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OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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MEMORANDUM

TO: Hon. Jeffrey S. Sutton, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Sandra Segal Ikuta
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 10, 2016

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 31, 2016, in Denver, Colorado. The draft minutes of that meeting are attached.

The Committee's agenda included discussion of several suggestions that were submitted by bankruptcy judges, attorneys, and another Judicial Conference committee. The Committee continued its consideration of rule amendments that would allow a district to opt out of a mandatory national form for chapter 13 plans if it adopts a single local chapter 13 plan form that meets certain nationally mandated requirements. And the Committee took action on a number of amendments to bankruptcy rules to conform to proposed and pending changes to the civil and appellate rules. With regard to those amendments, the Committee discussed the coordination efforts among the affected advisory committees that had occurred or would be undertaken.

The Committee now seeks the Standing Committee's final approval of two rule amendments that were published in August 2015, as well as retroactive approval of technical amendments that have been made to several official forms.

The Committee also requests the publication of several groups of proposed rule and form amendments for public comment. One group—amendments to Rule 3015 and new Rule 3015.1—would implement the local opt-out alternative for chapter 13 plan forms discussed above. Because two rounds of publication and extensive vetting have already occurred, the Committee recommends that the comment period following publication of these amendments be shortened to three months. It also recommends that publication occur in July, rather than August, in order to avoid confusion regarding the comment deadline for proposed rules and forms published on the regular schedule.

The Committee requests publication in August of one proposed new rule and proposed amendments to 10 existing rules, as well as amendments to seven official forms and a new appendix. The majority of these rule and form amendments are being proposed to conform to pending and proposed amendments to the civil and appellate rules and forms.

Part II of this report discusses the action items, grouped as follows:

A. Items for Final Approval

(A1) Rules published for comment in August 2015—

- Rules 1001;
- Rule 1006(b); and

(A2) Technical changes previously made to Official Forms 106E/F, 119, 201, 206 Summary, 309A, 309I, 423, and 424.

B. Items for Publication¹

(B1) For publication in July 2016—

- Rule 3015 and new Rule 3015.1; and

(B2) For publication in August 2016—

- Rule 5005(a)(2);
- Rules 8002(c), 8011(a)(2)(C), and Official Form 417A;
- Rule 8002(b);
- Rule 8013, 8015, 8016, 8022, Official Form 417C, and new Part VIII appendix;
- Rule 8017;

¹ The items recommended for publication would be added to the proposed amendments to Rule 3002.1 (Notice Related to Claims Secured by Security Interest in the Debtor's Principal Residence), which were approved for publication by the Standing Committee at its January 2016 meeting.

- Rule 8002(a);
- Rule 8006;
- New Rule 8018.1;
- Rule 8023;
- Official Form 309F; and
- Official Forms 25A, 25B, 25C, and 26 (renumbered as 425A, 425B, 425C, and 426).

Part III of this report consists of two information items regarding (i) the status of proposed amendments to Rule 9037 to address the redaction of previously filed documents, and (ii) the Committee's decision to take no action regarding the burden of proof for objections to claimed exemptions.

II. Action Items

A. Items for Final Approval

(AI) Rules published for comment in August 2015.

The Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule amendments that were published for public comment in August 2015 and are discussed below. Bankruptcy Appendix A includes the rules that are in this group.

Action Item 1. Rule 1001 (Scope of Rules and Forms; Short Title). Rule 1001 is the bankruptcy counterpart to Civil Rule 1. Rather than incorporating Civil Rule 1 by reference, Rule 1001 generally tracks the language of the civil rule. The last sentence of Rule 1001 currently states, "These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding." This language deviates from Civil Rule 1, which states (as of December 1, 2015), "[These rules] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." The proposed amendment to Rule 1001 changes the last sentence of the rule to conform to the language of Civil Rule 1.

The Committee received two comments to the proposed rule amendment and, after due deliberation, determined that the comments did not warrant any action. Accordingly, the Committee voted unanimously to approve the proposed amendment as published.

Action Item 2. Rule 1006(b) (Filing Fee). Rule 1006(b) governs the payment of the bankruptcy filing fee in installments, as authorized for individual debtors by 28 U.S.C. § 1930(a). The Committee received and over the course of several years considered a potential amendment to the rule with respect to courts requiring a debtor who applies to pay the filing fee in installments to make an initial installment payment with the petition and the application. The

Committee requested the Federal Judicial Center (“FJC”) to conduct an empirical study on court practices regarding initial installment payments at the time of filing and whether there is an association between such a requirement and the rate of fee waiver applications. Although based on the FJC study and other factors, the Committee ultimately concluded that there was no need to clarify that courts may require an initial installment payment with the petition and application, the FJC study raised a different issue. Because Rule 1006(b)(1) requires the bankruptcy clerk to accept the petition, resulting in the commencement of a bankruptcy case, the practice of some courts of refusing to accept a petition or summarily dismissing a case because of the failure to make an installment payment at the time of filing is inconsistent with Rules 1006(b)(1) and 1017(b)(1). The latter provision allows the court, only “after a hearing on notice to the debtor and the trustee,” to dismiss a case for the failure to pay any installment of the filing fee.

In order to clarify that courts may not refuse to accept petitions or summarily dismiss cases for failure to make initial installment payments at the time of filing, the Committee proposed, and the Standing Committee approved, publication of an amendment to Rule 1006(b)(1) clarifying that an individual debtor’s petition must be accepted for filing so long as the debtor submits a signed application to pay the filing fee in installments and even if a required initial installment payment is not made at the same time. The Committee Note explains that dismissal of the case for failure to pay any installment must proceed according to Rule 1017(b)(1).

The Committee received two comments to the proposed rule amendment and, after due deliberation, determined that the comments did not warrant any action. Accordingly, the Committee voted unanimously approve the proposed amendment as published.

(A2) Technical changes to official forms.

Action Item 3. Official Forms 106E/F, 119, 201, 206 Summary, 309A, 309I, 423, and 424. The Committee recommends that the Standing Committee give retroactive approval to the technical changes described below that have been made to official bankruptcy forms since the last Standing Committee meeting and that it give notice of these changes to the Judicial Conference.

At its March 15, 2016, meeting, the Judicial Conference approved the Standing Committee’s recommendation to allow the Advisory Committee to make technical, non-substantive changes to official bankruptcy forms when the need for such changes is determined, subject to retroactive approval by the Standing Committee and reporting of the changes to the Judicial Conference. Operating under that authority, the Committee has made the technical changes listed below.

- Official Form 106E/F - Line number references in the instruction at the top of Part 2 started at an incorrect number; they were changed from “4.3 followed by 4.4” to “4.4 followed by 4.5.”

- Official Form 119 - Because there is no “Part 3” on the form, the reference to “Part 3” at the top of page 1 was changed to “Part 2.”
- Official Form 201 - The hyperlink in Question 7 for NACIS codes was updated to match the new landing page maintained by the Administrative Office.
- Official Form 206 Summary - Cross-references to line numbers 6a and 6b of Official Form 206E/F were incorrect and were changed to 5a and 5b.
- Official Form 309A - Line 9 was reformatted to be consistent with the remainder of the lines in the form
- Official Form 309I - The last line of instruction 13 on page 2 was deleted, and the penultimate sentence was changed to: “If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1328(f), you must file a motion by the deadline.”
- Official Form 423 - The reference near the top of the form to 11 U.S.C. §1141(d)(3) was changed from “does not apply” to “applies” because it had previously misstated the relationship between that statutory provision and the necessity of a chapter 11 to complete an instructional course in personal financial management in order to obtain a discharge.
- Official Form 424 - The top of page 2 was changed from Rule 8001 to Rule 8006.

B. Items for Publication

(BI) For publication in July 2016.

Action Item 4. Rule 3015 (Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case) and new Rule 3015.1 (Requirements for a Local Form for Plans Filed in a Chapter 13 Case). The Committee recommends that the following rule amendments and new rule be published for public comment in July 2016 and that the comment period extend for three months. The rules in this group appear in Appendix B1.

The amended rule would require the use of an official form for chapter 13 plans unless a district requires the use of a single local form for that purpose that meets the requirements set out in the new rule. As the Committee has previously reported, it decided to consider this opt-out possibility in response to significant opposition that was voiced to the possible adoption of a mandatory national official form for chapter 13 plans. Informal comments on the opt-out proposal have been generally favorable.

The Committee began considering creating an official form for chapter 13 plans in 2011, prompted by the submission of two suggestions that a national plan form be adopted. *See* Suggestions 10-BK-G and 10-BK-M. A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Because the Committee made significant changes to the form in response to comments it received, the revised form and rules were published again in August 2014.

At the fall 2015 meeting, the Committee gave approval to proposed Official Form 113 (the national plan form) and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009, but it voted to defer submitting those items to the Standing Committee. This deferral was to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. It directed the Forms Subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

The Subcommittee reached out to all relevant groups and invited them to provide feedback on the opt-out proposal, as set out in proposed Rules 3015 and 3015.1, as well as on whether they perceived a need for further publication. The following groups provided comments to the Subcommittee in response: National Bankruptcy Conference (“NBC”), National Conference of Bankruptcy Judges (“NCBJ”), National Association of Consumer Bankruptcy Attorneys (“NACBA”), the American Bankruptcy Institute’s Consumer Committee, a large number of chapter 13 trustees whose comments were collected by the National Association of Chapter 13 Trustees, and an informal mortgage servicer group. While the bulk of the comments received were directed at the plan form itself, rather than at the opt-out proposal, three groups (NBC, NCBJ, and the mortgage servicers) and seven individual trustees did express support for allowing districts to opt out of a national plan form. In addition, Bankruptcy Judge Marvin Isgur (S.D. Tex.) circulated the opt-out proposal to the 144 bankruptcy judges who had submitted a letter in 2014 opposing a national plan form, and he reported that there was general acceptance of Rules 3015 and 3015.1 among the group.

The response of NACBA to the subcommittee’s outreach was relatively brief. The president of the organization said that he could not speak for the thousands of NACBA members, and he urged the Committee to publish the proposals that were being considered. He asserted that “adoption of the ‘compromise’ proposal without providing a new comment period would not comply with the law and [would] subject such to litigation and added controversy.” NCBJ also advised that the opt-out proposal be published for public comment.

At the spring meeting, the Committee unanimously approved the Forms Subcommittee’s recommendation that the amendments to Rule 3015 and proposed new Rule 3015.1 be published for public comment. The opt-out concept was not included in the 2013 and 2014 publications, and, although it might be viewed as a lesser-included version of the proposal for a mandatory national form, it does represent a distinct change from the published proposals. Some members

of the Committee stated that they favor republication because of concern about the constituencies that do not feel that they have had a fair opportunity to express their comments on the opt-out proposal. A general desire was expressed to eliminate any possible procedural objections to the Committee's eventual recommendation.

The Committee also unanimously agreed that the Committee should seek to publish Rules 3015 and 3015.1 on a truncated schedule. According to § 440.20.40(d) of the Guide to Judiciary Policy, "The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained." Because of the two prior publications and the narrow focus of the revised rules, the Committee believes that the usual 6-month comment period should be shortened so that an entire year can be eliminated from the period leading up to the effective date of the Committee's proposed rules and forms.

If the regular publication schedule were followed, Rules 3015 and 3015.1 would be published in August 2016, and comments would be received by sometime in February 2017. If approved, those rules and the rest of the chapter 13 plan form package would then be on track for an effective date of December 1, 2018.

However, if Rules 3015 and 3015.1 could be published on a truncated schedule, they could be published this summer with a 3-month deadline for submitting comments. A single hearing could be scheduled. The Committee could then vote on approval at its fall meeting in November and seek the Standing Committee's approval in January 2017. Approval of the Judicial Conference could be sought in March 2017. With advance notice to and permission of the Supreme Court, it could be asked to promulgate the rules by May 1, 2017, leading to an effective date for the form and rules of December 1, 2017.

The Committee suggests that, if the shortened schedule is approved, Rules 3015 and 3015.1 be published by themselves in July 2016. A separate publication would avoid creating confusion by having two different comment deadlines for the materials published in August.

The rules and official form approved by the Committee last fall would continue to be held in abeyance until the Committee takes final action on Rules 3015 and 3015.1. This would allow the entire chapter 13 plan package to be sent forward as a package.

(B2) *For publication in August 2016.*

The Committee recommends that the following rule amendments, new rule, official forms, and rules appendix be published for public comment in August 2016. The rules, forms, and appendix in this group appear in Appendix B2.

Action Item 5. Rule 5005(a)(2) (Electronic Filing and Signing). Rule 5005(a)(2) governs the filing of documents electronically in federal bankruptcy cases. Consistent with the Standing Committee’s suggestion that the advisory committees work collaboratively on electronic filing and service issues, the Committee has been working with the Civil, Criminal, and Appellate Advisory Committees on matters relating to Rule 5005(a)(2). Coordination between the Civil and Bankruptcy Advisory Committees is particularly warranted because Bankruptcy Rule 7005 makes Civil Rule 5 applicable in adversary proceedings. Therefore, an amendment to Civil Rule 5(d)(3) automatically would apply in adversary proceedings unless the Committee amended Rule 7005 to provide otherwise. The bankruptcy rules, however, also address electronic filing in Rule 5005(a)(2). That rule largely tracks the language of current Civil Rule 5(d)(3). In order to make Rule 5005(a)(2) consistent with Rule 7005’s incorporation of any amendments to Civil Rule 5(d)(3), the Committee would need to amend Rule 5005(a)(2) in a similar manner.

The Committee considered potential amendments to Rule 5005(a)(2) at its April 2015, October 2015, and its March 2016 meetings. The Committee reviewed the status of potential amendments to Civil Rule 5, and it examined the implications of those amendments for the bankruptcy rules. The Committee generally agreed that Rule 5005(a)(2) should be amended to the extent necessary to conform to Civil Rule 5, as made applicable to adversary proceedings by Rule 7005. The Committee also discussed in detail the proposed amendments to Civil Rule 5 and the variations on those electronic filing and service provisions being considered by the Criminal Advisory Committee with respect to Criminal Rule 49.

In light of the foregoing, the Committee unanimously approved amendments to Rule 5005(a)(2) that would be consistent, to the greatest extent possible, with the proposed amendments to Rule 5(d)(3). The variations between the proposed amendments to Rule 5005(a)(2) and Civil Rule 5(d)(3) relate primarily to different terminology used by the bankruptcy rules and the Bankruptcy Code.² The two rules are otherwise consistent. The Committee believes that it is prudent to submit Rule 5005(a)(2) for publication on the same timeline as that adopted for Civil Rule 5(d)(3). Accordingly, the Committee recommends that the Standing Committee approve the proposed amendments to Rule 5005(a)(2) for publication in August 2016, or at the same time that the amendments to Civil Rule 5(d)(3) are published. This recommendation includes any further non-material refinements to the proposed amendments necessary to conform to the Civil Rule published for comment.

Action Item 6. Proposed amendments to the bankruptcy appellate rules and forms to conform to pending and proposed amendments to the Federal Rules of Appellate Procedure (“FRAP”). Part VIII of the Bankruptcy Rules (Appeals) was completely revised in

² The civil rule uses the term “person,” which under § 101(41) of the Bankruptcy Code includes an “individual, partnership, and corporation.” Because only human beings may proceed without an attorney, the bankruptcy rule uses the term “individual” rather than “person.” Where the civil rule refers to “a person proceeding with an attorney,” the bankruptcy rule uses the term “entity,” which under Code § 101(15) includes estates, trusts, governmental units, and United States trustees, as well as persons.

2014 to conform as closely as possible to parallel FRAP provisions. Rather than incorporating FRAP provisions by reference, the Part VIII rules largely track the language of FRAP.

The Supreme Court recently approved and transmitted to Congress a set of FRAP amendments that will go into effect on December 1, 2016, unless Congress takes action to the contrary. With one exception, the Part VIII amendments included in this action item are being proposed to bring the bankruptcy rules into conformity with relevant FRAP provisions that are being amended this year. Because there was no coordination between the two advisory committees at the time the FRAP amendments were proposed and published, the bankruptcy amendments will lag behind the FRAP amendments by two years. One other amendment, discussed below, is being proposed to conform to a parallel FRAP provision that is being proposed for publication this summer. If approved, this bankruptcy rule amendment will be able to go into effect simultaneously with the parallel FRAP amendment.

A. Rules 8002(c), 8011(a)(2)(C), and Official Form 417A (inmate filing provisions). Bankruptcy Rules 8002(c) (Time for Filing Notice of Appeal) and 8011(a)(2)(C) (Filing and Service; Signature) include inmate-filing provisions that are virtually identical to the existing provisions in FRAP 4(c) and FRAP 25(a)(2)(C). These rules treat notices of appeal and other papers as timely filed by such inmates if the documents are deposited in the institution's internal mail system on or before the last day for filing and several other specified requirements are satisfied. The 2016 amendments to the FRAP rules are intended to clarify certain issues that have produced conflicts in the case law. They (1) make clear that prepayment of postage is required for an inmate to benefit from the inmate-filing provisions; (2) clarify that a document is timely filed if it is accompanied by evidence—a declaration, notarized statement, or other evidence such as postmark and date stamp—showing that the document was deposited on or before the due date and that postage was prepaid; and (3) clarify that if sufficient evidence does not accompany the initial filing, the court of appeals has discretion to permit the later filing of a declaration or notarized statement to establish timely deposit. Rules 8002(c) and 8011(a)(2)(C) would be similarly amended.

To implement the FRAP amendments, a new appellate form has been devised to provide a suggested form for an inmate declaration under Rules 4 and 25. For bankruptcy appeals, the Committee recommends that a similar form—Director's Form 4170 (Inmate Filer's Declaration)—be adopted for that purpose. As a Director's rather than official form, its use would not be mandatory, just as will be true for Appellate Form 7. In addition, the Committee proposes for publication an amendment to Official Form 417A (Notice of Appeal and Statement of Election), similar to the amendment to Appellate Forms 1 and 5, that will alert inmate filers to the existence of Director's Form 4170.

B. Rule 8002(b) (timeliness of tolling motions). Rule 8002(b) and its counterpart, FRAP 4(a)(4), set out a list of postjudgment motions that toll the time for filing an appeal. Under the current rules, the motion must be "timely file[d]" in order to have a tolling effect. The 2016 amendment to Rule 4(a)(4) resolves a circuit split on the question whether a tolling motion

filed outside the time period specified by the relevant rule, but nevertheless ruled on by the district court, is timely filed for purposes of Rule 4(a)(4). Adopting the majority view on this issue, the pending amendment adds an explicit requirement that the motion must be filed within the time period specified by the rule under which it is made in order to have a tolling effect for the purpose of determining the deadline for filing a notice of appeal. The Committee proposes that a similar amendment to Rule 8002(b) be published for comment.

C. Rules 8013, 8015, 8016, 8022, Official Form 417C, and Part VIII Appendix (length limits). The 2016 amendments to FRAP 5, 21, 27, 35, and 40 convert the existing page limits to word limits for documents prepared using a computer. For documents prepared without the aid of a computer, the page limits currently set out in those rules would be retained. The pending amendments employ a conversion ratio of 260 words per page. The current ratio is 280 words per page.

The FRAP amendments also reduce the word limits of Rule 32 for briefs to reflect the 260 words-per-page ratio. The 14,000-word limit for a party's principal brief becomes a 13,000-word limit; the limit for a reply brief changes from 7,000 to 6,500 words. The 2016 amendments correspondingly reduce the word limits set by Rule 28.1 for cross-appeals.

Rule 32(f) sets out a uniform list of the items that can be excluded when computing a document's length. The local variation provision of Rule 32(e) highlights a court's authority (by order or local rule) to set length limits that exceed those in FRAP. Appellate Form 6 (Certificate of Compliance with Rule 32(a)) is amended to reflect the changed length limits. Finally, a new appendix collects all the FRAP length limits in one chart.

The Committee proposes for publication parallel amendments to Rules 8013(f) (Motions), 8015(a)(7) and (f) (Form and Length of Briefs), 8016(d) (Cross-Appeals), and 8022(b) (Motion for Rehearing), along with Official Form 417C (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)). In addition, it approved for publication a proposed appendix to Part VIII, which is similar to the proposed FRAP appendix.

D. Rule 8017 (amicus filings). Rule 8017 is the bankruptcy counterpart to FRAP 29. The pending amendment to FRAP 29 provides a default rule concerning the timing and length of amicus briefs filed in connection with petitions for panel rehearing or rehearing en banc. The rule currently does not address the topic; it is limited to amicus briefs filed in connection with the original hearing of an appeal. The 2016 amendment would not require courts to accept amicus briefs regarding rehearing, but it would provide guidelines for such briefs that are permitted.

The Committee proposes for publication a parallel amendment to Rule 8017. The proposed amendment designates the existing rule as subdivision (a) and governs amicus briefs during a court's initial consideration of a case on the merits. It adds a new subdivision (b), which governs amicus briefs during a district court's or BAP's consideration of whether to grant rehearing. The latter subdivision could be overridden by a local rule or order in a case.

The Appellate Rules Advisory Committee is proposing for publication another amendment to FRAP 29(a). It would authorize a court of appeals to prohibit or strike the filing of an amicus brief to which the parties consented if the filing would result in the disqualification of a judge. The Committee proposes publication of a similar amendment to Rule 8017 in order to maintain consistency between the two sets of rules. This proposed amendment is reflected in the draft of proposed Rule 8017(a)(2) that is included in Appendix B2.

Action Item 7. Additional amendments to the bankruptcy appellate rules. In addition to the conforming amendments to Part VIII rules discussed in the previous action item, the Committee proposes for publication three additional bankruptcy appellate rule amendments and a new bankruptcy appellate rule in response to a suggestion and comments that the Committee has received. The Committee has held the proposed amendments in abeyance until they could be published as part of a package of bankruptcy appellate rule amendments.

A. Rule 8002(a) (separate document requirement). In response to the August 2012 publication of the proposed revision of the Part VIII rules, Chief Judge Christopher M. Klein (Bankr. E.D. Cal.), commented that it would be useful for Rule 8002 to have a provision similar to FRAP 4(a)(7), which addresses when a judgment or order is entered for purposes of Rule 4(a). He noted that the provision would help clarify timing issues presented by the separate-document requirement.

FRAP 4(a)(7) specifies when a judgment or order is entered for purposes of Rule 4(a) (Appeal in a Civil Case). It provides that, if Civil Rule 58(a) does not require a separate document, the judgment or order is entered when it is entered in the civil docket under Civil Rule 79(a). If Rule 58(a) does require a separate document, the judgment or order is entered when it is entered in the civil docket and either (1) the judgment or order is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first. The rule was amended in 2002 to resolve several circuit splits that arose out of uncertainties about how Rule 4(a)(7)'s definition of when a judgment or order is "entered" interacted with the requirement in Civil Rule 58 that, to be "effective," a judgment must be set forth on a separate document.

The Bankruptcy Rules have adopted Civil Rule 58 and its separate document requirement only for adversary proceedings. Rule 7058 was added in 2009, making Civil Rule 58 applicable in adversary proceedings. At the same time, Rule 9021 was amended to provide that a "judgment or order is effective when entered under Rule 5003 [Records Kept by the Clerk]." The latter rule applies to contested matters and does not require a separate document.

The Committee concluded that the rules specifying when a separate document is required and the impact of the requirement on the date of entry of the judgment are sufficiently confusing that, as suggested by Chief Judge Klein, Rule 8002 would likely be improved by adding a provision similar to FRAP 4(a)(7). It voted at the fall 2013 meeting to propose a new

subdivision (a)(5) defining entry of judgment. If so amended, it would clarify that the time for filing a notice of appeal under subdivision (a) begins to run upon docket entry in contested matters and adversary proceedings for which Rule 58 does not require a separate document. In adversary proceedings for which Rule 58 does require a separate document, the time commences when the judgment, order, or decree is entered in the civil docket and (1) it is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first.

B. Rule 8006(c) (court statement on merits of certification). The Committee proposes for publication another amendment suggested by Chief Judge Klein in response to the 2012 publication of the Part VIII amendments. Under 28 U.S.C. § 158(d)(2)(A), which is implemented by revised Rule 8006(c), all appellants and all appellees, acting jointly, may certify a proceeding for direct appeal to the court of appeals without any action being taken by the bankruptcy court, district court, or BAP. Chief Judge Klein suggested that a provision be added to Rule 8006(c) that would be a counterpart to Rule 8006(e)(2). The latter provision authorizes a party to file a short supplemental statement regarding the merits of certification within 14 days after the court certifies a case for direct appeal on its own motion. Chief Judge Klein suggested that the bankruptcy court should have a similar opportunity to comment when the parties certify the appeal.

At the fall 2013 meeting, the Committee concluded that the court of appeals would likely benefit from the court's statement about whether the appeal satisfies one of the grounds for certification. The Committee decided, however, that authorization should not be limited to the bankruptcy court. Because under Rule 8006(b) the matter might be deemed to be pending in the district court or BAP at the time or shortly after the parties file the certification, those courts should also be authorized to file a statement with respect to appeals pending before them. The authorization would be permissive, however, so a court would not be required to file a statement. A new subdivision (c)(2) would authorize such supplemental statements by the court.

C. New Rule 8018.1 (district court review of a judgment that the bankruptcy court lacked constitutional authority to enter). The proposed rule would authorize a district court to treat a bankruptcy court's judgment as proposed findings of fact and conclusions of law if the district court determined that the bankruptcy court lacked constitutional authority to enter a final judgment. This procedure is consistent with the Supreme Court's decision in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014).

In response to *Stern v. Marshall*, 131 S. Ct. 2594 (2011), Professor Alan Resnick submitted Suggestion 12-BK-H, which proposed a rule amendment to address the situation in which an appeal is taken from a bankruptcy court judgment and the district court decides that the proceeding is one in which the bankruptcy court lacked constitutional authority to enter a final judgment. Adopting a procedure that some districts have authorized by local rule, the proposed rule would allow the district court to review the judgment as if the bankruptcy court had treated

the proceeding as non-core under 28 U.S.C. § 157(c)(1).³ This procedure would eliminate the need for a remand to the bankruptcy court for the entry of proposed findings and conclusions.

In *Arkison* the Supreme Court held that *Stern* claims can be treated as non-core under § 157(c)(1). The Court explained that “because these *Stern* claims fit comfortably within the category of claims governed by § 157(c)(1), the Bankruptcy Court would have been permitted to follow the procedures required by that provision, *i.e.*, to submit proposed findings of fact and conclusions of law to the District Court to be reviewed *de novo*.” While the case before the Court “did not proceed in precisely that fashion,” the Court nevertheless affirmed. *Id.* at 2174. It concluded that the petitioner had received the equivalent of the review it was entitled to—*de novo* review—because the district court had reviewed the bankruptcy court’s entry of summary judgment *de novo* and had “conclude[ed] in a written opinion that there were no disputed issues of material fact and that the trustee was entitled to judgment as a matter of law.” *Id.* at 2174.

The decision made clear that *Stern* claims do not fall within a statutory gap of being neither core nor non-core. Instead, once identified as *Stern* claims, they can be treated under the statutory provisions for non-core claims, as the proposed rule authorizes. Moreover, *Arkison* shows the Court’s acceptance of a pragmatic approach to dealing with errors in the handling of *Stern* claims. Rather than reversing and remanding for the bankruptcy court to handle the proceeding as a non-core matter, it accepted the district court’s review as being tantamount to review of a non-core proceeding. *See also Stern*, 131 S. Ct. at 2602 (noting without criticism that “[b]ecause the District Court concluded that Vickie’s counterclaim was not core, the court determined that it was required to treat the Bankruptcy Court’s judgment as ‘proposed[,] rather than final,’ and engage in an ‘independent review’ of the record”).

The Committee discussed at the spring 2016 meeting whether to include provisions in the rule regarding the time for filing objections and responses to the bankruptcy court’s proposed findings and conclusions and addressing whether parties could choose to rely on their appellate briefs instead. In the end, the Committee was persuaded by district judge members that the rule does not need to spell out procedural details for the conduct of the proceeding once the judge determines that the bankruptcy court judgment should be treated as proposed findings of fact and conclusions of law. The complexity of cases addressed by this rule will vary, and the rule should allow flexibility for the conduct of each case. The district judge, in consultation with the parties, can decide in a given case whether the appellate briefs suffice to present the issues for which de

³ Section 157(c)(1) provides as follows:

A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such a proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.

novo review is sought or whether they should be supplemented with specific objections and responses.

D. Rule 8023 (voluntary dismissal; cross-reference regarding settlements). The rule would be amended by adding a cross-reference to Rule 9019 (Compromise and Arbitration) to provide a reminder that when dismissal of an appeal is sought as the result of a settlement by the parties, Rule 9019 may require approval of the settlement by the bankruptcy court. The Committee proposes the amendment in response to a comment by the National Conference of Bankruptcy Judges and approved it for publication at the spring 2014 meeting.

The NCBJ stated that Rule 8023 fails to take into account that one of the parties to the appeal being voluntarily dismissed might be the bankruptcy trustee, who is required under Rule 9019 to obtain court approval of any compromise. The NCBJ raised the concern that, by its silence, Rule 8023 could be read as overriding Rule 9019.

The Committee noted that there is a division in the courts concerning a bankruptcy court's jurisdiction, without remand, to approve the settlement of a proceeding on appeal. It concluded, however, that this jurisdictional issue does not need to be resolved by the Committee or addressed in Rule 8023. A reminder in the rule of the possible need to comply with Rule 9019 would be helpful, whether or not parties seeking approval of the settlement of an appeal must first obtain a remand from the appellate court.

Action Item 8. Official Form 309F (Notice of Chapter 11 Bankruptcy Case (For Corporations and Partnerships)). Official Form 309F is used for providing notice to creditors in a chapter 11 corporate or partnership case of the case's commencement, the date of the meeting of creditors, the deadline for filing a proof of claim, the deadline for filing a complaint to determine the dischargeability of certain debts, and the existence of the automatic stay. Line 8 of the form relates to the "Exception to discharge deadline." It states that "You must start a judicial proceeding by filing a complaint if you want to have a debt excepted from discharge under 11 U.S.C. § 1141(d)(6)(A)." In response to a suggestion by Bankruptcy Judge Stuart Bernstein (S.D.N.Y.) pointing out that recent caselaw identifies ambiguities in the wording of the cited statutory provision that may render the instruction incorrect, the Committee proposes for publication an amendment to the instruction.

Section 1141(d) of the Bankruptcy Code governs the scope of the discharge in a chapter 11 case. It distinguishes between debtors that are individuals and other debtors, including corporations and partnerships. It excepts from the discharge of an individual debtor "any debt that is excepted from discharge under section 523." § 1141(d)(2). Those exceptions are not generally applicable, however, to chapter 11 debtors that are corporations or partnerships. Instead, as a general matter, those debtors are discharged from "any debt that arose before the date of [the] confirmation [of a plan]." § 1141(d)(1).

In 2005 Congress added § 1141(d)(6), which does except some types of debts from the discharge of a chapter 11 corporate debtor. In addition to certain tax debts, the provision states that the confirmation of a corporate debtor's chapter 11 plan does not discharge the debtor

from any debt—

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar state statute

The latter statutory reference is to the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*

The Bankruptcy Code provisions referred to in § 1141(d)(6)(A)—paragraphs (2)(A) and (2)(B) of § 523(a)—except from discharge debts for money, property, services, or credit obtained by false pretenses, false representations, or actual fraud, or obtained by the use of a materially false written statement about the debtor's financial condition that the creditor reasonably relied upon and that the debtor made with intent to defraud. Although on its face § 523 governs only the discharge of individual debtors, by virtue of § 1141(d)(6)(A), its coverage is partially extended to corporate debtors in chapter 11 cases.

Section 523(c)(1) provides special procedural rules applicable to debts of a kind specified in § 523(a)(2), (4), and (6). Generally, an action to determine the dischargeability of a debt may be brought at any time, even after the bankruptcy case has concluded. Rule 4007(b) provides that a “complaint other than under § 523(c) may be filed at any time.” Section 523(c)(1), however, provides “the debtor shall be discharged from a debt of a kind specified paragraph (2), (4), or (6) unless, on request of the creditor to whom such debt is owed, the court determines such debt to be excepted from discharge” under one of the specified provisions. Rule 4007(c) implements this provision by requiring that “a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a).”

Recent caselaw demonstrates that § 1141(d)(6)(A) is ambiguous in at least two respects:

1. Whether the phrase “of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)” applies both to debts owed to a domestic governmental unit and to debts “owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar state statute” or just to the former; and
2. Whether the procedure specified by § 523(c)(1) applies to a debt excepted from discharge by § 1141(d)(6)(A) because it is of a kind specified by § 523(a)(2)(A) or (B).

The bankruptcy court in *United States ex rel. Minge v. Hawker Beechcraft Corp. (In re Hawker Beechcraft, Inc.)*, 493 B.R. 696 (Bankr. S.D.N.Y. 2013), held that § 1141(d)(6)(A) covers the following types of debts: (1) debts owed to a domestic governmental unit that fall within § 523(a)(2)(A) or (B), and (2) debts owed to a person as the result of an FCA action. 493 B.R. at 710. Critical to the result in the case was the court’s determination that the language—“specified in paragraph (2)(A) or (2)(B) of section 523(a)” —applies only to debts owed to domestic governmental units and not to debts owed to persons. If that interpretation is correct, the instruction in Form 309F is overbroad. Only creditors holding debts owed to a domestic governmental unit would be required to file a complaint seeking an exception to discharge under § 1141(d)(6)(A).

On appeal in the *Hawker Beechcraft* case, the district court agreed with the bankruptcy court’s interpretation, but it went further and held that, even though one part of § 1141(d)(6)(A) incorporates by reference § 523(a)(2)(A) and (B), the provision does not incorporate § 523(c)(1), nor does that procedural provision apply on its own to the discharge of debts of a chapter 11 corporate debtor. 515 B.R. 416, 425-429 (S.D.N.Y. 2014). Thus, according to that reading, there is no time limit for seeking a determination of nondischargeability under either part of § 1141(d)(6)(A), and thus the entire explanatory sentence in Form 309F is incorrect.

Although the Committee acknowledged that § 1141(d)(6)(A) can also be read in a manner that is consistent with the form’s instruction, it concluded at the fall 2014 meeting that the best course is to revise the statement in Form 309F so that it does not take a position on if or when the § 523(c) procedure applies to claims described by § 1141(d)(6)(A). That approach would allow further judicial development of the issue without retaining in the form a possibly incorrect statement of the law. It therefore proposes for publication an amendment to line 8 of the form that would read, “If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.”

Action Item 9. Official Forms 25A, 25B, 25C, 26 (Small Business Debtor Forms and Periodic Report Regarding Value, Operations, and Profitability). As part of the Committee’s Forms Modernization Project that began in 2008, the Committee deferred consideration of certain forms relating to chapter 11 cases—specifically, Forms 25A, B, and C, and Form 26. The Committee has now reviewed each of these forms extensively and, as explained further below, is recommending each form, as revised and renumbered, for publication in August 2016.

The small business debtor forms—Forms 25A, 25B, and 25C—are renumbered as Official Forms 425A, 425B, and 425C. Official Forms 425A and 425B set forth an illustrative form plan of reorganization and disclosure statement, respectively, for small business debtors under chapter 11 of the Bankruptcy Code. Official Form 425C is the monthly operating report for small business debtors, which must be filed with the court and served on the U.S. Trustee under section 1107(a) (which incorporates, among other things, section 704(a)(8)) of the

Bankruptcy Code. The revised forms incorporate stylistic and formatting changes to conform to the general structure of the modernized forms. The Committee believes that these changes make all three forms easier to read and use.

In addition, in reviewing the forms, the Committee identified several places where Official Forms 425A and 425B were inconsistent with the Bankruptcy Code or required additional information to explain fully the debtor's disclosure obligations. For example, Official Form 425A, the plan of reorganization, now provides for separate classification of priority claims that must be classified under the plan and non-priority general unsecured claims. It also clarifies treatment options for executory contracts and unexpired leases and the timing and kinds of discharges available in the small business chapter 11 case. The Committee made parallel changes to Official Form 425B, the disclosure statement, in each appropriate place. The Committee Notes to Official Forms 425A and 425B identify and explain these and the other substantive changes made and recommended by the Committee. They also explicitly state that the plan of reorganization and the disclosure statement set forth in each form are sample documents and not required forms in small business cases.

The Committee's working group sought and received significant input from the Executive Office for U.S. Trustees on Official Form 425C, which is the monthly operating report that small business debtors must file with the court and serve on the U.S. Trustee. As explained in the Committee Note to Official Form 425C, the form is rearranged to eliminate duplicative sections and further explain the kinds of information required by the form. It also clarifies that the person completing the form on behalf of the debtor must answer all questions, unless otherwise provided, and it provides a checkbox to indicate if the report is an amended filing.

Form 26 (renumbered as Official Form 426) requires periodic disclosures by chapter 11 debtors concerning the value, operations, and profitability of entities in which they hold a substantial or controlling interest. The Judicial Conference promulgated Form 26 and related Bankruptcy Rule 2015.3 in response to section 419(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Section 419(a) of BAPCPA, in turn, mandated that debtors in chapter 11 cases disclose certain information on the "value, operations, and profitability of any closely held corporation, partnership or of any other entity in which the debtor holds a substantial or controlling interest." Section 419(b) explains the section's purpose as "to assist parties in interest [in] taking steps to ensure that the debtor's interest in any [controlled entity] ... is used for the payment of allowed claims against the debtor."

In reviewing Form 26, the Committee determined that certain changes would help to clarify the information requested by the form in connection with Rule 2015.3. These changes involve better defining the nondebtor entities for which a debtor must provide information, as well as modifying the exhibits that describe the kinds of information that a debtor must disclose. The Committee Note to Official Form 426 explains the scope of each exhibit and the justifications for the kinds of information requested by each exhibit.

The modified exhibits to Official Form 426 eliminate the requirement that the debtor provide a valuation estimate for the nondebtor entity. In lieu of a valuation, the modified exhibits focus on the information required by existing Exhibit B (retitled as Exhibit A)—i.e., the nondebtor entity’s most recent balance sheet, income statement, cash flow statement, and statement of changes in shareholders’ or partners’ equity (and a summary of the footnotes to those financial statements). The revised form does not change the information concerning the nondebtor entity’s business description in current Exhibit C, except to require that information in retitled Exhibit B. The revised form then adds new Exhibits C, D, and E. These new exhibits focus on intercompany claims, tax allocations, and the payment of claims or administrative expenses that would otherwise have been payable by a debtor.

The Committee unanimously approved Official Forms 425A, 425B, 425C, and 426, finding that the forms conform to the formatting and the underlying objectives of the Forms Modernization Project, including to make the forms more understandable and easier to use. Accordingly, the Committee recommends that the Standing Committee approve Official Forms 425A, 425B, 425C, and 426 for publication in August 2016.

III. Information Items

A. Status of proposed amendment to Rule 9037 to address redaction of previously filed documents. As reported at the January meeting, the Committee on Court Administration and Case Management (“CACM”) submitted a suggestion (14-BK-B) to the Committee regarding the procedure for redacting personal identifiers in documents that have already been filed in bankruptcy cases. It suggested that Rule 9037 (Privacy Protection for Filings Made with the Court) be amended to require that notice be given to affected individuals of a request to redact a previously filed document. This amendment would reflect the Judicial Conference’s recent addition of § 325.70 to the *Guide to Judiciary Policy*, Vol. 10 (Public Access and Records), which states in part that “the court should require the . . . party [requesting redaction] to promptly serve the request on the debtor, any individual whose personal identifiers have been exposed, the case trustee (if any), and the U.S. trustee (or bankruptcy administrator where applicable).”

The Committee began its consideration of this suggestion in 2014, and its research included a survey of bankruptcy clerks’ offices to determine how these matters are currently being handled. The survey revealed a variety of procedures regarding how redaction is sought, how unredacted information is protected, and whether and when individuals affected by the request for redaction are given notice.

At the spring meeting, the Committee approved for publication, at an appropriate time, a proposed amendment to Rule 9037 that would add a new subdivision (h) to the rule to provide a procedure for redacting personal identifiers in documents that were previously filed without complying with the rule’s redaction requirements. The Committee approved a procedure that would restrict access to the motion and the unredacted document in order to prevent the filing of

the motion from highlighting the existence of the unredacted document on file. The Committee concluded that the rule itself should not specify the precise technological methods to be used, since they will likely evolve over time.

The Committee was made aware of the existence of commercial services that maintain and make available to subscribers parallel dockets for all the bankruptcy courts. The existence of these dockets outside the control of the courts means that an unredacted document can continue to be accessible despite a belated redaction and the court's restriction of access to the unredacted document in the court's files. The Committee concluded that resolution of this problem is outside the scope of rulemaking authority and that the proposed rule should address only documents within the courts' control. Knowledge of the existence of these services, however, did lead the Committee to conclude that, following a successful motion to redact, access to the motion and the unredacted document should remain restricted. The Committee also recommends that CACM be made aware of the potential impact that these unofficial dockets have on the effectiveness of courts' belated redaction of filed documents.

After the Committee's report in January, it was suggested that because the advisory committees proposed the privacy rules, including Rule 9037, in a coordinated effort, an amendment to any one of them should be considered by all of the relevant advisory committee so that uniformity of the rules could be maintained to the extent possible. Accordingly, after the Committee approved the proposed amendment to Rule 9037 and the style consultants' suggestions were incorporated, the draft was shared with the reporters for the other advisory committees. The Civil Rules Committee discussed the possibility of a similar amendment to Rule 5.2 at its spring meeting. The reporters will continue to discuss wording and organization issues in an attempt to arrive at a uniform provision. Meanwhile, Professor Capra has inquired of Administrative Office staff whether there are technologies available or in development that would allow the immediate protection of unredacted information upon the filing of a motion to redact or that might even render a rule amendment unnecessary by immediately identifying the existence of unredacted information at the time of filing so that proper redaction could occur. Further inquiry into technological solutions will be pursued.

B. Decision to take no action on Suggestion 15-BK-E to amend Rule 4003(c) concerning burden of proof for objections to claimed exemptions. As the Committee reported to the Standing Committee at its January 2016 meeting, the Committee received, and has been evaluating, a suggestion from Chief Judge Christopher M. Klein, U.S. Bankruptcy Court for the Eastern District of California, to consider the amendment or elimination of Bankruptcy Rule 4003(c). Rule 4003(c) provides: "(c) Burden of Proof. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections." The primary issue is the burden of proof in litigation involving a debtor's entitlement to a claimed exemption under section 522 of the Bankruptcy Code. Specifically, the suggestion posits that the language of Rule 4003(c), which places the burden of proof on the

party objecting to the claimed exemption, alters the substantive rights of the parties in violation of the Rules Enabling Act.

The Committee first considered Suggestion 15-BK-E at its October 2015 meeting. At that time, the Committee determined that additional research and further deliberations would assist in its assessment of the suggestion. The Assistant Reporter provided a supplemental research memorandum, and the Committee again considered the suggestion at its March 2016 meeting. As explained further below, the Committee has determined to take no action on Suggestion 15-BK-E at this time.

Suggestion 15-BK-E posits that Rule 4003(c) violates the Rules Enabling Act because, under the Supreme Court's decision in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15 (2000), the burden of proof is a substantive part of a litigant's claim and therefore should be governed by applicable nonbankruptcy law in exemption litigation. Notably, Suggestion 15-BK-E differs from the claims litigation at issue in *Raleigh* in at least one significant way: Suggestion 15-BK-E involves a potential conflict between a federal rule and state law. The *Raleigh* decision did not involve a federal rule. This distinction required the Committee to consider the Supreme Court's jurisprudence on the Rules Enabling Act under *Hanna v. Plumer*, 380 U.S. 460 (1965), and its progeny; this jurisprudence underscores that a different analysis applies to conflicts involving federal rules and that the procedural-substantive determination may differ in the federal rules context (compared to, for example, an *Erie* choice of law context).

In accordance with *Hanna*, the Committee considered whether (i) the state law and federal rule conflict; (ii) the federal rule is within the scope of the Rules Enabling Act; and (iii) the federal rule under the Rules Enabling Act is constitutional, that is, within Congress's Article I power. *Hanna* articulated the standard for determining whether a federal rule is constitutional as whether the rule was "rationally capable" of being characterized as procedural. *Hanna*, 380 U.S. at 472. *Hanna* articulated the standard for determining whether a federal rule is within the scope of the Rules Enabling Act as "whether a rule really regulates procedure,—the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them." *Hanna*, 380 U.S. at 464 (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)).

The issue presented to the Committee was a difficult one. The *Hanna* test does not clearly define what is substantive or procedural for purposes of the Rules Enabling Act. Moreover, the Supreme Court's most recent decision on the Rules Enabling Act raises questions about the application of the *Hanna* test and whether the inquiry (i.e., procedural or substantive) focuses on the nature of the federal rule or, rather, the state law at issue. See *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393 (2010).

In its deliberations, the Committee acknowledged Chief Judge Klein's thoughtful analysis of Rule 4003(c) and the *Raleigh* decision in *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Ca. 2015), but agreed that the Supreme Court's decision in *Hanna* required a broader analysis of

the issues. The Committee found that the first and third elements of the *Hanna* test were satisfied in that Rule 4003(c) conflicted with at least California law and that Rule 4003(c) was rationally capable of being characterized as procedural for purposes of the Constitutional analysis. The Advisory Committee then turned to the second element of the *Hanna* test and examined the nature of the burden of proof not only under *Raleigh*, but also under *Hanna* and similar cases that endorse a different approach to the procedural-substantive determination.

Based on the supplemental research memorandum, the Committee recognized ways in which the burden of proof could be characterized as procedural in terms of governing “the judicial process for enforcing rights and duties recognized” by federal bankruptcy law.⁴ Rule 4003(c), as its predecessor Bankruptcy Rule 403(c), places the burden of proof on the party objecting to a claimed exemption, regardless of the identity of the objector. This approach aligns with the presumption in favor of a debtor’s claimed exemptions under section 522(l) of the Bankruptcy Code, as well as the general process for scheduling, asserting, and preserving exemptions under section 522 of the Bankruptcy Code. In addition, a state’s ability to opt out of the federal exemption scheme is only one part of the overarching exemption process in federal bankruptcy litigation—a process enacted by Congress under the Bankruptcy Clause of the U.S. Constitution. Accordingly, the Committee generally agreed that Rule 4003(c) could be characterized as really regulating procedure for purposes of *Hanna* and the Rules Enabling Act.

The Advisory Committee also discussed the history to Rule 4003(c) and the fact that the Committee previously analyzed its ability to promulgate a rule allocating the burden of proof in exemption litigation.⁵ Specifically, when the Committee was overhauling the federal bankruptcy rules in connection with the adoption of the 1978 Bankruptcy Code, the Committee considered whether the federal bankruptcy rules could shift the burden of proof away from the moving party. This issue was raised, in part, because of a comment in the legislative history (a report from the House of Representatives) that the bankruptcy rules would not address burden of proof issues. Nevertheless, that same legislative history (as well as a subsequent report from the Senate) specifically noted that Congress intended the federal rules committee to promulgate a bankruptcy rule allocating the burden of proof in at least the claims litigation context. Notably, similar issues were raised in the context of former Bankruptcy Rule 403(c). The Committee found the long history of a federal bankruptcy rule allocating the burden of proof in exemption litigation—despite issues similar to those identified in Suggestion 15-BK-E being raised and considered—to be persuasive evidence of Rule 4003(c)’s presumptive validity.

The Committee also considered the impact of the Supreme Court’s decision in *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393 (2010), and the apparent disagreement among the Justices concerning the Rules Enabling Act. It recognized and

⁴ See *Sibbach*, 312 U.S. at 14.

⁵ The supplemental research memorandum includes a detailed history of Rule 4003(c) and its predecessor, Bankruptcy Rule 403(c). It also explains the legislative history to section 522 of the Bankruptcy Code and the relationship between section 522 and Rule 4003(c).

discussed the potential import of this uncertainty, as well as the fact that only a few bankruptcy courts in California have declared Rule 4003(c) invalid. Accordingly, in addition to generally agreeing that Rule 4003(c) satisfies the three-part test of *Hanna* and is presumptively valid, the Committee also determined that it would be premature to take any action on Rule 4003(c).

For all of the foregoing reasons, the Committee determined to take no action on Suggestion 15-BK-E at this time and to monitor case law developments concerning both Rule 4003(c) and the Rules Enabling Act more generally.

TAB 7B

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APPENDIX A

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Appendix A

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

1 **Rule 1001. Scope of Rules and Forms; Short Title**

2 The Bankruptcy Rules and Forms govern procedure
3 in cases under title 11 of the United States Code. The rules
4 shall be cited as the Federal Rules of Bankruptcy Procedure
5 and the forms as the Official Bankruptcy Forms. These
6 rules shall be construed, administered, and employed by the
7 court and the parties to secure the just, speedy, and
8 inexpensive determination of every case and proceeding.

Committee Note

The last sentence of the rule is amended to
incorporate the changes to Rule 1 F.R. Civ. P. made in
1993 and 2015.

The word “administered” is added to recognize the
affirmative duty of the court to exercise the authority

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

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conferred by these rules to ensure that bankruptcy cases and the proceedings within them are resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

The addition of the phrase “employed by the court and the parties” emphasizes that parties share in the duty of using the rules to secure the just, speedy, and inexpensive determination of every case and proceeding. Achievement of this goal depends upon cooperative and proportional use of procedure by lawyers and parties.

This amendment does not create a new or independent source of sanctions. Nor does it abridge the scope of any other of these rules.

Changes Made After Publication and Comment

None.

Summary of Public Comment

BK-2015-0004, submitted by Cheryl Siler, on behalf of Aderant. “We agree with the amendments as proposed.”

BK-2015-0003, submitted by M.K. The comment concerns general drafting matters and questions the use of the word “should” in proposed rules.

1 **Rule 1006. Filing Fee**

2 * * * * *

3 (b) PAYMENT OF FILING FEE IN
4 INSTALLMENTS.

5 (1) *Application to Pay Filing Fee in*
6 *Installments.* A voluntary petition by an individual
7 shall be accepted for filing, regardless of whether any
8 portion of the filing fee is paid, if accompanied by the
9 debtor's signed application, prepared as prescribed by
10 the appropriate Official Form, stating that the debtor
11 is unable to pay the filing fee except in installments.

12 * * * * *

Committee Note

Subdivision (b)(1) is amended to clarify that an individual debtor's voluntary petition, accompanied by an application to pay the filing fee in installments, must be accepted for filing, even if the court requires the initial installment to be paid at the time the petition is filed and the debtor fails to make that payment. Because the debtor's bankruptcy case is commenced upon the filing of the petition, dismissal of the case due to the debtor's failure to

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make the initial or a subsequent installment payment is governed by Rule 1017(b)(1).

Changes Made After Publication and Comment

None.

Summary of Public Comment

BK-2015-0004, submitted by Cheryl Siler, on behalf of Aderant. “We agree with the amendments as proposed.”

BK-2015-0003, submitted by M.K. The comment concerns general drafting matters and questions the use of the word “should” in proposed rules.

APPENDIX B1

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Appendix B1

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

For Publication for Public Comment

1 **Rule 3015. Filing, Objection to Confirmation, Effect of**
2 **Confirmation, and Modification of a Plan**
3 **in a Chapter 12 ~~Family Farmer's Debt~~**
4 **~~Adjustment~~ or a Chapter 13 ~~Individual's~~**
5 **~~Debt Adjustment Case~~**

6 (a) FILING A CHAPTER 12 PLAN. The debtor
7 may file a chapter 12 plan with the petition. If a plan is not
8 filed with the petition, it shall be filed within the time
9 prescribed by § 1221 of the Code.

10 (b) FILING A CHAPTER 13 PLAN. The debtor
11 may file a chapter 13 plan with the petition. If a plan is not
12 filed with the petition, it shall be filed within 14 days
13 thereafter, and such time may not be further extended
14 except for cause shown and on notice as the court may
15 direct. If a case is converted to chapter 13, a plan shall be

¹ New material is underlined in red; matter to be omitted is lined through.

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16 filed within 14 days thereafter, and such time may not be
17 further extended except for cause shown and on notice as
18 the court may direct.

19 (c) ~~DATING.~~ Every proposed plan and any
20 ~~modification thereof shall be dated.~~ FORM OF
21 CHAPTER 13 PLAN. If there is an Official Form for a
22 plan filed in a chapter 13 case, that form must be used
23 unless a Local Form has been adopted in compliance with
24 Rule 3015.1. With either the Official Form or a Local
25 Form, a nonstandard provision is effective only if it is
26 included in a section of the form designated for
27 nonstandard provisions and is also identified in accordance
28 with any other requirements of the form. As used in this
29 rule and the Official Form or a Local Form, “nonstandard
30 provision” means a provision not otherwise included in the
31 Official or Local Form or deviating from it.

32 (d) NOTICE AND COPIES. If the plan ~~The plan or~~
33 ~~a summary of the plan shall be~~ is not included with the ~~each~~
34 notice of the hearing on confirmation mailed under
35 ~~pursuant to Rule 2002,~~ the debtor shall serve the plan on
36 the trustee and all creditors when it is filed with the court.
37 ~~If required by the court, the debtor shall furnish a sufficient~~
38 ~~number of copies to enable the clerk to include a copy of~~
39 ~~the plan with the notice of the hearing.~~

40 (e) TRANSMISSION TO UNITED STATES
41 TRUSTEE. The clerk shall forthwith transmit to the
42 United States trustee a copy of the plan and any
43 modification thereof filed under ~~pursuant to~~ subdivision (a)
44 or (b) of this rule.

45 (f) OBJECTION TO CONFIRMATION;
46 DETERMINATION OF GOOD FAITH IN THE
47 ABSENCE OF AN OBJECTION. An objection to

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48 confirmation of a plan shall be filed and served on the
49 debtor, the trustee, and any other entity designated by the
50 court, and shall be transmitted to the United States trustee,
51 ~~before confirmation of the plan~~ at least seven days before
52 the date set for the hearing on confirmation, unless the
53 court orders otherwise. An objection to confirmation is
54 governed by Rule 9014. If no objection is timely filed, the
55 court may determine that the plan has been proposed in
56 good faith and not by any means forbidden by law without
57 receiving evidence on such issues.

58 (g) EFFECT OF CONFIRMATION. Upon the
59 confirmation of a chapter 12 or chapter 13 plan:

60 (1) any determination in the plan made under
61 Rule 3012 about the amount of a secured claim is
62 binding on the holder of the claim, even if the holder
63 files a contrary proof of claim or the debtor schedules

64 that claim, and regardless of whether an objection to
65 the claim has been filed; and

66 (2) any request in the plan to terminate the stay
67 imposed by § 362(a), § 1201(a), or § 1301(a) is
68 granted.

69 ~~(g)~~(h) MODIFICATION OF PLAN AFTER
70 CONFIRMATION. A request to modify a plan pursuant to
71 under § 1229 or § 1329 of the Code shall identify the
72 proponent and shall be filed together with the proposed
73 modification. The clerk, or some other person as the court
74 may direct, shall give the debtor, the trustee, and all
75 creditors not less than 21 days' notice by mail of the time
76 fixed for filing objections and, if an objection is filed, the
77 hearing to consider the proposed modification, unless the
78 court orders otherwise with respect to creditors who are not
79 affected by the proposed modification. A copy of the

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80 notice shall be transmitted to the United States trustee. A
81 copy of the proposed modification, or a summary thereof,
82 shall be included with the notice. ~~If required by the court,~~
83 ~~the proponent shall furnish a sufficient number of copies of~~
84 ~~the proposed modification, or a summary thereof, to enable~~
85 ~~the clerk to include a copy with each notice.~~ Any objection
86 to the proposed modification shall be filed and served on
87 the debtor, the trustee, and any other entity designated by
88 the court, and shall be transmitted to the United States
89 trustee. An objection to a proposed modification is
90 governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically

designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve

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a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

1 **Rule 3015.1. Requirements for a Local Form for Plans**
2 **Filed in a Chapter 13 Case**

3 Notwithstanding Rule 9029(a)(1), a district may
4 require that a Local Form for a plan filed in a chapter 13
5 case be used instead of an Official Form adopted for that
6 purpose if the following conditions are satisfied:

7 (a) a single Local Form is adopted for the district
8 after public notice and an opportunity for public comment;

9 (b) each paragraph is numbered and labeled in
10 boldface type with a heading stating the general subject
11 matter of the paragraph;

12 (c) the Local Form includes an initial paragraph for
13 the debtor to indicate that the plan does or does not:

14 (1) contain any nonstandard provision;

15 (2) limit the amount of a secured claim based
16 on a valuation of the collateral for the claim; or

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17 (3) avoid a security interest or lien;

18 (d) the Local Form contains separate paragraphs

19 for:

20 (1) curing any default and maintaining
21 payments on a claim secured by the debtor's principal
22 residence;

23 (2) paying a domestic-support obligation;

24 (3) paying a claim described in the final
25 paragraph of § 1325(a) of the Bankruptcy Code; and

26 (4) surrendering property that secures a claim
27 with a request that the stay be terminated as to the
28 surrendered collateral; and

29 (e) the Local Form contains a final paragraph for:

30 (1) the placement of nonstandard provisions, as
31 defined in Rule 3015(c), along with a statement that

32 any nonstandard provision placed elsewhere in the
33 plan is void; and
34 (2) certification by the debtor's attorney or by
35 an unrepresented debtor that the plan contains no
36 nonstandard provision other than those set out in the
37 final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter13 Plan Form. See Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and

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maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the “hanging paragraph” of § 1325(a), and surrender of property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor’s individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the plan contains a nonstandard provision, limits the amount of a secured claim based on a valuation of the collateral, or avoids a lien. The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. The form must also require a certification by the debtor’s attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

APPENDIX B2

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Appendix B2

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

For Publication for Public Comment

1 **Rule 5005. Filing and Transmittal of Papers**

2 (a) FILING.

3 * * * * *

4 (2) Electronic Filing and Signing~~by Electronic~~
5 ~~Means.~~

6 (A) By a Represented Entity—Generally
7 Required; Exceptions.~~A court may by local rule~~
8 ~~permit or require documents to be filed, signed,~~
9 ~~or verified by electronic means that are~~
10 ~~consistent with technical standards, if any, that~~
11 ~~the Judicial Conference of the United States~~
12 ~~establishes.~~ An entity represented by an attorney
13 shall file electronically, unless nonelectronic

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

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14 filing is allowed by the court for good cause or is
15 allowed or required by local rule.~~A local rule~~
16 ~~may require filing by electronic means only if~~
17 ~~reasonable exceptions are allowed.~~

18 (B) By an Unrepresented Individual—
19 When Allowed or Required. An individual not
20 represented by an attorney:

21 (i) may file electronically only if
22 allowed by court order or by local rule; and

23 (ii) may be required to file
24 electronically only by court order, or by a
25 local rule that includes reasonable
26 exceptions.

27 (C) Signing. The user name and password
28 of an attorney of record, together with the
29 attorney's name on a signature block, serves as
30 the attorney's signature.

31 (D) Same as a Written Paper. A paper
32 ~~document filed electronically by electronic means~~
33 ~~in compliance with a local rule constitutes~~ is a
34 written paper for ~~the purpose~~ s of ~~applying these~~
35 rules, the Federal Rules of Civil Procedure made
36 applicable by these rules, and § 107 of the Code.

* * * * *

Committee Note

Electronic filing has matured. Most districts have adopted local rules that require electronic filing, and allow reasonable exceptions as required by the former rule. The time has come to seize the advantages of electronic filing by making it mandatory in all districts, except for filings made by an individual not represented by an attorney. But exceptions continue to be available. Paper filing must be allowed for good cause. And a local rule may allow or require paper filing for other reasons.

Filings by an individual not represented by an attorney are treated separately. It is not yet possible to rely on an assumption that pro se litigants are generally able to seize the advantages of electronic filing. Encounters with the court's system may prove overwhelming to some. Attempts to work within the system may generate substantial burdens on a pro se party, on other parties, and on the court. Rather than mandate electronic filing, filing by pro se litigants is

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left for governing by local rules or court order. Efficiently handled electronic filing works to the advantage of all parties and the court. Many courts now allow electronic filing by pro se litigants with the court's permission. Such approaches may expand with growing experience in these and other courts, along with the growing availability of the systems required for electronic filing and the increasing familiarity of most people with electronic communication.

The user name and password of an attorney of record, together with the attorney's name on a signature block, serves as the attorney's signature.

1 **Rule 8002. Time for Filing a Notice of Appeal**

2 (a) IN GENERAL.

3 * * * * *

4 (5) Entry Defined.

5 (A) A judgment, order, or decree is
6 entered for purposes of this Rule 8002(a):

7 (i) when it is entered in the docket
8 under Rule 5003(a), or

9 (ii) if Rule 7058 applies and
10 Rule 58(a) F.R. Civ. P. requires a separate
11 document, when the judgment, order, or
12 decree is entered in the docket under Rule
13 5003(a) and when the earlier of these events
14 occurs:

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- 15 • the judgment, order, or
16 decree is set out in a separate
17 document; or
18 • 150 days have run from
19 entry of the judgment, order, or
20 decree in the docket under
21 Rule 5003(a).

22 (B) A failure to set out a judgment, order,
23 or decree in a separate document when required
24 by Rule 58(a) F.R. Civ. P. does not affect the
25 validity of an appeal from that judgment, order,
26 or decree.

27 * * * * *

28 (b) EFFECT OF A MOTION ON THE TIME TO
29 APPEAL.

30 (1) *In General.* If a party ~~timely~~ files in the
31 bankruptcy court any of the following motions and

32 does so within the time allowed by these rules, the
33 time to file an appeal runs for all parties from the
34 entry of the order disposing of the last such remaining
35 motion:

36 * * * * *

37 (c) APPEAL BY AN INMATE CONFINED IN AN
38 INSTITUTION.

39 (1) *In General.* If an institution has a system
40 designed for legal mail, an inmate confined there must
41 use that system to receive the benefit of this
42 Rule 8002(c)(1). If an inmate ~~confined in an~~
43 ~~institution~~ files a notice of appeal from a judgment,
44 order, or decree of a bankruptcy court, the notice is
45 timely if it is deposited in the institution's internal
46 mail system on or before the last day for filing. ~~If the~~
47 ~~institution has a system designed for legal mail, the~~
48 ~~inmate must use that system to receive the benefit of~~

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49 ~~this rule. Timely filing may be shown by a~~
50 ~~declaration in compliance with 28 U.S.C. § 1746 or by~~
51 ~~a notarized statement, either of which must set forth~~
52 ~~the date of deposit and state that first class postage~~
53 ~~has been prepaid. and:~~

54 (A) it is accompanied by:

55 (i) a declaration in compliance
56 with 28 U.S.C. § 1746—or a
57 notarized statement—setting out the
58 date of deposit and stating that first-
59 class postage is being prepaid; or

60 (ii) evidence (such as a
61 postmark or date stamp) showing
62 that the notice was so deposited and
63 that postage was prepaid; or

64 (B) the appellate court exercises its
65 discretion to permit the later filing of a

66 declaration or notarized statement that satisfies

67 Rule 8002(c)(1)(A)(i).

68 * * * * *

Committee Note

Clarifying amendments are made to subdivisions (a), (b), and (c) of the rule. They are modeled on parallel provisions of F.R. App. P. 4.

Paragraph (5) is added to subdivision (a) to clarify the effect of the separate-document requirement of F.R. Civ. P. 58(a) on the entry of a judgment, order, or decree for the purpose of determining the time for filing a notice of appeal.

Rule 7058 adopts F.R. Civ. P. Rule 58 for adversary proceedings. If Rule 58(a) requires a judgment to be set out in a separate document, the time for filing a notice of appeal runs—subject to subdivisions (b) and (c)—from when the judgment is docketed and the judgment is set out in a separate document or, if no separate document is prepared, from 150 days from when the judgment is entered in the docket. The court’s failure to comply with the separate-document requirement of Rule 58(a), however, does not affect the validity of an appeal.

Rule 58 does not apply in contested matters. Instead, under Rule 9021, a separate document is not required, and a judgment or order is effective when it is entered in the docket. The time for filing a notice of appeal under

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subdivision (a) therefore begins to run upon docket entry in contested matters, as well as in adversary proceedings for which Rule 58 does not require a separate document.

A clarifying amendment is made to subdivision (b)(1) to conform to a recent amendment to F.R. App. P. 4(a)(4)—from which Rule 8002(b)(1) is derived. Former Rule 8002(b)(1) provided that “[i]f a party timely files in the bankruptcy court” certain post-judgment motions, “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.” Responding to a circuit split concerning the meaning of “timely” in F.R. App. P. 4(a)(4), the amendment adopts the majority approach and rejects the approach taken in *National Ecological Foundation v. Alexander*, 496 F.3d 466 (6th Cir. 2007). A motion made after the time allowed by the Bankruptcy Rules will not qualify as a motion that, under Rule 8002(b)(1), re-starts the appeal time—and that fact is not altered by, for example, a court order that sets a due date that is later than permitted by the Bankruptcy Rules, another party’s consent or failure to object to the motion’s lateness, or the court’s disposition of the motion without explicit reliance on untimeliness.

Subdivision (c)(1) is revised to conform to F.R. App. P. 4(c)(1), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution’s mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage

“is being prepaid,” not (as directed by the former rule) that first-class postage “has been prepaid.” This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution’s mail system. A new Director’s Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to accept a declaration or notarized statement at a later date. The rule uses the phrase “exercises its discretion to permit”—rather than simply “permits”—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

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1 **Rule 8006. Certifying a Direct Appeal to the Court of**
2 **Appeals**

3 * * * * *

4 (c) JOINT CERTIFICATION BY ALL
5 APPELLANTS AND APPELLEES.

6 (1) How Accomplished. A joint certification by
7 all the appellants and appellees under 28 U.S.C.
8 § 158(d)(2)(A) must be made by using the appropriate
9 Official Form. The parties may supplement the
10 certification with a short statement of the basis for the
11 certification, which may include the information listed
12 in subdivision (f)(2).

13 (2) Supplemental Statement by the Court.
14 Within 14 days after the parties' certification, the
15 bankruptcy court or the court in which the matter is
16 then pending may file a short supplemental statement
17 about the merits of the certification.

Committee Note

Subdivision (c) is amended to provide authority for the court to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all of the parties to the appeal. It is a counterpart to subdivision (e)(2), which allows a party to file a similar statement when the court certifies direct review on the court's own motion.

The bankruptcy court may file a supplemental statement within 14 days after the certification, even if the appeal is no longer pending before it according to subdivision (b). If the appeal is pending in the district court or BAP during that 14-day period, the appellate court is authorized to file a statement. In all cases, the filing of a statement by the court is discretionary.

1 **Rule 8011. Filing and Service; Signature**

2 (a) FILING.

3 * * * * *

4 (2) *Method and Timeliness.*

5 * * * * *

6 (C) *Inmate Filing.* If an institution has a
7 system designed for legal mail, an inmate
8 confined there must use that system to receive
9 the benefit of this Rule 8011(a)(2)(C). A
10 document filed by an inmate confined in an
11 institution is timely if it is deposited in the
12 institution's internal mailing system on or before
13 the last day for filing. ~~If the institution has a~~
14 ~~system designed for legal mail, the inmate must~~
15 ~~use that system to receive the benefit of this rule.~~
16 ~~Timely filing may be shown by a declaration in~~

17 ~~compliance with 28 U.S.C. § 1746 or by a~~
18 ~~notarized statement, either of which must set~~
19 ~~forth the date of deposit and state that first class~~
20 ~~postage has been prepaid. and:~~

21 (i) it is accompanied by:

22 • a declaration in compliance
23 with 28 U.S.C. § 1746—or a
24 notarized statement—setting out
25 the date of deposit and stating
26 that first-class postage is being
27 prepaid; or

28 • evidence (such as a
29 postmark or date stamp) showing
30 that the notice was so deposited
31 and that postage was prepaid; or

32 (ii) the appellate court exercises its
33 discretion to permit the later filing of a

34 declaration or notarized statement that
35 satisfies Rule 8011(a)(2)(C)(i).

36 * * * * *

Committee Note

Subdivision (a)(2)(C) is revised to conform to F.R. App. P. 25(a)(2)(C), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution’s mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage “is being prepaid,” not (as directed by the former rule) that first-class postage “has been prepaid.” This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution’s mail system. A new Director’s Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to

accept a declaration or notarized statement at a later date. The rule uses the phrase “exercises its discretion to permit”—rather than simply “permits”—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

1 **Rule 8013. Motions; Intervention**

2 * * * * *

3 (f) FORM OF DOCUMENTS; ~~PAGE~~LENGTH
4 LIMITS; NUMBER OF COPIES.

5 * * * * *

6 (2) *Format of an Electronically Filed*
7 *Document.* A motion, response, or reply filed
8 electronically must comply with the requirements for
9 a paper version regarding covers, line spacing,
10 margins, typeface, and type style. It must also comply
11 with the ~~page~~length limits under paragraph (3).

12 (3) *PageLength Limits.* ~~Unless the district~~
13 ~~court or BAP orders otherwise:~~Except by the district
14 court's or BAP's permission, and excluding the
15 accompanying documents authorized by subdivision
16 (a)(2)(C):

17 (A) a motion or a response to a motion
18 ~~must not exceed 20 pages, exclusive of the~~
19 ~~corporate disclosure statement and~~
20 ~~accompanying documents authorized by~~
21 ~~subdivision (a)(2)(C)~~ produced using a computer
22 must include a certificate under Rule 8015(h)
23 and not exceed 5,200 words; and

24 (B) ~~a reply to a response must not exceed~~
25 ~~10 pages.~~ a handwritten or typewritten motion or
26 a response to a motion must not exceed 20
27 pages;

28 (C) a reply produced using a computer
29 must include a certificate under Rule 8015(h)
30 and not exceed 2,600 words; and

31 (D) a handwritten or typewritten reply
32 must not exceed 10 pages.

33 * * * * *

Committee Note

Subdivision (f)(3) is amended to conform to F.R. App. P. 27(d)(2), which was recently amended to replace page limits with word limits for motions and responses produced using a computer. The word limits were derived from the current page limits, using the assumption that one page is equivalent to 260 words. Documents produced using a computer must include the certificate of compliance required by Rule 8015(h); Official Form 417C suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes the accompanying documents required by Rule 8013(a)(2)(C) and any items listed in Rule 8015(h).

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1 **Rule 8015. Form and Length of Briefs; Form of**
2 **Appendices and Other Papers**

3 (a) PAPER COPIES OF A BRIEF. If a paper copy
4 of a brief may or must be filed, the following provisions
5 apply:

6 * * * * *

7 (7) *Length.*

8 (A) *Page limitation.* A principal brief
9 must not exceed 30 pages, or a reply brief 15
10 pages, unless it complies with subparagraph (B)
11 ~~and (C).~~

12 (B) *Type-volume limitation.*

13 (i) A principal brief is acceptable if
14 it contains a certificate under Rule 8015(h)
15 and:

16 • ~~it~~ contains no more than
17 ~~14,000~~ 13,000 words; or

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18 • ~~it~~ uses a monospaced face
19 and contains no more than 1,300 lines
20 of text.

21 (ii) A reply brief is acceptable if it
22 includes a certificate under Rule 8015(h)
23 and contains no more than half of the type
24 volume specified in item (i).

25 ~~(iii) Headings, footnotes, and~~
26 ~~quotations count toward the word and line~~
27 ~~limitations. The corporate disclosure~~
28 ~~statement, table of contents, table of~~
29 ~~citations, statement with respect to oral~~
30 ~~argument, any addendum containing~~
31 ~~statutes, rules, or regulations, and any~~
32 ~~certificates of counsel do not count toward~~
33 ~~the limitation.~~

34 ~~(C) Certificate of Compliance.~~

35 ~~(i) A brief submitted under~~
36 ~~subdivision (a)(7)(B) must include a~~
37 ~~certificate signed by the attorney, or an~~
38 ~~unrepresented party, that the brief complies~~
39 ~~with the type-volume limitation. The person~~
40 ~~preparing the certificate may rely on the~~
41 ~~word or line count of the word-processing~~
42 ~~system used to prepare the brief. The~~
43 ~~certificate must state either:~~

44 • ~~the number of words in the~~
45 ~~brief; or~~

46 • ~~the number of lines of~~
47 ~~monospaced type in the brief.~~

48 ~~(ii) The certification requirement is~~
49 ~~satisfied by a certificate of compliance that~~
50 ~~conforms substantially to the appropriate~~
51 ~~Official Form.~~

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52

* * * * *

53

(f) LOCAL VARIATION. A district court or BAP

54

must accept documents that comply with the ~~applicable~~

55

form requirements of this rule and the length limits set by

56

Part VIII of these rules. By local rule or order in a

57

particular case, a district court or BAP may accept

58

documents that do not meet all of the form requirements of

59

this rule or the length limits set by Part VIII of these rules.

60

(g) ITEMS EXCLUDED FROM LENGTH. In

61

computing any length limit, headings, footnotes, and

62

quotations count toward the limit, but the following items

63

do not:

64

• the cover page;

65

• a corporate disclosure statement;

66

• a table of contents;

67

• a table of citations;

68

• a statement regarding oral argument;

- 69 • an addendum containing statutes, rules, or
- 70 regulations;
- 71 • certificates of counsel;
- 72 • the signature block;
- 73 • the proof of service; and
- 74 • any item specifically excluded by these
- 75 rules or by local rule.

76 (h) CERTIFICATE OF COMPLIANCE.

77 (1) Briefs and Documents That Require a

78 Certificate. A brief submitted under Rule 8016(d)(2),

79 8017(b)(4), or 8015(a)(7)(B)—and a document

80 submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or

81 8022(b)(1)—must include a certificate by the

82 attorney, or an unrepresented party, that the document

83 complies with the type-volume limitation. The

84 individual preparing the certificate may rely on the

85 word or line count of the word-processing system

86 used to prepare the document. The certificate must
87 state the number of words—or the number of lines of
88 monospaced type—in the document.

89 (2) *Acceptable Form.* The certificate
90 requirement is satisfied by a certificate of compliance
91 that conforms substantially to the appropriate Official
92 Form.

Committee Note

The rule is amended to conform to recent amendments to F.R. App. P. 32, which reduced the word limits generally allowed for briefs. When Rule 32(a)(7)(B)'s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. Amended F.R. App. P. 32 applies a conversion ratio of 260 words per page and reduces the word limits accordingly. Rule 8015(a)(7) adopts the same reduced word limits for briefs prepared by computer.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those

situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (f) is amended to make clear a court's ability (by local rule or order in a case) to increase the length limits for briefs and other documents. Subdivision (f) already established this authority as to the length limits in Rule 8015(a)(7); the amendment makes clear that this authority extends to all length limits in Part VIII of the Bankruptcy Rules.

A new subdivision (g) is added to set out a global list of items excluded from length computations, and the list of exclusions in former subdivision (a)(7)(B)(iii) is deleted. The certificate-of-compliance provision formerly in subdivision (a)(7)(C) is relocated to a new subdivision (h) and now applies to filings under all type-volume limits (other than Rule 8014(f)'s word limit)—including the new word limits in Rules 8013, 8016, 8017, and 8022. Conforming amendments are made to Official Form 417C.

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1 **Rule 8016. Cross-Appeals**

2 * * * * *

3 (d) LENGTH.

4 (1) *Page Limitation.* Unless it complies with
5 paragraphs (2) ~~and (3)~~, the appellant's principal brief
6 must not exceed 30 pages; the appellee's principal and
7 response brief, 35 pages; the appellant's response and
8 reply brief, 30 pages; and the appellee's reply brief,
9 15 pages.

10 (2) *Type-Volume Limitation.*

11 (A) The appellant's principal brief or the
12 appellant's response and reply brief is acceptable
13 if it includes a certificate under Rule 8015(h)
14 and:

15 (i) ~~it~~ contains no more than ~~14,000~~

16 13,000 words; or

17 (ii) ~~it~~ uses a monospaced face and
18 contains no more than 1,300 lines of text.

19 (B) The appellee's principal and response
20 brief is acceptable if it includes a certificate
21 under Rule 8015(h) and:

22 (i) ~~it~~ contains no more than ~~16,500~~
23 15,300 words; or

24 (ii) ~~it~~ uses a monospaced face and
25 contains no more than 1,500 lines of text.

26 (C) The appellee's reply brief is
27 acceptable if it includes a certificate under
28 Rule 8015(h) and contains no more than half of
29 the type volume specified in subparagraph (A).

30 ~~(D) Headings, footnotes, and quotations~~
31 ~~count toward the word and line limitations. The~~
32 ~~corporate disclosure statement, table of contents,~~
33 ~~table of citations, statement with respect to oral~~

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34 ~~argument, any addendum containing statutes,~~
35 ~~rules, or regulations, and any certificates of~~
36 ~~counsel do not count toward the limitation.~~

37 ~~(3) Certificate of Compliance. A brief~~
38 ~~submitted either electronically or in paper form under~~
39 ~~paragraph (2) must comply with Rule 8015(a)(7)(C).~~

40 * * * * *

Committee Note

The rule is amended to conform to recent amendments to F.R. App. P. 28.1, which reduced the word limits generally allowed for briefs in cross-appeals. When Rule 28.1 was adopted in 2005, it modeled its type-volume limits on those set forth in F.R. App. P. 32(a)(7) for briefs in cases that did not involve a cross-appeal. At that time, Rule 32(a)(7)(B) set word limits based on an estimate of 280 words per page. Amended F.R. App. P. 32 and 28.1 apply a conversion ratio of 260 words per page and reduce the word limits accordingly. Rule 8016(d)(2) adopts the same reduced word limits.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici.

The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (d) is amended to refer to new Rule 8015(h) (which now contains the certificate-of-compliance provision formerly in Rule 8015(a)(7)(C)).

1 **Rule 8017. Brief of an Amicus Curiae**

2 (a) DURING INITIAL CONSIDERATION OF A
3 CASE ON THE MERITS.

4 (1) Applicability. This Rule 8017(a) governs
5 amicus filings during a court's initial consideration of
6 a case on the merits.

7 (2) When Permitted. The United States or its
8 officer or agency or a state may file an amicus-curiae
9 brief without the consent of the parties or leave of
10 court. Any other amicus curiae may file a brief only
11 by leave of court or if the brief states that all parties
12 have consented to its filing, except that a district court
13 or BAP may strike or may prohibit the filing of an
14 amicus brief that would result in a judge's
15 disqualification. On its own motion, and with notice
16 to all parties to an appeal, the district court or BAP
17 may request a brief by an amicus curiae.

18 ~~(b)~~(3) *Motion for Leave to File.* The motion
19 must be accompanied by the proposed brief and state:

20 ~~(1)~~(A) the movant's interest; and

21 ~~(2)~~(B) the reason why an amicus brief is
22 desirable and why the matters asserted are
23 relevant to the disposition of the appeal.

24 ~~(c)~~(4) *Contents and Form.* An amicus brief
25 must comply with Rule 8015. In addition to the
26 requirements of Rule 8015, the cover must identify
27 the party or parties supported and indicate whether the
28 brief supports affirmance or reversal. If an amicus
29 curiae is a corporation, the brief must include a
30 disclosure statement like that required of parties by
31 Rule 8012. An amicus brief need not comply with
32 Rule 8014, but must include the following:

33 ~~(1)~~(A) a table of contents, with page
34 references;

34 FEDERAL RULE OF BANKRUPTCY PROCEDURE

35 ~~(2)~~(B) a table of authorities—cases
36 (alphabetically arranged), statutes, and other
37 authorities—with references to the pages of the
38 brief where they are cited;

39 ~~(3)~~(C) a concise statement of the
40 identity of the amicus curiae, its interest in the
41 case, and the source of its authority to file;

42 ~~(4)~~(D) unless the amicus curiae is one
43 listed in the first sentence of subdivision (a)(2), a
44 statement that indicates whether:

45 ~~(A)~~(i) a party’s counsel authored
46 the brief in whole or in part;

47 ~~(B)~~(ii) a party or a party’s counsel
48 contributed money that was intended to fund
49 preparing or submitting the brief; and

50 ~~(C)~~(iii) a person—other than the
51 amicus curiae, its members, or its counsel—

52 contributed money that was intended to fund
53 preparing or submitting the brief and, if so,
54 identifies each such person;

55 ~~(5)~~(E) an argument, which may be
56 preceded by a summary and need not include a
57 statement of the applicable standard of review;

58 ~~(6)~~(F) a certificate of compliance, if
59 required by Rule 8015(a)(7)(C) or 8015(b).

60 ~~(d)~~(5) *Length.* Except by the district court's
61 or BAP's permission, an amicus brief must be no
62 more than one-half the maximum length authorized by
63 these rules for a party's principal brief. If the court
64 grants a party permission to file a longer brief, that
65 extension does not affect the length of an amicus
66 brief.

67 ~~(e)~~(6) *Time for Filing.* An amicus curiae
68 must file its brief, accompanied by a motion for filing

36 FEDERAL RULE OF BANKRUPTCY PROCEDURE

69 when necessary, no later than 7 days after the
70 principal brief of the party being supported is filed.
71 An amicus curiae that does not support either party
72 must file its brief no later than 7 days after the
73 appellant's principal brief is filed. The district court
74 or BAP may grant leave for later filing, specifying the
75 time within which an opposing party may answer.

76 ~~(f)~~(7) *Reply Brief.* Except by the district
77 court's or BAP's permission, an amicus curiae may
78 not file a reply brief.

79 ~~(g)~~(8) *Oral Argument.* An amicus curiae
80 may participate in oral argument only with the district
81 court's or BAP's permission.

82 (b) DURING CONSIDERATION OF WHETHER
83 TO GRANT REHEARING.

84 (1) Applicability. This Rule 8017(b) governs
85 amicus filings during a district court's or BAP's

86 consideration of whether to grant rehearing, unless a
87 local rule or order in a case provides otherwise.

88 (2) *When Permitted.* The United States or its
89 officer or agency or a state may file an amicus-curiae
90 brief without the consent of the parties or leave of
91 court. Any other amicus curiae may file a brief only
92 by leave of court.

93 (3) *Motion for Leave to File.* Rule 8017(a)(3)
94 applies to a motion for leave.

95 (4) *Contents, Form, and Length.*
96 Rule 8017(a)(4) applies to the amicus brief. The brief
97 must include a certificate under Rule 8015(h) and not
98 exceed 2,600 words.

99 (5) *Time for Filing.* An amicus curiae
100 supporting the motion for rehearing or supporting
101 neither party must file its brief, accompanied by a
102 motion for filing when necessary, no later than 7 days

103 after the motion is filed. An amicus curiae opposing
104 the motion for rehearing must file its brief,
105 accompanied by a motion for filing when necessary,
106 no later than the date set by the court for the response.

Committee Note

Rule 8017 is amended to conform to the recent amendment to F.R. App. P. 29, which now addresses amicus filings in connection with petitions for rehearing. Former Rule 8017 is renumbered Rule 8017(a), and language is added to that subdivision (a) to state that its provisions apply to amicus filings during the district court's or BAP's initial consideration of a case on the merits. New subdivision (b) is added to address amicus filings in connection with a motion for rehearing. Subdivision (b) sets default rules that apply when a district court or BAP does not provide otherwise by local rule or by order in a case. A court remains free to adopt different rules governing whether amicus filings are permitted in connection with motions for rehearing, and governing the procedures when such filings are permitted.

The amendment to subdivision (a)(2) authorizes orders or local rules that prohibit the filing of an amicus brief by party consent if the brief would result in a judge's disqualification. The amendment does not alter or address the standards for when an amicus brief requires a judge's disqualification. It is modeled on an amendment to F.R. App. 29(a).

1 **Rule 8018.1. District-Court Review of a Judgment that**
2 **the Bankruptcy Court Lacked the**
3 **Constitutional Authority to Enter**

4 If, on appeal, a district court determines that the
5 bankruptcy court did not have the power under Article III
6 of the Constitution to enter the judgment, order, or decree
7 appealed from, the district court may treat it as proposed
8 findings of fact and conclusions of law.

Committee Note

This rule is new. It is added to prevent a district court from having to remand an appeal whenever it determines that the bankruptcy court lacked constitutional authority to enter the judgment, order, or decree appealed from. Consistent with the Supreme Court's decision in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014), the district court in that situation may treat the bankruptcy court's judgment as proposed findings of fact and conclusions of law. Upon making the determination to proceed in that manner, the district court may choose to allow the parties to file written objections to specific proposed findings and conclusions and to respond to another party's objections, see Rule 9033; treat the parties' briefs as objections and responses; or prescribe other procedures for the review of the proposed findings of fact and conclusions of law.

1 **Rule 8022. Motion for Rehearing**

2 * * * * *

3 (b) FORM OF MOTION; LENGTH. The motion
4 must comply in form with Rule 8013(f)(1) and (2). Copies
5 must be served and filed as provided by Rule 8011. ~~Unless~~
6 ~~the district court or BAP orders otherwise, a motion for~~
7 ~~rehearing must not exceed 15 pages.~~Except by the district
8 court's or BAP's permission:

9 (1) a motion for rehearing produced using a
10 computer must include a certificate under Rule
11 8015(h) and not exceed 3,900 words; and

12 (2) a handwritten or typewritten motion must
13 not exceed 15 pages.

Committee Note

Subdivision (b) is amended to conform to the recent
amendment to F.R. App. P. 40(b), which was one of several
appellate rules in which word limits were substituted for
page limits for documents prepared by computer. The

word limits were derived from the previous page limits using the assumption that one page is equivalent to 260 words. Documents produced using a computer must include the certificate of compliance required by Rule 8015(h); completion of Official Form 417C suffices to meet that requirement.

Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes any items listed in Rule 8015(g).

1 **Rule 8023. Voluntary Dismissal**

2 Subject to Rule 9019. The clerk of the district court
3 or BAP must dismiss an appeal if the parties file a signed
4 dismissal agreement specifying how costs are to be paid
5 and pay any fees that are due. An appeal may be dismissed
6 on the appellant's motion on terms agreed to by the parties
7 or fixed by the district court or BAP.

Committee Note

The rule is amended to provide a reminder that, when
dismissal of an appeal is sought as the result of a settlement
by the parties, Rule 9019 may require approval of the
settlement by the bankruptcy court.

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**Appendix:
Length Limits Stated in Part VIII of
the Federal Rules of Bankruptcy Procedure**

This chart shows the length limits stated in Part VIII of the Federal Rules of Bankruptcy Procedure. Please bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 8015(g).
- If you are using a word limit or line limit (other than the word limit in Rule 8014(f)), you must include the certificate required by Rule 8015(h).
- If you are using a line limit, your document must be in monospaced typeface. A typeface is monofaced when each character occupies the same amount of horizontal space.
- For the limits in Rules 8013 and 8022:
 - You must use the word limit if you produce your document on a computer; and
 - You must use the page limit if you handwrite your document or type it on a typewriter.

	Rule	Document Type	Word Limit	Page Limit	Line Limit
Motions	8013(f)(3)	• Motion • Response to a motion	5,200	20	Not applicable
	8013(f)(3)	• Reply to a response to a motion	2,600	10	Not applicable
Parties' briefs (where no cross-appeal)	8015(a)(7)	• Principal brief	13,000	30	1,300
	8015(a)(7)	• Reply brief	6,500	15	650
Parties' briefs (where cross-appeal)	8016(d)	• Appellant's principal brief • Appellant's response and reply brief	13,000	30	1,300
	8016(d)	• Appellee's principal and response brief	15,300	35	1,500
	8016(d)	• Appellee's reply brief	6,500	15	650

	Rule	Document type	Word limit	Page limit	Line limit
Party's supplemental letter	8014(f)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
Amicus briefs	8017(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief
	8017(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
Motion for rehearing	8022(b)	• Motion for rehearing	3,900	15	Not applicable

Information to identify the case:

Debtor _____ Name	EIN _____
United States Bankruptcy Court for the: _____ District of _____ (State)	[Date case filed for chapter 11 _____ MM / DD / YYYY OR [Date case filed in chapter _____ MM / DD / YYYY Date case converted to chapter 11 _____ MM / DD / YYYY]
Case number: _____	

Official Form 309F (For Corporations or Partnerships)**Notice of Chapter 11 Bankruptcy Case**

12/4517

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name

2. All other names used in the last 8 years

3. Address

4. Debtor's attorney

Name and address

Contact phone _____

Email _____

5. Bankruptcy clerk's office

Documents in this case may be filed at this address.

You may inspect all records filed in this case at this office or online at www.pacer.gov.

Hours open _____

Contact phone _____

6. Meeting of creditors

The debtor's representative must attend the meeting to be questioned under oath.

Creditors may attend, but are not required to do so.

_____ at _____
Date Time

Location: _____

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

For more information, see page 2 ►

7. Proof of claim deadline **Deadline for filing proof of claim:** [Not yet set. If a deadline is set, the court will send you another notice.] or
 [date, if set by the court]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

8. Exception to discharge deadline ~~You~~**If § 523(c) applies to your claim and you seek to have it excepted from discharge, you** must start a judicial proceeding by filing a complaint ~~if you want to have a debt excepted from discharge under 11 U.S.C. § 1141(d)(6)(A) by the deadline stated below.~~

The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.

Deadline for filing the complaint: _____

9. Creditors with a foreign address If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.

11. Discharge of debts Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge under 11 U.S.C. § 1141(d)(6)(A), you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

COMMITTEE NOTE

Official Form 309F (For Corporations or Partnerships), *Notice of Chapter 11 Bankruptcy Case*, is amended at Line 8. Line 8 previously stated that a creditor seeking to have a debt excepted from discharge under § 1141(d)(6)(A) must file a complaint by the stated deadline. That statement has been revised in light of ambiguities in § 1141(d)(6)(A) regarding its relationship with § 523. Specifically, the provision is unclear about whether not only a debt “owed to a domestic governmental unit” but also a debt “owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute” must be of the type described by § 523(a)(2)(A) and (B). The provision is also unclear about whether the procedural requirements of § 523(c)(1) apply, given that § 1141(d)(6)(A) specifically refers to § 523(a) but not to § 523(c). Rather than take a position on the proper interpretation of § 1141(d)(6)(A), the form leaves to creditors the determination of whether § 523(c) applies to their claims, in which case they must commence a dischargeability proceeding by the Rule 4007(c) deadline that is stated on the form.

[Caption as in Form 416A, 416B, or 416D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s): _____

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- Plaintiff
- Defendant
- Other (describe) _____

For appeals in a bankruptcy case and not in an adversary proceeding.

- Debtor
- Creditor
- Trustee
- Other (describe) _____

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: _____

2. State the date on which the judgment, order, or decree was entered: _____

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: _____ Attorney: _____

2. Party: _____ Attorney: _____

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Date: _____

Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney):

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4710 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

Committee Note

The form is amended to include a notice to inmate filers that Director's Form 4710 may be used to provide a declaration under Rule 8002(c)(1) regarding the mailing of a notice of appeal using an institution's legal mail system.

[This certification must be appended to your brief document if the its length of your brief is calculated by maximum number of words or lines of text rather than number of pages.]

Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements Rule 8015(a)(7)(B) or 8016(d)(2)

1. This brief document complies with [the type-volume limitation of Rule 8015(a)(7)(B) or 8016(d)(2) because: Fed. R. Bankr. P. [insert Rule citation; e.g., 8015(a)(7)(B)] [the word limit of Fed. R. Bankr. P. [insert Rule citation; e.g., 8013(f)(3)(A)] because, excluding the parts of the document exempted by Fed. R. Bankr. P. 8015(g) [and [insert applicable Rule citation, if any]]:

- this brief document contains [state the number of] words, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D), or
- this brief uses a monospaced typeface having no more than 10½ characters per inch and contains [state the number of] lines of text, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D).

2. This document complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because:

- this document has been prepared in a proportionally spaced typeface using [state name and version of word-processing program] in [state font size and name of type style], or
- this brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

Signature

Date: _____

Print name of person signing certificate of compliance:

Committee Note

The form is amended to reflect changes in the length limits specified by Part VIII of the Bankruptcy Rules for appellate documents and the broadened requirement for a certificate of compliance under Rule 8015(h). The rule now requires certification of compliance with the type-volume or word limits for briefs filed under Rule 8015(a)(7)(b) 8016(d)(2), or 8017(b)(4), and documents filed under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1).

Fill in this information to identify the case:

Debtor 1 _____
 First Name Middle Name Last Name

Debtor 2 _____
 (Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
 (State)

Case number: _____

Official Form 425A

Plan of Reorganization for Small Business Under Chapter 11

12/17

's **Plan of Reorganization, Dated**

Article 1: Summary

This Plan of Reorganization (the *Plan*) under chapter 11 of the Bankruptcy Code (the *Code*) proposes to pay creditors of (the *Debtor*) from [Specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for: classes of priority claims;
 classes of secured claims;
 classes of non-priority unsecured claims; and
 classes of equity security holders.

Non-priority unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately cents on the dollar. This Plan also provides for the payment of administrative and priority claims.

All creditors and equity security holders should refer to Articles 3 through 6 of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

Article 2: Classification of Claims and Interests

2.01 **Class 1**..... All allowed claims entitled to priority under § 507(a) of the Code (except administrative expense claims under § 507(a)(2), ["gap" period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8)).

[Add classes of priority claims, if applicable]

2.02 **Class 2**..... The claim of , to the extent allowed as a secured claim under § 506 of the Code.

[Add other classes of secured creditors, if any. *Note:* Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).]

- 2.03 **Class 3** All non-priority unsecured claims allowed under § 502 of the Code.
[Add other classes of unsecured claims, if any.]
- 2.04 **Class 4** Equity interests of the Debtor. [If the Debtor is an individual, change this heading to *The interests of the individual Debtor in property of the estate.*]

Article 3: Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees

- 3.01 **Unclassified claims** Under section § 1123(a)(1), administrative expense claims, ["gap" period claims in an involuntary case allowed under § 502(f) of the Code,] and priority tax claims are not in classes.
- 3.02 **Administrative expense claims** Each holder of an administrative expense claim allowed under § 503 of the Code, [and a "gap" claim in an involuntary case allowed under § 502(f) of the Code,] will be paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.
- 3.03 **Priority tax claims** Each holder of a priority tax claim will be paid [Specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].
- 3.04 **Statutory fees** All fees required to be paid under 28 U.S.C. § 1930 that are owed on or before the effective date of this Plan have been paid or will be paid on the effective date.
- 3.05 **Prospective quarterly fees** All quarterly fees required to be paid under 28 U.S.C. § 1930(a)(6) or (a)(7) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code.

Article 4: Treatment of Claims and Interests Under the Plan

4.01 **Claims and interests shall be treated as follows under this Plan:**

Class	Impairment	Treatment
Class 1 - Priority claims excluding those in Article 3	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: "Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan, or the date on which such claim is allowed by a final non-appealable order. Except: [];"] [Add classes of priority claims if applicable]
Class 2 - Secured claim of [Insert name of secured creditor.]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add classes of secured claims if applicable]
Class 3 - Non-priority unsecured creditors	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 - Equity security holders of the Debtor	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

Article 5: Allowance and Disallowance of Claims

- 5.01 **Disputed claim** A *disputed claim* is a claim that has not been allowed or disallowed [by a final non-appealable order], and as to which either:
- (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or
 - (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.
- 5.02 **Delay of distribution on a disputed claim** No distribution will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].

5.03 **Settlement of disputed claims** The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Article 6: Provisions for Executory Contracts and Unexpired Leases

6.01 **Assumed executory contracts and unexpired leases** (a) The Debtor assumes, and if applicable assigns, the following executory contracts and unexpired leases as of the effective date:
[List assumed, or if applicable assigned, executory contracts and unexpired leases.]

(b) Except for executory contracts and unexpired leases that have been assumed, and if applicable assigned, before the effective date or under section 6.01(a) of this Plan, or that are the subject of a pending motion to assume, and if applicable assign, the Debtor will be conclusively deemed to have rejected all executory contracts and unexpired leases as of the effective date.

A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than [] days after the date of the order confirming this Plan.

Article 7: Means for Implementation of the Plan

[Insert here provisions regarding how the plan will be implemented as required under § 1123(a)(5) of the Code. For example, provisions may include those that set out how the plan will be funded, as well as who will be serving as directors, officers or voting trustees of the reorganized Debtor.]

Article 8: General Provisions

8.01 **Definitions and rules of construction** The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions:
[Insert additional definitions if necessary].

8.02 **Effective date** The effective date of this Plan is the first business day following the date that is 14 days after the entry of the confirmation order. If, however, a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the date on which the stay expires or is otherwise terminated.

8.03 **Severability** If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 **Binding effect** The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 **Captions** The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

8.06 **Controlling effect** Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of [] govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

8.07 **Corporate governance** [If the Debtor is a corporation include provisions required by § 1123(a)(6) of the Code.]

Article 9: Discharge

Check one box.

9.01

Discharge if the Debtor is an individual and § 1141(d)(3) is not applicable.

Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

Discharge if the Debtor is a partnership and § 1141(d)(3) is not applicable. On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable. On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt:

- (i) imposed by this Plan; or
- (ii) to the extent provided in § 1141(d)(6).

No discharge if § 1141(d)(3) is applicable. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

Article 10: Other Provisions

[Insert other provisions, as applicable.]

Respectfully submitted,

By The Plan Proponent: _____

By Attorney for the Plan Proponent: _____

Committee Note

Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*, replaces Official Form 25A, *Plan of Reorganization in Small Business Case Under Chapter 11*. It is revised as part of the Forms Modernization Project, making it easier to read, and includes formatting and stylistic changes throughout the form. It is intended to provide an illustrative format, rather than a specific prescription for the form's language or content of a plan in any particular case.

In Article 1, *Summary*, a category is added for priority claims that are required to be classified and provided for under the plan, and the category for "unsecured claims" is revised to provide for only "non-priority unsecured claims." Also, the value that the proponent estimates to be distributed to unsecured claims is revised to clarify that the estimate is limited to non-priority claims. The instruction to identify and briefly summarize priority and administrative claims that will not be paid on the effective date of the plan, to the extent permitted by the Bankruptcy Code, is eliminated because it is duplicative of the information requested in Articles 3 and 4.

In Article 2, *Classification of Claims and Interests*, section 2.01 is revised to clarify that the priority of claims is determined under section 507(a) of the Bankruptcy Code and to provide for the classification of priority claims where necessary and appropriate. *See* 11 U.S.C. § 1129(a)(9)(B). Section 2.03 is revised to clarify that Class 3 "unsecured claims" are limited to "non-priority unsecured claims."

In Article 3, *Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees*, the title and categories of claims have been revised to include all unclassified administrative and priority claims and all fees payable under 28 U.S.C. § 1930 for which the Bankruptcy Code specifies the treatment under the plan. *See* 11 U.S.C. § 1129(a)(9), (12). In the title, the reference to "United States Trustee fees" is changed to "Quarterly and Court Fees" to include all of the fees payable under

28 U.S.C. § 1930. Also, section 3.04 is revised to include all statutory fees under 28 U.S.C. § 1930(a), and quarterly fees payable under 28 U.S.C. § 1930(a)(6) and (7) after the effective date of the plan are moved to a new section 3.05.

Article 4, *Treatment of Claims and Interests Under the Plan*, is revised to conform to the changes made in sections 2.01 and 2.03 of the plan to classify priority claims, if applicable, and to distinguish the non-priority unsecured claims.

In Article 6, *Provisions for Executory Contracts and Unexpired Leases*, references to the assumption of executory contracts and unexpired leases are expanded to include assignment, if applicable. Section 6.01 is revised to clarify that executory contracts and unexpired leases are assumed, and if applicable assigned, under section 6.01(a) and rejected under section 6.01(b) as of the effective date of the plan. Section 6.01(b) is revised to clarify that all executory contracts and unexpired leases that have been previously assumed, and if applicable assigned, or are the subject of a pending motion to assume, and if applicable assign, as of plan confirmation are also excluded from presumed rejection under the plan.

In Article 9, *Discharge*, the third option is revised to delete the reference to Rule 4007(c) and to clarify that corporations will not be discharged of debts to the extent specified in section 1141(d)(6) of the Bankruptcy Code.

Fill in this information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number: _____

Official Form 425B

Disclosure Statement for Small Business Under Chapter 11

12/17

[Name of Proponent]’s Disclosure Statement, Dated [Insert Date]

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I. Introduction

This is the disclosure statement (the *Disclosure Statement*) in the small business chapter 11 case of [] (the *Debtor*). This Disclosure Statement provides information about the Debtor and the Plan filed on [insert date] (the *Plan*) to help you decide how to vote.

A copy of the Plan is attached as *Exhibit A*. **Your rights may be affected.** You should read the Plan and this Disclosure Statement carefully. You may wish to consult an attorney about your rights and your treatment under the Plan.

The proposed distributions under the Plan are discussed at pages [] - [] of this Disclosure Statement. [General unsecured creditors are classified in Class [], and will receive a distribution of [] % of their allowed claims, to be distributed as follows [].]

A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the *Court*) will consider when deciding whether to confirm the Plan,
- Why [the proponent] believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. A separate order has been entered setting the following information:

- Time and place of the hearing to [finally approve this disclosure statement and] confirm the plan,
- Deadline for voting to accept or reject the plan, and
- Deadline for objecting to the [adequacy of disclosure and] confirmation of the plan.

If you want additional information about the Plan or the voting procedure, you should contact [insert name and address of representative of plan proponent].

C. Disclaimer

The Court has [conditionally] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.

II. Background

A. Description and History of the Debtor's Business

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of [_____]. [Describe the Debtor's business].

B. Insiders of the Debtor

[Insert a detailed list of the names of Debtor's insiders as defined in § 101(31) of the United States Bankruptcy Code (the Code) and their relationship to the Debtor.

For each insider, list all compensation paid by the Debtor or its affiliates to that person or entity during the 2 years prior to the commencement of the Debtor's bankruptcy case, as well as compensation paid during the pendency of this chapter 11 case.]

C. Management of the Debtor During the Bankruptcy

List the name and position of all current officers, directors, managing members, or other persons in control (collectively the *Management*) who will not have a position post-confirmation that you list in III D 2.

Name	Position

D. Events Leading to Chapter 11 Filing

[Describe the events that led to the commencement of the Debtor's bankruptcy case.]

E. Significant Events During the Bankruptcy Case

[Describe significant events during the Debtor's bankruptcy case:

- Describe any asset sales outside the ordinary course of business, Debtor in Possession financing, or cash collateral orders.
- Identify the professionals approved by the court.
- Describe any adversary proceedings that have been filed or other significant litigation that has occurred (including contested claim disallowance proceedings), and any other significant legal or administrative proceedings that are pending or have been pending during the case in a forum other than the Court.
- Describe any steps taken to improve operations and profitability of the Debtor.
- Describe other events as appropriate.]

F. Projected Recovery of Avoidable Transfers

Check one box.

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

The Debtor estimates that up to \$ [] may be realized from the recovery of fraudulent, preferential or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

Transaction	Defendant	Amount Claimed

The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. Disputed claims are treated in Article 5 of the Plan.

H. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are listed in *Exhibit B*. [Identify source and basis of valuation.]

The Debtor's most recent financial statements [if any] issued before bankruptcy, each of which was filed with the Court, are set forth in *Exhibit C*.

[The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case is set

forth in *Exhibit D.*]

[A summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in *Exhibit D.*]

III. Summary of the Plan of Reorganization and Treatment of Claims and Equity Interests

A. What Is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. Therefore, the Plan Proponent has *not* placed the following claims in any class:

1. Administrative expenses, involuntary gap claims, and quarterly and Court fees

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 503(b) of the Code. Administrative expenses include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition, and compensation for services and reimbursement of expenses awarded by the court under § 330(a) of the Code. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment. Involuntary gap claims allowed under § 502(f) of the Code are entitled to the same treatment as administrative expense claims. The Code also requires that fees owed under section 1930 of title 28, including quarterly and court fees, have been paid or will be paid on the effective date of the Plan.

The following chart lists the Debtor's estimated administrative expenses, and quarterly and court fees, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Administrative expenses		Paid in full on the effective date of the Plan, unless the holder of a particular claim has agreed to different treatment
Involuntary gap claims		Paid in full on the effective date of the Plan, unless the holder of a particular claim has agreed to different treatment
Statutory Court fees		Paid in full on the effective date of the Plan
Statutory quarterly fees		Paid in full on the effective date of the Plan
Total		

2. Priority tax claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim pursuant to 11 U.S.C. § 511, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor’s estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (Name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
	\$		Payment interval
			[Monthly] payment \$
			Begin date
			End date
			Interest rate %
			Total payout amount \$
	\$		Payment interval
			[Monthly] payment \$
			Begin date
			End date
			Interest rate %
			Total payout amount \$

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. Classes of secured claims

Allowed Secured Claims are claims secured by property of the Debtor’s bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor’s claim is less than the amount of the creditor’s allowed claim, the deficiency will [be classified as a general unsecured claim].

The following chart lists all classes containing Debtor’s secured prepetition claims and their proposed treatment under the Plan:

Class #	Description	Insider?	Impairment?	Treatment
	Secured claim of:	<input type="checkbox"/> Yes	<input type="checkbox"/> Impaired	[Monthly] payment \$
	Name	<input type="checkbox"/> No	<input type="checkbox"/> Unimpaired	
	Collateral description			Payments begin
	Allowed secured amount \$			Payments end
	Priority of lien			[Balloon payment]
	Principal owed			Interest rate %
	Pre-pet. arrearage			Treatment of lien
	Total claim \$			[Additional payment required to cure defaults] \$
	Secured claim of:	<input type="checkbox"/> Yes	<input type="checkbox"/> Impaired	[Monthly] payment \$

Name	<input type="checkbox"/> No <input type="checkbox"/> Unimpaired	Payment begin
Collateral description		Payments end
Allowed secured amount \$		[Balloon payment]
Priority of lien		Interest rate %
Principal owed		Treatment of lien
Pre-pet. arrearage		[Additional payment required to cure defaults] \$
Total claim \$		

2. Classes of priority unsecured claims

The Code requires that, with respect to a class of claims of a kind referred to in §§ 507(a)(1), (4), (5), (6), and (7), each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim, unless a particular claimant agrees to a different treatment or the class agrees to deferred cash payments.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment?	Treatment
	Priority unsecured claim pursuant to section [insert]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	
	Total amount of claims \$		
	Priority unsecured claim pursuant to section [insert]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	
	Total amount of claims \$		

3. Classes of general unsecured claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. [Insert description of § 1122(b) convenience class if applicable.]

The following chart identifies the Plan’s proposed treatment of classes through , which contain general unsecured claims against the Debtor:

Class #	Description	Impairment?	Treatment
	[1122(b) Convenience Class]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert proposed treatment, such as "Paid in full in cash on effective date of the Plan or when due under contract or applicable nonbankruptcy law"]
	General unsecured class	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Monthly] payment \$ _____ Payments begin _____ Payments end _____ [Balloon payment] \$ _____ Interest rate from % [date] _____ Estimated percent of % claim paid _____

4. Classes of equity interest holders

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (*LLC*), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan’s proposed treatment of the classes of equity interest holders: [There may be more than one class of equity interests in, for example, a partnership case, or a case where the prepetition Debtor had issued multiple classes of stock.]

Class #	Description	Impairment?	Treatment
	Equity interest holders	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	

D. Means of Implementing the Plan

1. Source of payments

Payments and distributions under the Plan will be funded by the following:

[Describe the source of funds for payments under the Plan.]

2. Post-confirmation Management

The Post-Confirmation Management of the Debtor (including officers, directors, managing members, and other persons in control), and their compensation, shall be as follows:

Name	Position	Compensation

E. Risk Factors

The proposed Plan has the following risks:

[List all risk factors that might affect the Debtor's ability to make payments and other distributions required under the Plan.]

F. Executory Contracts and Unexpired Leases

The Plan in Article 6 lists all executory contracts and unexpired leases that the Debtor will assume, and if applicable assign, under the Plan. *Assumption* means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Article 6 also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption, and if applicable the assignment, of your unexpired lease or executory contract under the Plan, the proposed cure of any defaults, the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Article 6 or have not previously been assumed, and if applicable assigned, or are not the subject of a pending motion to assume, and if applicable assign, will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

[The deadline for filing a Proof of Claim based on a claim arising from the rejection of a lease or contract is .

Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]

G. Tax Consequences of Plan

Creditors and equity interest holders concerned with how the plan may affect their tax liability should consult with their own accountants, attorneys, and/or advisors.

The following are the anticipated tax consequences of the Plan: [List the following general consequences as a minimum:

- (1) Tax consequences to the Debtor of the Plan;
- (2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation.]

IV. Confirmation Requirements and Procedures

To be confirmable, the Plan must meet the requirements listed in §1129 of the Code. These include the requirements that:

- the Plan must be proposed in good faith;
- if a class of claims is impaired under the Plan, at least one impaired class of claims must accept the Plan, without counting votes of insiders;
- the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and
- the Plan must be feasible.

These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both

- (1) allowed or allowed for voting purposes and
- (2) impaired.

In this case, the Plan Proponent believes that classes are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. What is an allowed claim or an allowed equity interest?

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either

- (1) the Debtor has scheduled the claim on the Debtor’s schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or
- (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was .

[If applicable – The deadline for filing objections to claims is .

2. What is an impaired claim or impaired equity interest?

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a

class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered *impaired* if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is not entitled to vote

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

Even if you are not entitled to vote on the plan, you have a right to object to the confirmation of the Plan [and to the adequacy of the Disclosure Statement].

4. Who can vote in more than one class

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless:

- (1) all impaired classes have voted to accept the Plan; or
- (2) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and the Plan is eligible to be confirmed by “cram down” of the non-accepting classes, as discussed later in Section B.2.

1. Votes necessary for a class to accept the plan

A class of claims accepts the Plan if both of the following occur:

- (1) the holders of more than $\frac{1}{2}$ of the allowed claims in the class, who vote, cast their votes to accept the Plan, and
- (2) the holders of at least $\frac{2}{3}$ in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least $\frac{2}{3}$ in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. Treatment of non-accepting classes of secured claims, general unsecured claims, and interests

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan upon the request of the Plan proponent if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds non-accepting classes is commonly referred to as a *cram down* plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not *discriminate unfairly*, and is *fair and equitable* toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a *cram down* confirmation will affect your claim or equity interest, as

the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as *Exhibit E*.

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. Ability to initially fund plan

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as *Exhibit F*.

2. Ability to make future plan payments and operate without further reorganization

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments and operate the debtor's business.

The Plan Proponent has provided projected financial information. Those projections are listed in *Exhibit G*.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$.

The final Plan payment is expected to be paid on .

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.

V. Effect of Confirmation of Plan

A. Discharge of Debtor

Check one box.

Discharge if the Debtor is an individual and 11 U.S.C. § 1141(d)(3) is not applicable. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

Discharge if the Debtor is a partnership and § 1141(d)(3) of the Code is not applicable. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any debt imposed by the Plan. After the effective date of the Plan your claims against the Debtor will be limited to the debts imposed by the Plan.

Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt:

- (i) imposed by the Plan, or
- (ii) to the extent provided in 11 U.S.C. § 1141(d)(6).

No Discharge if § 1141(d)(3) is applicable. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

[If the Debtor is not an individual, add the following:

“The Plan Proponent may also seek to modify the Plan at any time after confirmation only if

- (1) the Plan has not been substantially consummated and
- (2) the Court authorizes the proposed modifications after notice and a hearing.]

[If the Debtor is an individual, add the following:

“Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to

- (1) increase or reduce the amount of payments under the Plan on claims of a particular class,
- (2) extend or reduce the time period for such payments, or
- (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.]

Debtor _____
Name

Case number _____

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

VI. Other Plan Provisions

[Insert other provisions here, as necessary and appropriate.]

[Signature of the Plan Proponent]

[Signature of the Attorney for the Plan Proponent]

Debtor _____
Name

Case number _____

Exhibits

Exhibit A: Copy of Proposed Plan of Reorganization

Debtor _____
Name

Case number _____

Exhibit B: Identity and Value of Material Assets of Debtor

Debtor _____
Name

Case number _____

Exhibit C: Prepetition Financial Statements
(to be taken from those filed with the court)

Debtor _____
Name

Case number _____

**Exhibit D: [Most Recently Filed Postpetition Operating Report]
[Summary of Postpetition Operating Reports]**

Exhibit E: Liquidation Analysis

Plan Proponent's Estimated Liquidation Value of Assets

Assets		
a. Cash on hand		\$
b. Accounts receivable		\$
c. Inventory		\$
d. Office furniture and equipment		\$
e. Machinery and equipment		\$
f. Automobiles		\$
g. Building and land		\$
h. Customer list		\$
i. Investment property (such as stocks, bonds or other financial assets)		\$
j. Lawsuits or other claims against third-parties		\$
K Other intangibles (such as avoiding powers actions)		\$
Total Assets at Liquidation Value		\$
Less: Secured creditors' recoveries	-	\$
Less: Chapter 7 trustee fees and expenses	-	\$
Less: Chapter 11 administrative expenses	-	\$
Less: Priority claims, excluding administrative expense claims	-	\$
[Less: Debtor's claimed exemptions]	-	\$
(1) Balance for unsecured claims		\$
(2) Total dollar amount of unsecured claims		\$
Percentage of claims which unsecured creditors would receive or retain in a chapter 7 liquidation:		%
Percentage of claims which unsecured creditors will receive or retain under the Plan:		% [Divide (1) by (2)]

Debtor _____
Name

Case number _____

Exhibit F: Cash on hand on the effective date of the Plan

Cash on hand on effective date of plan		\$
Less: Amount of administrative expenses payable on effective date of the Plan	-	\$
Less: Amount of statutory costs and charges	-	\$
Less: Amount of cure payments for executory contracts	-	\$
Less: Other Plan payments due on effective date of the Plan	-	\$
Balance after paying these amounts		\$

The sources of the cash Debtor will have on hand by the effective date of the Plan are estimated as follows:

Cash in Debtor's bank account now		\$
Net earnings between now and effective date of the Plan [State the basis for such projections]		\$
Borrowing [Separately state terms of repayment]		\$
Capital contributions		\$
Other		\$
Total (This number should match "cash on hand" figure noted above)		\$

Debtor _____
Name

Case number _____

Exhibit G: Projections of Cash Flow for Post-Confirmation Period

Committee Note

Official Form 425B, *Disclosure Statement for Small Business Under Chapter 11*, replaces Official Form 25B, *Disclosure Statement in Small Business Case Under Chapter 11*. It is revised as part of the Forms Modernization Project, making it easier to read, and includes formatting and stylistic changes throughout the form. Where possible, the form parallels how businesses commonly keep their financial records. It is intended to provide an illustrative format for disclosure, rather than a specific prescription for the form's language or content.

Part I, *Introduction*, is revised to clarify that the disclosure statement is being provided for purposes of voting on the plan. The instructions that the recipient discuss the plan and disclosure statement with an attorney are revised to clarify that, if the recipient has an attorney, the recipient is not required to consult with the attorney, but may wish to consult with an attorney regardless of whether it has one.

Part I.B., *Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing*, is revised to provide for the court's entry of a separate order setting time frames for hearings and deadlines, *see* Official Form 313, and to delete those dates from the form as redundant. Also, this part is revised to clarify that requests for additional information about the voting procedure, in addition to the plan, should be directed to the plan proponent's representative.

In Part I.C., *Disclaimer*, the instruction to provide the date by which an objection to final approval of the disclosure statement must be filed is eliminated as duplicative of the court's order required under Part I.B. Repetitive language indicating that the court's approval of the disclosure statement is not final is eliminated.

In Part II.C., *Management of the Debtor During the Bankruptcy*, the title is revised to eliminate the reference to the debtor's management before the bankruptcy, and the instruction is revised to limit the required disclosure to those current officers,

directors, managing members, and other persons in control who will not retain a position after confirmation. The instruction to provide information regarding the debtor's pre-petition management is deleted because similar information is required in the *Statement of Financial Affairs of Non-Individuals Filing for Bankruptcy*, Official Form 207. The instruction to provide information regarding the debtor's post-confirmation management is incorporated in Part III.D.2, *Post-confirmation Management*, of the form.

In Part III.B.1, *Administrative expenses, involuntary gap claims, and quarterly and Court fees*, the title and form are revised to clarify that the debtor must provide for the treatment of all fees and expenses owed under 28 U.S.C. § 1930, including quarterly fees and court fees. *See* 11 U.S.C. § 1129(a)(12). Also, the title and form are revised to include involuntary "gap" period claims in an involuntary case under section 502(f) of the Bankruptcy Code. *See* 11 U.S.C. §§ 507(a)(3), 1129(a)(9)(A). The reference to the provision governing the allowance of administrative expenses is corrected and changed from section 507(a) to 503(b) of the Bankruptcy Code. The example is revised to include compensation for services and reimbursement of expenses awarded by the court under section 330(a) of the Bankruptcy Code. The requirement that any agreement to pay professional fees and expenses and other unclassified administrative expenses on a date other than the effective date be in writing is deleted. *See* 11 U.S.C. § 1129(a)(9). The list is revised to include a single category of administrative expenses allowed under section 503(b) of the Bankruptcy Code, deleting as redundant the specific categories for reclamation claims under section 503(b)(9) and approved professional fees and expenses under section 503(b)(2), and to clarify that any holder of an allowed administrative expense claim may agree to payment other than in full on the effective date. *Id.*

Part III.B.2, *Priority tax claims*, is revised to include a reference to section 511 of the Bankruptcy Code governing the rate of interest on tax claims.

Part III.C.2, *Classes of priority unsecured claims*, is revised to comply with section 1129(a)(9)(B), including the addition that any particular claimant may agree to treatment other than cash

payment in full on the effective date and to clarify that any class may agree to deferred cash payments. *See* 11 U.S.C. § 1129(a)(9)(B).

Part III.D.2, *Post-confirmation Management*, is revised to comply with section 1129(a)(5) of the Bankruptcy Code.

Part III.F., *Executory Contracts and Unexpired Leases*, is revised to incorporate changes to Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*. “Exhibit 5.1” is changed to “Article 6” of the plan. References to the assumption of executory contracts and unexpired leases are expanded to include assignment, if applicable, including the requirement that a party objecting to the assignment of an executory contract or unexpired lease under the plan must timely file and serve an objection to the plan. The form is revised to clarify that executory contracts and unexpired leases that have been previously assumed, and if applicable assigned, or are the subject of a pending motion to assume, and if applicable assign, as of plan confirmation are also excluded from presumed rejection under the plan.

In Part IV, *Confirmation Requirements and Procedures*, the introduction is revised to delete references to subsections (a) and (b) to clarify that a plan must satisfy all of the requirements of section 1129 of the Bankruptcy Code. Also, the form is revised to clarify that the requirement to obtain the acceptance of at least one impaired accepting class of claims, excluding any acceptance by an insider, applies only if the plan proposes to impair at least one class of claims. *See* 11 U.S.C. § 1129(a)(10).

In Part IV.B.1, *Votes necessary for a class to accept the plan*, the standards for confirmation in the event the plan has impaired classes have been corrected. *See* 11 U.S.C. § 1129(a)(8)(A), (10) and (b).

The title to Part IV.B.2, *Treatment of non-accepting classes of secured claims, general unsecured claims, and interests*, is revised for clarity to exclude priority claimants. *See* 11 U.S.C. § 1129(b). Also, the requirement that the proponent must request

confirmation pursuant to section 1129(b) of the Bankruptcy Code is added.

In Part IV.D.2, *Ability to make future plan payments and operate without further reorganization*, the requirement that the plan proponent show that the business will have sufficient cash flow to operate the business, in addition to making the required plan payments, is new. See 11 U.S.C. § 1129(a)(11).

In Part V.A., *Discharge of Debtor*, the third option is revised to delete the reference to Rule 4007(c) and to clarify that corporations will not be discharged of debts to the extent specified in section 1141(d)(6) of the Bankruptcy Code.

In the title to Exhibit G, *Projections of Cash Flow for Post-Confirmation Period*, the reference to “and Earnings” is deleted to ensure consistency given the disparate ways in which “earnings” can be interpreted.

Fill in this information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number: _____

Check if this is an amended filing

Official Form 425C

Monthly Operating Report for Small Business Under Chapter 11

12/17

Month: _____ Date report filed: _____
MM / DD / YYYY

Line of business: _____ NAISC code: _____

In accordance with title 28, section 1746, of the United States Code, I declare under penalty of perjury that I have examined the following small business monthly operating report and the accompanying attachments and, to the best of my knowledge, these documents are true, correct, and complete.

Responsible party: _____

Original signature of responsible party _____

Printed name of responsible party _____

1. Questionnaire

Answer all questions on behalf of the debtor for the period covered by this report, unless otherwise indicated.

	Yes	No	N/A
If you answer No to any of the questions in lines 1-9, attach an explanation and label it Exhibit A.			
1. Did the business operate during the entire reporting period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you plan to continue to operate the business next month?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Have you paid all of your bills on time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did you pay your employees on time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you deposited all the receipts for your business into debtor in possession (DIP) accounts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you timely filed your tax returns and paid all of your taxes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Have you timely filed all other required government filings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Are you current on your quarterly fee payments to the U.S. Trustee or Bankruptcy Administrator?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Have you timely paid all of your insurance premiums?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If you answer Yes to any of the questions in lines 10-18, attach an explanation and label it Exhibit B.			
10. Do you have any bank accounts open other than the DIP accounts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Have you sold any assets other than inventory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Have you sold or transferred any assets or provided services to anyone related to the DIP in any way?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Did any insurance company cancel your policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Did you have any unusual or significant unanticipated expenses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Have you borrowed money from anyone or has anyone made any payments on your behalf?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Has anyone made an investment in your business?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

17. Have you paid any bills you owed before you filed bankruptcy?
18. Have you allowed any checks to clear the bank that were issued before you filed bankruptcy?

2. Summary of Cash Activity for All Accounts

19. Total opening balance of all accounts

This amount must equal what you reported as the cash on hand at the end of the month in the previous month. If this is your first report, report the total cash on hand as of the date of the filing of this case. \$ _____

20. Total cash receipts

Attach a listing of all cash received for the month and label it *Exhibit C*. Include all cash received even if you have not deposited it at the bank, collections on receivables, credit card deposits, cash received from other parties, or loans, gifts, or payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit C*.

Report the total from *Exhibit C* here. \$ _____

21. Total cash disbursements

Attach a listing of all payments you made in the month and label it *Exhibit D*. List the date paid, payee, purpose, and amount. Include all cash payments, debit card transactions, checks issued even if they have not cleared the bank, outstanding checks issued before the bankruptcy was filed that were allowed to clear this month, and payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit D*.

Report the total from *Exhibit D* here. - \$ _____

22. Net cash flow

Subtract line 21 from line 20 and report the result here. + \$ _____
This amount may be different from what you may have calculated as *net profit*.

23. Cash on hand at the end of the month

Add line 22 + line 19. Report the result here. = \$ _____
Report this figure as the *cash on hand at the beginning of the month* on your next operating report.
This amount may not match your bank account balance because you may have outstanding checks that have not cleared the bank or deposits in transit.

3. Unpaid Bills

Attach a list of all debts (including taxes) which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit E*. Include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due. Report the total from *Exhibit E* here.

24. Total payables \$ _____
(*Exhibit E*)

4. Money Owed to You

Attach a list of all amounts owed to you by your customers for work you have done or merchandise you have sold. Include amounts owed to you both before, and after you filed bankruptcy. Label it *Exhibit F*. Identify who owes you money, how much is owed, and when payment is due. Report the total from *Exhibit F* here.

25. **Total receivables** \$ _____
(*Exhibit F*)

5. Employees

26. What was the number of employees when the case was filed? _____
27. What is the number of employees as of the date of this monthly report? _____

6. Professional Fees

28. How much have you paid this month in professional fees related to this bankruptcy case? \$ _____
29. How much have you paid in professional fees related to this bankruptcy case since the case was filed? \$ _____
30. How much have you paid this month in other professional fees? \$ _____
31. How much have you paid in total other professional fees since filing the case? \$ _____

7. Projections

Compare your actual cash receipts and disbursements to what you projected in the previous month. Projected figures in the first month should match those provided at the initial debtor interview, if any.

	<u>Column A</u>	-	<u>Column B</u>	=	<u>Column C</u>
	Projected		Actual		Difference
	Copy lines 35-37 from the previous month's report.		Copy lines 21-23 of this report.		Subtract Column B from Column A.
32. Cash receipts	\$ _____	-	\$ _____	=	\$ _____
33. Cash disbursements	\$ _____	-	\$ _____	=	\$ _____
34. Net cash flow	\$ _____	-	\$ _____	=	\$ _____
35. Total projected cash receipts for the next month:					\$ _____
36. Total projected cash disbursements for the next month:					- \$ _____
37. Total projected net cash flow for the next month:					= \$ _____

8. Additional Information

If available, check the box to the left and attach copies of the following documents.

- 38. Bank statements for each open account (redact all but the last 4 digits of account numbers).
- 39. Bank reconciliation reports for each account.
- 40. Financial reports such as an income statement (profit & loss) and/or balance sheet.
- 41. Budget, projection, or forecast reports.
- 42. Project, job costing, or work-in-progress reports.

Committee Note

Official Form 425C, *Monthly Operating Report for Small Business Under Chapter 11*, replaces Official Form 25C, *Small Business Monthly Operating Report*. It is revised as part of the Forms Modernization Project, which was designed so that persons completing the forms would do so accurately and completely. To facilitate this, Official Form 425C is renumbered and includes formatting and stylistic changes throughout the form. The form requires basic financial information that the Internal Revenue Service recommends that businesses maintain.

The form is revised to add a checkbox to indicate if the report is an amended filing. It also clarifies that persons completing the form on behalf of the debtor should answer all questions for the period covered by the report, unless otherwise indicated. All instructions indicating that the U.S. Trustee may waive the attachments to the form are eliminated.

The form is reorganized. The previous sections for *Tax and Banking Information* are eliminated as redundant of information requested elsewhere within the form. The previous sections for *Income, Summary of Cash on Hand, Expenses, and Cash Profit* are revised and incorporated into Section 2, *Summary of Cash Activity for All Accounts*.

In Part 1, *Questionnaire*, a third checkbox column option, “N/A,” has been added to indicate if the question is not applicable. New exhibits to be attached provide explanations for any negative responses to questions 1 through 9 (Exhibit A) and any affirmative answers to questions 10 through 18 (Exhibit B). The questions are reorganized and renumbered, and several are revised. Question 1 is revised to ask whether the business operated during the period. Question 8, regarding the payment of quarterly fees under 28 U.S.C. § 1930(a)(6), is revised to include payments to the bankruptcy administrator. Question 15 is expanded to include payments made on the debtor’s behalf. The question whether the debtor has paid anything to an attorney or other professionals is eliminated, as redundant of information disclosed in Part 6. A new

question 17 is added inquiring whether the debtor has allowed any checks to clear the bank that were issued before the bankruptcy case.

Part 2, *Summary of Cash Activity for All Accounts*, clarifies and simplifies the reporting of the debtor's cash on hand during the period, and the letters of the attached exhibits are revised. References to "income," "expenses," and "cash profit" are eliminated. Line 19 clarifies that the cash on hand at the beginning of the month is the same as the cash on hand reported at the end of the previous month (or the commencement of the case if no prior report has been submitted). Net cash flow during the month, calculated in line 22, is equal to total cash receipts in line 20 (as itemized in Exhibit C) less total cash disbursements in line 21 (as itemized in Exhibit D). Net cash flow is added to the beginning balance to calculate the cash on hand at the end of the month in line 23. The form is revised to add explanations of the receipts and disbursements to be included in Exhibits C and D, as well as an instruction to clarify that bank statements should not be submitted in lieu of the exhibits.

In Part 3, *Unpaid Bills*, the exhibit letter is revised to *Exhibit E*.

In Part 4, *Money Owed to You*, the exhibit letter is revised to *Exhibit F*.

In Part 6, *Professional Fees*, the subheadings "*Bankruptcy Related*" and "*Non-Bankruptcy Related*" are eliminated.

Part 7, *Projections*, is revised to compare the debtor's actual cash receipts, cash disbursements, and net cash flow for the month to the projections in the previous month's report (or if the case is new, that the debtor reported at the initial debtor interview). See 11 U.S.C. § 308(b)(2) and (3). References to "income," "expenses," "cash profit," and the 180 day look-back period are eliminated.

Part 8, *Additional Information*, is revised to clarify which documents should be attached, if available and regardless of whether the debtor prepares them internally. These documents are:

Official Form 425C (Committee Note)

(1) redacted bank statements for each open account; (2) bank reconciliation reports for each account; (3) financial reports such as an income statement (profit & loss) or balance sheet; (4) budget, projection, or forecast reports; and (5) project, job casting, or work-in-progress reports.

Fill in this information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number: _____

Official Form 426

**Periodic Report Regarding Value, Operations, and Profitability of Entities
in Which the Debtor's Estate Holds a Substantial or Controlling Interest**

12/17

This is the *Periodic Report* as of [] on the value, operations, and profitability of those entities in which a Debtor holds, or two or more Debtors collectively hold, a substantial or controlling interest (a "Controlled Non-Debtor Entity"), as required by Bankruptcy Rule 2015.3. For purposes of this form, "Debtor" shall include the estate of such Debtor.

[Name of Debtor] holds a substantial or controlling interest in the following entities:

Name of Controlled Non-Debtor Entity	Interest of the Debtor	Tab #

This *Periodic Report* contains separate reports (*Entity Reports*) on the value, operations, and profitability of each Controlled Non-Debtor Entity.

Each *Entity Report* consists of five exhibits.

- *Exhibit A* contains the most recently available: balance sheet, statement of income (*loss*), statement of cash flows, and a statement of changes in shareholders' or partners' equity (*deficit*) for the period covered by the *Entity Report*, along with summarized footnotes.
- *Exhibit B* describes the Controlled Non-Debtor Entity's business operations.
- *Exhibit C* describes claims between the Controlled Non-Debtor Entity and any other Controlled Non-Debtor Entity.
- *Exhibit D* describes how federal, state or local taxes, and any tax attributes, refunds, or other benefits, have been allocated between or among the Controlled Non-Debtor Entity and any Debtor or any other Controlled Non-Debtor Entity and includes a copy of each tax sharing or tax allocation agreement to which the Controlled Non-Debtor Entity is a party with any other Controlled Non-Debtor Entity.
- *Exhibit E* describes any payment, by the Controlled Non-Debtor Entity, of any claims, administrative expenses or professional fees that have been or could be asserted against any Debtor, or the incurrence of any obligation to make such payments, together with the reason for the entity's payment thereof or incurrence of any obligation with respect thereto.

This *Periodic Report* must be signed by a representative of the trustee or debtor in possession.

Debtor _____
Name

Case number _____

The undersigned, having reviewed the *Entity Reports* for each Controlled Non-Debtor Entity, and being familiar with the Debtor's financial affairs, verifies under the penalty of perjury that to the best of his or her knowledge, (i) this *Periodic Report* and the attached *Entity Reports* are complete, accurate and truthful to the best of his or her knowledge, and (ii) the Debtor did not cause the creation of any entity with actual deliberate intent to evade the requirements of Bankruptcy Rule 2015.3

For non-individual Debtors:

X

Signature of Authorized Individual

Printed name of Authorized Individual

Date _____
MM / DD / YYYY

For individual Debtors:

X

Signature of Debtor 1

Printed name of Debtor 1

Date _____
MM / DD / YYYY

X

Signature of Debtor 2

Printed name of Debtor 2

Date _____
MM / DD / YYYY

Debtor _____
Name

Case number _____

Exhibit A: Financial Statements for [Name of Controlled Non-Debtor Entity]

Debtor _____
Name

Case number _____

Exhibit A-1: Balance Sheet for [Name of Controlled Non-Debtor Entity] as of [date]

[Provide a balance sheet dated as of the end of the most recent 3-month period of the current fiscal year and as of the end of the preceding fiscal year.

Describe the source of this information.]

Exhibit A-2: Statement of Income (*Loss*) for [Name of Controlled Non-Debtor Entity] for period ending [date]

[Provide a statement of income (*loss*) for the following periods:

(i) For the initial report:

- a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and
- b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

Debtor _____
Name

Case number _____

Exhibit A-3: Statement of Cash Flows for [Name of Controlled Non-Debtor Entity] for period ending [date]

[Provide a statement of changes in cash position for the following periods:

(i) For the initial report:

- a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and
- b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

**Exhibit A-4: Statement of Changes in Shareholders'/Partners' Equity (*Deficit*) for [Name of Controlled Non-Debtor Entity]
for period ending [date]**

[Provide a statement of changes in shareholders'/partners equity (*deficit*) for the following periods:

(i) For the initial report:

a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and

b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

Debtor _____
Name

Case number _____

Exhibit B: Description of Operations for [Name of Controlled Non-Debtor Entity]

[Describe the nature and extent of the Debtor's interest in the Controlled Non-Debtor Entity.

Describe the business conducted and intended to be conducted by the Controlled Non-Debtor Entity, focusing on the entity's dominant business segments.

Describe the source of this information.]

Debtor _____
Name

Case number _____

Exhibit C: Description of Intercompany Claims

[List and describe the Controlled Non-Debtor Entity's claims against any other Controlled Non-Debtor Entity, together with the basis for such claims and whether each claim is contingent, unliquidated or disputed.

Describe the source of this information.]

Debtor _____
Name

Case number _____

Exhibit D: Allocation of Tax Liabilities and Assets

[Describe how income, losses, tax payments, tax refunds or other tax attributes relating to federal, state or local taxes have been allocated between or among the Controlled Non-Debtor Entity and one or more other Controlled Non-Debtor Entities.

Include a copy of each tax sharing or tax allocation agreement to which the entity is a party with any other Controlled Non-Debtor Entity.

Describe the source of this information.]

Debtor _____
Name

Case number _____

Exhibit E: Description of Controlled Non-Debtor Entity's payments of Administrative Expenses or Professional Fees otherwise payable by a Debtor

[Describe any payment made, or obligations incurred (or claims purchased), by the Controlled Non-Debtor Entity in connection with any claims, administrative expenses or professional fees that have been or could be asserted against any Debtor.

Describe the source of this information.]

COMMITTEE NOTE

Official Form 426, *Periodic Report Regarding Value, Operations, and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest*, is revised and renumbered as part of the Forms Modernization Project. It implements section 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which requires a chapter 11 debtor to file periodic reports on the profitability of any entities in which the estate holds a substantial or controlling interest. The form is to be used when required by Rule 2015.3, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule.

In addition to formatting revisions, certain aspects of Official Form 426 are changed to make the form easier for the debtor to complete and to better identify the kinds of information that a debtor must disclose in accordance with section 419 of BAPCPA and Rule 2015.3.

Official Form 426 limits its application to entities in which the debtor has a substantial or controlling interest, which the rule defines as a “Controlled Non-Debtor Entity.” The scope of this defined term is guided by subdivisions (a) and (c) of Rule 2015.3.

Official Form 426 eliminates the requirement to file a valuation of the Controlled Non-Debtor Entity. Exhibit A to Official Form 426 requires only periodic filings of the Controlled Non-Debtor Entity’s most recently available balance sheet, statement of income (*loss*), statement of cash flows, and statement of changes in shareholders’ or partners’ equity (*deficit*), together with summarized footnotes for such financial statements. If any of these financial statements are not available, the debtor can seek relief under Rule 2015.3(d).

Exhibit B to Official Form 426 requires a description of the Controlled Non-Debtor Entity's business, which was required by Exhibit C of former Rule 26.

Exhibits C, D, and E to Official Form 426 are new. Exhibit C requires a description of claims between a Controlled Non-Debtor Entity and any other Controlled Non-Debtor Entity. Exhibit D requires disclosure of information relating to the allocation of taxable income, losses, and other attributes among Controlled Non-Debtor Entities. Exhibit E requires disclosure about a Controlled Non-Debtor Entity's payment of claims or administrative expenses that would otherwise have been payable by a debtor.

TAB 7C

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 31, 2016
Denver, Colorado

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Adalberto Jordan
District Judge Jean Hamilton
District Judge Robert J. Jonker
District Judge Amul R. Thapar
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Arthur I. Harris
Diana Erbsen, Esquire
Jeffrey Hartley, Esquire
Richardo I. Kilpatrick, Esquire
Jill Michaux, Esquire
Thomas Moers Mayer, Esquire
Professor Edward R. Morrison

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Michelle Harner, assistant reporter
Circuit Judge Jeffrey S. Sutton, Chair of the Committee on Rules of Practice and
Procedure (Standing Committee)
Professor Daniel Coquillette, reporter to the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee
Officer
Bankruptcy Judge Martin Isgur
Bankruptcy Judge Eugene R. Wedoff
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for
U.S. Trustee
Roy T. Englert, Jr., Esq., liaison from the Standing Committee
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Molly Johnson, Senior Research Associate, Federal Judicial Center
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Michael T. Bates, Lindquist & Venum, LLP, Minneapolis, Minnesota
Edward Boltz, Law Offices of John T. Orcutt, National Association of Consumer
Bankruptcy Attorneys
Michael Delmonico, Ford Motor Credit Company
Michael McCormick, McCalla Rayner, LLC, Roswell, Georgia

Jon M. Waage, Chapter 13 Trustee, Middle District of Florida
Nancy Whaley, National Association of Chapter 13 Trustees
Alice Whitten, Wells Fargo

Discussion Agenda

1. Greetings.

Judge Sandra Ikuta opened the meeting by welcoming everyone to Denver. Participants and visitors introduced themselves. Judge Ikuta noted that Consent Agenda Item 3A had been moved from the consent agenda to the discussion agenda and would be addressed after Discussion Agenda Item 6C.

2. Approval of the minutes from the Fall 2015 Meeting.

The minutes were approved with one edit.

3. Oral reports on meetings of other committees:

- (A) January 7, 2016 meeting of the Committee on Rules of Practice and Procedure (Standing Committee).

Professor Michelle Harner provided this report to the Committee. For bankruptcy, the proposed rule amendments following the Supreme Court's decision in *Stern v. Marshall*, 564 U.S. 462 (2011) (the *Stern* amendments) were approved. There was a report on private information in court documents based on a study conducted by the Federal Judicial Center (FJC); the study suggested, among other things, that bankruptcy had improved its record of preventing disclosure of private information in documents. Also, there was a discussion regarding coordination of efforts regarding similar rules among the rules committees, and the use of parallel language where possible.

Judge Ikuta stated that the Committee will discuss coordination efforts regarding rule changes at the meeting. Judge Jeffrey Sutton added that the Judicial Conference approved the Committee's requests for retroactive approval of technical form changes.

- (B) November 5, 2015 meeting of the Advisory Committee on Civil Rules.

Judge Arthur Harris reported that there are several amendments under consideration by the Civil Rules Committee that may impact the Committee. Two examples are the amendments to Rule 5 and the class action rules. There are several pilot projects under consideration that may have some impact on bankruptcy. There may be some bankruptcy districts included as part of the pilot projects, although this is yet to be decided.

- (C) December 10-11, 2015 meeting of the Committee on the Administration

of the Bankruptcy System (the Bankruptcy Committee).

Judge Erithe Smith reported on the issues considered by the Bankruptcy Committee that could impact the work of the Committee. The Bankruptcy Committee considered fees related to searches for records held by the National Archives and Records Administration (NARA). The suggested fee for a record search is \$10, with an additional fee for actual document retrieval. The Bankruptcy Committee supports this fee as it allows for a more focused document search and an overall better cost for the consumer.

Cost containment is still being discussed by the Bankruptcy Committee, in particular, the consolidation of bankruptcy courts. The concept is to pair bankruptcy courts for a three-year term as a pilot project for study to determine whether there are enough similarities among the courts to permit them to work together on a more permanent basis. The program will be studied by the FJC.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.
 - (A) Suggestion 14-BK-B from CACM to amend various rules regarding redaction of private information in closed cases.

Tab 4A: Memo of March 3, 2016 by Professor Gibson.
-Proposed Rule 9037(h).

This suggestion is from the Court Administration and Case Management Committee (CACM), and is an effort to solve a problem with personally identifiable information on court dockets. Judge Harris noted that although there are solutions to this problem, the bigger issue is preventing the information from getting on the dockets in the first place. As noted, the FJC study was presented to the Standing Committee at its January meeting regarding documents with personally identifiable information.

The subcommittee's discussions focused on potentially adding a new subdivision (h) to Rule 9037. It determined, however, that any amendment to the bankruptcy privacy rule should be coordinated with possible amendments to the appellate, civil, and criminal versions of the privacy rule and that it may make sense for the Committee to wait to publish until other rules committees have had a chance to consider possible amendments. Professor Elizabeth Gibson suggested that the Committee hold its recommended amendment at the Committee level until such time that the other rules committees are ready with any amendments, and Judge Sutton agreed with this proposal.

Judge Harris detailed the proposed amendments as set forth in the agenda book. A suggestion was made to remove the "under seal" language because the CM/ECF system automatically restricts these types of motions from the public, making the proposed language redundant. The group discussed this issue, and the language "motion to redact" as a replacement

for “under seal” was accepted as an amendment. A motion was passed to approve the proposed amendment, including the revised language, and to hold the amendment until the issue has been considered by the other rules committees. Professor Gibson advised the Committee about several stylistic suggestions from the reporter for the Civil Rules Committee, and the Committee agreed that the language approved at this meeting is subject to change as the other rules committees move forward in their discussions, and that it will be discussed at the Committee’s fall meeting.

- (B) Suggestion 15-BK-E to amend or eliminate Rule 4003(c), which currently allocates the burden of proof in exemption litigation.

Tab 4 B: Memo of March 4, 2016 by Professor Harner.
-Supplemental Memorandum of February 11, 2016.

Judge Harris introduced Suggestion 15-BK-E, noting that the Committee had discussed this matter on a preliminary basis at its fall 2015 meeting. Professor Harner then explained the structure of Rule 4003(c), which allocates the burden of proof to the objecting party in exemption litigation, and the general issues raised by Suggestion 15-BK-E. The primary issue posed by the suggestion is whether the federal bankruptcy rules or the law governing the rule of decision controls the burden of proof in exemption litigation. Under the Supreme Court’s holding in *Hanna v. Plumer*, 380 U.S. 460 (1965), a federal rule promulgated under the Rules Enabling Act is valid so long as it is within Congress’s Article I power and is within the scope of the Rules Enabling Act. Considering the parameters of the Rules Enabling Act, and because several states characterize the burden of proof as being procedural, Rule 4003(c) meets the Rules Enabling Act test. The basic test for whether a rule is within the scope of the Rules Enabling Act is whether the rule “really regulates procedure.” Because there is a strong argument that Rule 4003(c) does really regulate procedure, the subcommittee concluded that there is no need to amend Rule 4003(c) at this time. Although the recommendation is to take no action, the issue deserves monitoring as more case law develops.

The Committee discussed this suggestion and adopted the subcommittee’s recommendation to take no action at this time, but to continue to monitor the matter.

5. Report by the Subcommittee on Forms.

- (A) Discussion regarding proposed chapter 13 plan form (Official Form 113), and related proposed amendments to certain bankruptcy rules.

Tab 5A: Memo of March 7, 2016 by Professor Gibson.
-Proposed Rules 3015 and 3015.1.

Judge Dow provided a brief history of the Chapter 13 plan project. Following the two rounds of publication, a compromise regarding the plan was reached involving an opt-out procedure for the official plan form. In evaluating and implementing the compromise, the subcommittee gathered informal input from relevant chapter 13 constituencies. The opt-out

proposal would require the use of a national form for chapter 13 plans unless a district promulgated its own form that met the requirements specified in a new rule. At the fall 2015 meeting, the Committee approved proposed Official Form 113 and the related amendments to Rules 2002, 3002, 3007,¹ 3012, 4003, 5009, 7001, and 9009, but agreed to defer submitting those items to the Standing Committee. The deferral was to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication.

The subcommittee considered these issues and reached out to the relevant groups regarding the proposed amendments to Rule 3015 and new Rule 3015.1, as well as the republication issue. Several groups supported publication of the rules implementing the opt-out proposal. Based on its review, the subcommittee recommended that the Committee approve the publication of the amendment to Rule 3015 and new Rule 3015.1. The rules will implement the opt-out proposal. The subcommittee also recommended the approval of a shortened comment period that would permit for an effective date of December 2017 for the chapter 13 plan form and all related rules. Judge Isgur spoke briefly regarding his support (and his knowledge of general support among his colleagues) for this proposal.

A motion was made to approve the recommendation to publish Rules 3015 and 3015.1 on a shortened comment period, starting in July 2016, with one public hearing, and a proposed effective date of December 2017. The motion was approved.

- (B) Report regarding suggestion for Notice of Change of Address Form (Suggestion 15-BK-D) submitted by Russell C. Simon, Chapter 13 Standing Trustee, on behalf of National Association of Chapter 13 Trustees.

Tab 5B: Memo of March 3, 2016 by Professor Harner.
-Appendices A and B.

Professor Harner advised that the subcommittee recommends no action at this time. Based on research completed by Professor Harner and Jim Waldron, there is no indication of need for this rule change. Mr. Waldron surveyed the clerks of court, and Professor Harner examined the issue of unclaimed funds. Although unclaimed funds are an issue for the courts, it is not necessarily something for the Committee to resolve through the rule-making process. Also, many courts have local forms for changes of address, and it wasn't clear that the existence the local forms impacted the unclaimed funds problem. A suggestion was made to refer the issue to the Bankruptcy Committee.

6. Report by the Subcommittee on Business Issues.

- (A) Recommendation regarding proposed amendments to Official Forms 25A, 25B, 25C, and 26 (including renumbering the forms as 425A, 425B, 425C, and 426).

¹ At the fall meeting, the Committee approved the amendments to Rule 3007 subject to further review by the Subcommittee on Business Issues. As discussed at item 6D, the Business Subcommittee recommends the approval of the published version of the amended rule.

Tab 6A: Memo of March 3, 2016 regarding Official Forms 425A, 425B, and 425C by Professor Harner.
Memo of March 3, 2016 regarding Official Form 426 by Professor Harner.
-Proposed Official Forms 425A, 425B, 425C, and 426.

Forms 425A, 425B, and 425C (formerly Forms 25A, 25B, and 25C) are used in small business cases. Official Forms 425A and 425B set forth an illustrative form plan of reorganization and disclosure statement, respectively, for small business debtors under chapter 11 of the Bankruptcy Code. Official Form 425C is the monthly operating report for small business debtors, which must be filed with the court and served on the U.S. Trustee under section 1107(a) of the Bankruptcy Code. The forms were revised to match the style of the forms modernization project, along with several substantive changes the subcommittee identified several places where Official Forms 425A, 425B, and 425C were inconsistent with the Bankruptcy Code, required additional information to explain fully the debtor's disclosure obligations, or contained duplicative questions. The subcommittee's working group received significant input on Form 425C from the Executive Office of the U.S. Trustee.

Form 426 (formerly Form 26) is used by chapter 11 debtors to disclose certain information regarding entities in which the debtors hold substantial or controlling interests, as mandated by Rule 2015.3. The subcommittee's working group updated the form to match the format used by the forms modernization project, clarified some of the questions, and revised the required exhibits.

The subcommittee recommended that the Committee approve Official Forms 425A, 425B, 425C, and 426 for publication with two minor edits, and a motion to approve the recommendation was passed.

- (B) Suggestion 12-BK-H regarding a new rule allowing a district court to treat a bankruptcy court judgment as proposed findings of fact and conclusions of law.

Tab 6B: Memo of March 4, 2016 with proposed Rule 8018.1 by Professor Gibson.

The subcommittee is proposing a simplified version of the original proposed amendment to Rule 9033, now new Rule 8018.1. The original proposal was considered at the fall 2015 meeting and returned to the subcommittee for further discussion. The rule was changed from an amendment to Rule 9033 to new Rule 8018.1 based on a suggestion at the fall meeting to place the rule within the bankruptcy appellate rules (the Part VIII Rules). The case citation to *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014) was retained in the committee note to explain the basis for the rule. The revised amendment is recommended for publication.

An issue was raised as to whether the rule was necessary, given that it repeats the holding in *Arkison*. Several members commented that the rule is helpful. Professor Gibson noted that the citation to *Arkison* is a reminder to future committee members that if the case is overruled,

the rule must be re-visited. An issue was raised whether the rule should also address circuit court bankruptcy appeals as well.

A motion was made to approve the rule as presented for publication and the motion was approved.

- (C) Report on preliminary research on noticing issues in bankruptcy cases.

Tab 6C: Memo of March 4, 2016 by Professor Harner including consideration of Suggestions 12-BK-M, 12-BK-B, 15-BK-H, and Comment BK-2014 0001-0062 (includes Appendices A, B, and C).
-Appendix D (Memo to reporters and attachment).

Professor Harner completed preliminary research on various noticing issues, and provided a chart of all bankruptcy rule noticing provisions. Unlike other rules, the bankruptcy rules are fairly onerous in terms of noticing responsibilities. Several specific suggestions regarding noticing have been submitted. The subcommittee considered whether to complete a review of all noticing in the bankruptcy rules. The general view was that the burdens and costs often associated with noticing under the current rules may be reduced by the continued use of electronic noticing. The rules committees in general are considering changing electronic noticing as a coordinated effort, and it makes sense to wait to see these changes prior to making any changes to the rules regarding noticing in bankruptcy. The subcommittee will continue to monitor the work of the other committees, and any changes in technology that impact noticing. In addition, the subcommittee indicated that it will review the specific suggestions and comments received to date concerning noticing issues in bankruptcy cases and report back to the full Committee with any specific recommendations.

- (D) Recommendation to remove a previously approved amendment to Rule 3007(a) from the chapter-13-plan-form package of rule amendments and that it be reconsidered in connection with the Advisory Committee's noticing project.

This issue was moved from the consent agenda to the discussion agenda. The subcommittee recommends approving Rule 3007(a)(2) with subparagraph (b) deleted (as originally proposed prior to the fall 2015 meeting), and to leave any remaining issues with the rule for consideration as part of the noticing project.

A motion was made to approve the recommendation to include the originally published version of Rule 3007(a) as part of the chapter 13 package, and the motion was approved.

- 7. Report by the Subcommittee on Privacy, Public Access, and Appeals.

- (A) Recommendation concerning pending amendments to the Federal Rules of Appellate Procedure and whether to publish similar amendments to the Federal Rules of Bankruptcy Procedure.

Tab 7A: Memo of March 7, 2016 by Professor Gibson.

- Proposed Rules 8002, 8011, 8013, 8015, 8016, 8017, 8022.
- Appendix to Part VIII Rules length limits.
- Proposed Official Form 417A (Notice of Appeal).
- Proposed Official Form 417C (Certificate of Compliance with Type-Volume Limit, Typeface Requirements and Type-Style Requirements).
- Proposed Director's Form 4170 (Inmate Filer's Declaration).

Several amendments were needed to parallel the amended Federal Rules of Appellate Procedure that will likely go into effect in December 2016. When the Committee revised the Part VIII rules, the decision was made to maintain consistency with the Appellate Rules. The proposed amendments to Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022 are necessary to maintain the same language. The proposed amendments include the length limits adopted by the Appellate Rules Committee.

In addition, the subcommittee recommends the publication of amendments to Official Forms 417A and 417C and a new appendix to the Part VIII rules that sets out all of the Part VIII document-length limits. Finally, it proposes a Director's form for an inmate filer's declaration, to be promulgated when the other rule and form amendments go into effect (likely December 2018).

Professor Gibson noted several small edits to the proposed amended rules. Also, the proposed amendments to Rule 8017 are meant to go forward on the same publication schedule as the proposed amended Appellate Rules, however, the Appellate Committee is reconsidering the language of the amendment. The subcommittee's recommendation is to track the Appellate Committee's language when it is finalized. Once the changes are adopted by the Appellate Committee, this Committee can decide whether to adopt the proposed language.

Professor Gibson also explained that two amendments to the Appellate Rules were approved for publication by the Appellate Rules Committee but the subcommittee recommends that the Committee not adopt them. The first is a rule for staying the mandate, which is inapplicable to the Part VIII rules. The second was the timing for reply briefs, and the Part VIII rules already deviate from the Appellate Rules in this respect.

A motion was made to approve the recommendation to publish the Part VIII rules, along with the amended Official Forms, and proposed Director's Form. The motion was approved.

8. Report by the Subcommittee on Technology and Cross Border Insolvency.
 - (A) Status report on proposed amendment to Rule 5005(a)(2) to address proposed amendments to Civil Rule 5(d).

The Civil Rules Committee will consider amendments to Civil Rule 5(d) at its meeting this spring. Professor Harner noted that the Criminal and Appellate Rules Committees also were considering amendments to their respective companion rules on electronic filing and service. The Committee would continue to monitor developments with respect to these companion rules.

Professor Gibson explained that the Committee previously approved amendments to Rule 5005(a)(2) that would track the current proposed amendments to Civil Rule 5(d). The Committee discussed the potential value to submitting the amendments to Rule 5005(a)(2) to the Standing Committee for publication on the same schedule as that pursued by the Civil Rules Committee for Civil Rule 5(d) and authorized Professor Gibson to do so with any necessary non-substantive conforming changes.

9. Coordination with Other Committees.

Judge Ikuta advised that the topic is on the agenda to promote more coordination and communication between the five advisory committees, as well as the Standing Committee, regarding potential rule amendments. There should be a heavy presumption in favor of parallel language. An example is the current electronic service rule provisions, for which the Criminal Rules Committee is going a different course for specific reasons. Professor Gibson stated that generally, one committee should lead the way on each issue. She noted the amendments regarding redaction as a good example of the need for coordination. Professor Harner created a chart with rule amendment cross-references for bankruptcy. Rebecca Womeldorf commented on the role of the Rules Committee Support Office (RCSO) in terms of coordination. The RCSO could provide alerts when a suggestion or possible rule amendment seems to impact more than one of the advisory committees, including other Judicial Conference committees.

Information Items

10. Future meetings: Fall 2016 in Washington D.C.

The Committee members will consider the list of hub cities for the spring 2017 meetings, and make a decision regarding location.

11. Deferred Recommendations.

The following previously approved recommendations will be included in the report of this meeting and submitted to the Standing Committee at its next meeting:

- Recommendation to publish amendment to line 8 of Official Form 309F. *Approved at fall 2015 Advisory Committee meeting.*

-Recommendation to publish amendments to Rules 8002 (Time for Filing Notice of Appeal), 8006 (Certifying a Direct Appeal to the Court of Appeal), and 8023 (Voluntary Dismissal). *All approved at fall 2015 Advisory Committee meeting.*

The following recommendations for final approval, all approved at the fall 2015 Advisory Committee meeting, will be bundled with the proposed amendments to Rules 3015 and 3015.1 at Discussion Agenda 5 and submitted to the Standing Committee in the future.

-Chapter 13 Plan Form (Official Form 113) and associated Rules 2002, 3002, 3012, 4003,

5009, 7001, and 9009.

12. New business.

There is one new suggestion regarding Form 101, and the matter was referred to the Forms Subcommittee.

13. Adjourn.

Proposed Consent Agenda

The Chair and Reporters proposed the following items for study and consideration prior to the Advisory Committee's meeting. Other than item 3A, none of the matters were moved to the Discussion Agenda. On motion, the items on the Consent Agenda were approved.

1. Subcommittee on Consumer Issues.

- (A) Recommendation of no action regarding Suggestion 14-BK-G to remove Social Security Number from mailed or electronically distributed 341 notices.

Tab Consent 1A: Memo of March 7, 2016 by Professor Gibson.

- (B) Report on comments concerning proposed amendment to Rule 1006(b) (payment of filing fees in installments) and recommendation to approve the amendment.

Tab Consent 1B: Memo regarding Rules 1001 and 1006(b) of March 3, 2016 by Professors Gibson and Harner.
-Proposed Rule 1006(b).

2. Subcommittee on Forms.

- (A) Recommendation to approve technical changes to Official Bankruptcy Forms 106E/F, 119, 201, 206 Summary, 206E/F, 309A, 309I, 423, and 424.

Tab Consent 2A: Memo of February 29, 2016 by Ms. Healy and Mr. Myers.

- (B) Recommendation of no action regarding suggestion 15-BK-J (seeking clarification of proposed amendments to Rule 9009).

Tab Consent 2B: Memo of March 2, 2016 by Professor Gibson.

- (C) Recommendation of no action regarding suggestion 16-BK-A concerning NAICS code on Official Form 201.

Tab Consent 2C: Memo of March 2, 2016 by Professor Gibson.

3. Subcommittee on Business Issues.

(A) Recommendation to remove a previously approved amendment to Rule 3007(a) from the chapter-13-plan-form package of rule amendments and that it be reconsidered in connection with the Advisory Committee's noticing project.

Tab Consent 3A: Memo of March 3, 2016 by Professor Gibson.

(B) Report on comments and recommendation concerning proposed amendment to Rule 1001(scope of rules and forms) and recommendation to approve the amendment.

Consent Tab 3B: Memo regarding Rules 1001 and 1006(b) of March 3, 2016 by Professors Gibson and Harner.
-Proposed Rule 1001.

DRAFT