

I would prefer to see present Rule 2019 retained but clarified in favor of disclosure by unofficial committees and their ilk. Assuming the Committee thinks otherwise, however, I have several thoughts about the proposed rule.

My specific comments on Proposed Rule 2019 are as follows:

1. Rule 2019(a): I suggest the definition be altered to turn on the value of the debtor or its estate. Possible language might be:

“In this rule, ‘disclosable economic interest’ means any direct or indirect interest in property the value of which interest or property is directly or indirectly dependent on the value of the debtor or the debtor’s estate.”
2. Rule 2019(b): First, it appears that this applies to official committees – Rule 2019(c)(1)(B) excepts official committees, thus suggesting the balance of 2019(c) applies to them. I have several concerns with automatically requiring disclosure by members of official committees, given their statutory basis and the US. trustee’s role in their appointment; I have also always viewed the individual as the committee member – as opposed to the creditor/interest owner entity. It further appears that some of the information required overlaps disclosures that will be made by some entities (professionals retained by a committee) pursuant to Rule 2014(a).

Second, I suggest limiting parties in interest who may file motions under the second sentence. I have seen present Rule 2019 used tactically, and I suspect this new provision would fuel that fire. I agree that it sometimes would be useful to know a party’s possible motives for seeking or opposing relief – but

I question how often a court may actually consider possible motives of the party in deciding a motion (at least absent bad faith). Perhaps limiting the parties who might file a motion under Rule 2019(b) to the U.S. trustee, a trustee appointed in the case or an examiner (or, of course, the court) would work better.

Finally, is Rule 2019(b) intended to reach collective bargaining agents or class action (including class claim) representatives? A party intervening under Rule 2018(b)?

3. Rule 2019(c)(3): I think an unofficial committee arguably represents all persons situated similarly to its members. *See Young v. Higbee Co.*, 324 U.S. 204 (1943). I fear that Rule 2019(c)(3) could be interpreted such as to make unofficial committees impractical – if broadly interpreted; or if narrowly construed, to excuse an unofficial committee from the burdens of *Young*, which I consider important.
4. Rule 2019(d): In several of my large cases, entities whose representatives sat on official committees have been allowed to trade in the debtor’s securities provided they maintain an appropriate Chinese wall. It is my understanding that, without such an arrangement, the U.S. trustee would have found it difficult to form a truly representative committee. I fear this proposed provision will create holes in such a Chinese wall that would be harmful and therefore urge that official committees be excepted from its operation.
5. Generally, as to official committees, I am concerned that the proposed rule invades the U.S. trustee’s turf. I respectfully submit that the court’s role in

policing an official committee and its members has been congressionally established by Code § 1102(a)(4) and adding alternative sanctions, in particular, by the rule is not appropriate.