subdivision (b). Subdivision (b)(1) specifies who is covered by the rule's disclosure requirements. In addition to an entity, group, or committee that *represents* more than one creditor or equity security holder, the amendment extends the rule's coverage to groups or committees that *consist of* more than one creditor or equity security holder. The rule no longer excludes official committees, except as specifically indicated. The rule applies to a group of creditors or equity security holders that act in concert to advance common interests (except when the group consists exclusively of affiliates or insiders of one another), even if the group does not call itself a committee.

Subdivision (b)(2) excludes certain entities from the rule's coverage. Even though these entities may represent multiple creditors or equity security holders, they do so under formal legal arrangements of trust or contract law that preclude them from acting on the basis of conflicting economic interests. For example, an indenture trustee's responsibilities are defined by the indenture, and individual interests of bondholders would not affect the trustee's representation.

Subdivision (c). Subdivision (c) sets forth the information that must be included in a verified statement required to be filed under this rule. Subdivision (c)(1) continues to require disclosure concerning the formation of a committee or group, other than an official committee, and the employment of an entity.

Subdivision (c)(2) specifies information that must be disclosed with respect to the entity and each member of the committee and group filing the statement. In the case of a committee or group, the information about the nature and amount of a disclosable economic interest must be specifically provided on a member-by-member basis, and not in the aggregate. The quarter and

year in which each disclosable economic interest was acquired by each member of a committee or group (other than an official committee) that claims to represent others must also be specifically provided, except for a disclosable economic interest acquired more than a year before the filing of the petition. Although the rule no longer requires the disclosure of the precise date of acquisition or the amount paid for disclosable economic interests, nothing in this rule precludes either the discovery of that information or its disclosure when ordered by the court pursuant to authority outside this rule.

Subdivision (c)(3) specifies information that must be disclosed with respect to creditors or equity security holders that are represented by an entity, group, or committee. This provision does not apply with respect to those represented by official committees. The information required to be disclosed under subdivision (c)(3) parallels that required to be disclosed under subdivision (c)(2)(A) and (B). The amendment also clarifies that under (c)(3) the nature and amount of each disclosable economic interest of represented creditors and shareholders must be stated as of the date of the verified statement.

Subdivision (c)(4) requires the attachment of any instrument authorizing the filer of the verified statement to act on behalf of creditors or equity security holders.

Subdivision (d). Subdivision (d) requires the filing of a supplemental statement at the time an entity, group, or committee takes a position before the court or solicits votes on a plan if there has been a material change in any of the information contained in its last filed statement. The supplemental verified statement must set forth the material changes that have occurred regarding the information required to be disclosed by subdivision (c) of this rule.

Subdivision (e). Subdivision (e) addresses the court's authority to determine whether there has been a violation of this rule and to impose a sanction for any violation. It no longer addresses the court's authority to determine violations of other applicable laws regulating the activities and personnel of an entity, group, or committee.

Changes Made After Publication

Subdivision (a). A definition of "represent" or "represents" was added, and the subdivision was divided into paragraphs (1) and (2).

Subdivision (b). The provision authorizing the court to require disclosure by an entity that seeks or opposes the granting of relief was deleted.

In the paragraph now designated as (1), language was added providing that groups, committees, and entities are covered by the rule only if they consist of or represent multiple creditors or equity security holders "that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another." The phrase "and, unless the court directs otherwise, every indenture trustee," was deleted.

Subdivision (b)(2) was added to specify entities that are not required to file a verified statement merely because they act in one of the designated capacities.

Subdivision (c). The authorization in subdivision (c)(2)(B) and (c)(3)(B) for the court to require the disclosure of the amount paid for a disclosable economic interest was deleted.

The requirement in subdivision (c)(2)(C) and (c)(3)(C) for disclosure of the acquisition date of each disclosable economic interest was modified. The requirement was made applicable only to members of an unofficial group or committee that claims to represent any entity in addition to the members of the group or committee, and the date that must be disclosed was limited to the quarter and year of acquisition.

Subdivision (d). The requirement of monthly supplementation of a verified statement was modified to require supplementation whenever a covered group, committee, or entity takes a position before the court or solicits votes on the confirmation of a plan and there has been a material change in any fact disclosed in its most recently filed statement.

Subdivision (e). The provisions published as subdivision (e)(1)(B) and (C), which authorized the court to determine failures to comply with legal requirements other than those imposed by Rule 2019, were deleted.

Subdivision (e)(2), which enumerated the materials the court could examine in making a determination of noncompliance, was deleted.

Committee Note. In the discussion of the definition of "disclosable economic interest," the specific examples of "short positions, credit default swaps, and total return swaps" were added to illustrate the breadth of the definition. A sentence was added to the discussion of subdivision (c)(2) that states that the rule does not affect

the right of a party to obtain information by means of discovery or as ordered by the court under any authority outside the rule.

Other changes. Stylistic and organizational changes were made throughout the rule and Committee Note to reduce the length and clarify the meaning of the published proposal.

Rule 3001. Proof of Claim

* * * * *

(c) SUPPORTING INFORMATION.

(1) *Claim Based on a Writing.* When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

* * * * *

COMMITTEE NOTE

Subdivision (c). Subdivision (c) is amended to prescribe with greater specificity the supporting information required to accompany certain proofs of claim and, in cases in which the debtor is an individual, the consequences of failing to provide the required information.

Existing subdivision (c) is redesignated as (c)(1).

Subdivision (c)(2) is added to require additional information to accompany proofs of claim filed in cases in which the debtor is an individual. When the holder of a claim seeks to recover – in addition to the principal amount of a debt – interest, fees, expenses, or other charges, the proof of claim must be accompanied by a statement itemizing these additional amounts with sufficient specificity to make clear the basis for the claimed amount.

If a claim is secured by a security interest in the property of the debtor and the debtor defaulted on the claim prior to the filing of the petition, the proof of claim must be accompanied by a statement of the amount required to cure the prepetition default.

If the claim is secured by a security interest in the debtor's principal residence, the proof of claim must be accompanied by the attachment prescribed by the appropriate Official Form. In that attachment, the holder of the claim must provide the information required by subparagraphs (A) and (B) of this paragraph (2). In addition, if an escrow account has been established in connection with the claim, an escrow account statement showing the account balance, and any amount owed, as of the date the petition was filed must be submitted in accordance with subparagraph (C). The statement must be prepared in a form consistent with the requirements of nonbankruptcy law. *See, e.g.*, 12 U.S.C. § 2601 *et seq.* (Real Estate Settlement Procedure Act). Thus the holder of the claim may provide the escrow account statement using the same form it uses outside of bankruptcy for this purpose.

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case

that fails to provide information required by subdivision (c). Failure to provide the required information does not itself constitute a ground for disallowance of a claim. *See* § 502(b) of the Code. But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was substantially justified or harmless. The court retains discretion to allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

Changes Made After Publication

Subdivision (c)(1). The requirement that the last account statement sent to the debtor be filed with the proof of claim was deleted.

Subdivision (c)(2). In subparagraph (C), a provision was added requiring the use of the appropriate Official Form for the attachment filed by a holder of a claim secured by a security interest in a debtor's principal residence.

In subdivision (c)(2)(D), the clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court may, after notice and hearing, take either or both" of the specified actions.

Committee Note. In the discussion of subdivision (c)(2), the term "security interest" was added to the sentence that discusses the

required filing of a statement of the amount necessary to cure a prepetition default.

The discussion of subdivision (c)(2)(D) was expanded to clarify that failure to provide required documentation, by itself, is not a ground for disallowance of a claim and that the court has several options in responding to a creditor's failure to provide information required by subdivision (c).

Other changes. Stylistic changes were made to the rule and the Committee Note.

Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

(a) IN GENERAL. This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan.

(b) NOTICE OF PAYMENT CHANGES. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment

amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

(c) NOTICE OF FEES, EXPENSES, AND CHARGES. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (i) that were incurred in connection with the claim after the bankruptcy case was filed, and (ii) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

(d) FORM AND CONTENT. A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and

filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).

(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its

obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

(i) FAILURE TO NOTIFY. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

COMMITTEE NOTE

This rule is new. It is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor's plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, *see* Rule 3001(c)(2), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

Subdivision (a). Subdivision (a) specifies that this rule applies only in a chapter 13 case to claims secured by a security interest in the debtor's principal residence.

Subdivision (b). Subdivision (b) requires the holder of a claim to notify the debtor, debtor's counsel, and the trustee of any postpetition change in the mortgage payment amount at least 21 days before the new payment amount is due.

Subdivision (c). Subdivision (c) requires an itemized notice to be given, within 180 days of incurrence, of any postpetition fees, expenses, or charges that the holder of the claim asserts are recoverable from the debtor or against the debtor's principal residence. This might include, for example, inspection fees, late charges, or attorney's fees.

Subdivision (d). Subdivision (d) provides the method of giving the notice under subdivisions (b) and (c). In both instances, the holder of the claim must give notice of the change as prescribed by the appropriate Official Form. In addition to serving the debtor, debtor's counsel, and the trustee, the holder of the claim must also file the notice on the claims register in the case as a supplement to its proof of claim. Rule 3001(f) does not apply to any notice given under subdivision (b) or (c), and therefore the notice will not constitute prima facie evidence of the validity and amount of the payment change or of the fee, expense, or charge.

Subdivision (e). Subdivision (e) permits the debtor or trustee, within a year after service of a notice under subdivision (c), to seek a determination by the court as to whether the fees, expenses, or charges set forth in the notice are required by the underlying agreement or applicable nonbankruptcy law to cure a default or maintain payments.

Subdivision (f). Subdivision (f) requires the trustee to issue a notice to the holder of the claim, the debtor, and the debtor's attorney within 30 days after completion of payments under the plan. The notice must (1) indicate that all amounts required to cure a default on a claim secured by the debtor's principal residence have been paid, and (2) direct the holder to comply with subdivision (g). If the trustee fails to file this notice within the required time, this

subdivision also permits the debtor to file and serve the notice on the trustee and the holder of the claim.

Subdivision (g). Subdivision (g) governs the response of the holder of the claim to the trustee's or debtor's notice under subdivision (f). Within 21 days after service of notice of the final cure payment, the holder of the claim must file and serve a statement indicating whether the prepetition default has been fully cured and also whether the debtor is current on all payments in accordance with § 1322(b)(5) of the Code. If the holder of the claim contends that all cure payments have not been made or that the debtor is not current on other payments required by § 1322(b)(5), the response must itemize all amounts, other than regular future installment payments, that the holder contends are due.

Subdivision (h). Subdivision (h) provides a procedure for the judicial resolution of any disputes that may arise about payment of a claim secured by the debtor's principal residence. Within 21 days after the service of the statement under (g), the trustee or debtor may move for a determination by the court of whether any default has been cured and whether any other non-current obligations remain outstanding.

Subdivision (i). Subdivision (i) specifies sanctions that may be imposed if the holder of a claim fails to provide any of the information as required by subdivisions (b), (c), or (g).

If, after the chapter 13 debtor has completed payments unde r the plan and the case has been closed, the holder of a claim secured by the debtor's principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

Changes Made After Publication

Subdivision (a). As part of organizational changes intended to make the rule shorter and clearer, a new subdivision (a) was inserted that specifies the applicability of the rule. Other subdivision designations were changed accordingly.

Subdivision (b). The timing of the notice of payment change, addressed in subdivision (a) of the published rule, was changed from 30 to 21 days before payment must be made in the new amount.

Subdivision (d). The provisions of the published rule prescribing the procedure for providing notice of payment changes and of fees, expenses, and charges were moved to subdivision (d).

Subdivision (e). As part of the organizational revision of the rule, the provision governing the resolution of disputes over claimed fees, expenses, or charges was moved to this subdivision.

Subdivision (f). The triggering event for the filing of the notice of final cure payment was changed to the debtor's completion of all payments required under the plan. A sentence was added requiring the notice to inform the holder of the mortgage claim of its obligation to file and serve a response under subdivision (g).

Subdivision (h). The caption of this subdivision (which was subdivision (f) as published), was changed to describe its content more precisely.

Subdivision (i). The clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court

may, after notice and hearing, take either or both" of the specified actions.

Committee Note. A sentence was added to the first paragraph to clarify that the rule applies regardless of whether ongoing mortgage payments are made directly by the debtor or disbursed through the chapter 13 trustee. Other changes were made to the Committee Note to reflect the changes made to the rule.

Other changes. Stylistic changes were made throughout the rule and Committee Note.

Rule 4004. Grant or Denial of Discharge

* * * * *

(b) EXTENSION OF TIME.

(1) On motion of any party in interest, after notice and hearing ~~on notice~~, the court may for cause extend the time to ~~file a complaint~~ objecting to discharge. Except as provided in subdivision (b)(2), ~~T~~the motion shall be filed before the time has expired.

(2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and

before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

* * * * *

COMMITTEE NOTE

Subdivision (b). Subdivision (b) is amended to allow a party, under certain specified circumstances, to seek an extension of time to object to discharge after the time for filing has expired. This amendment addresses the situation in which there is a gap between the expiration of the time for objecting to discharge and the entry of the discharge order. If, during that period, a party discovers facts that would provide grounds for revocation of discharge, it may not be able to seek revocation under § 727(d) of the Code because the facts would have been known prior to the granting of the discharge. Furthermore, during that period the debtor may commit an act that provides a basis for both denial and revocation of the discharge. In those situations, subdivision (b)(2) allows a party to file a motion for an extension of time to object to discharge based on those facts so long as they were not known to the party before expiration of the

deadline for objecting. The motion must be filed promptly after discovery of those facts.

Changes Made After Publication

Following publication minor stylistic changes were made to the language of the rule, and a sentence was added to the Committee Note to clarify that the rule applies whenever the debtor commits an act during the gap period that provides a basis for both denial and revocation of the discharge.

Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case – Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, ~~grant relief~~ issue an order granting ~~regarding~~ the following:

(a) an application under Rule 2014;

(b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; ~~and~~ or

(c) a motion to assume or assign an executory contract or unexpired lease in accordance with § 365.

COMMITTEE NOTE

The rule is amended to clarify that it limits the timing of the entry of certain orders, but does not prevent the court from providing an effective date for such an order that may relate back to the time of the filing of the application or motion, or to some other date. For example, while the rule prohibits, absent immediate and irreparable harm, the court from authorizing the employment of counsel during the first 21 days of a case, it does not prevent the court from providing in an order entered after expiration of the 21-day period that the relief requested in the motion or application is effective as of a date earlier than the issuance of the order. Nor does it prohibit the filing of an application or motion for relief prior to expiration of the 21-day period. Nothing in the rule prevents a professional from representing the trustee or a debtor in possession pending the approval of an application for the approval of the employment under Rule 2014.

The amendment also clarifies that the scope of the rule is limited to granting the specifically identified relief set out in the subdivisions of the rule. Deleting "regarding" from the rule clarifies

that the rule does not prohibit the court from entering orders in the first 21 days of the case that may relate to the motions and applications set out in (a), (b), and (c); it is only prohibited from granting the relief requested by those motions or applications. For example, in the first 21 days of the case, the court could grant the relief requested in a motion to establish bidding procedures for the sale of property of the estate, but it could not, absent immediate and irreparable harm, grant a motion to approve the sale of property.

Changes Made After Publication

Minor stylistic changes were made to the Committee Note following publication.