

**TREATMENT OF CERTAIN LOCAL RULES AND GUIDELINES OF THE
UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT
OF NEW YORK IN CASES COMMENCED ON OR AFTER OCTOBER 17, 2005**

Rule 1020-1 **SMALL BUSINESS ELECTION – Repealed [October 17, 2005]**

~~If a debtor files a written statement of election to be considered a small business, a copy of the statement shall be mailed to all creditors and equity security holders and to the United States Trustee.~~

Rule 3015-1 **CHAPTER 13 PLANS: PAYMENTS EXCEEDING THREE YEARS;
TREATMENT OF DEBTOR'S ATTORNEY'S FEES AS
ADMINISTRATIVE EXPENSE; SERVICE**

(a) Repealed [October 17, 2005]

~~*Payments Exceeding Three Years.* If a chapter 13 plan proposes payments to creditors over a period exceeding three years, then not later than 10 days prior to the date fixed for the hearing on confirmation of the plan, the debtor shall file an application on notice to the trustee, the United States Trustee, and all creditors setting forth the reasons for the longer period of time. If the debtor files both a plan and an application to extend the three year period contemporaneously with the filing of the chapter 13 petition, the debtor shall serve the application upon the trustee and the United States Trustee, but shall be relieved of the obligation of serving it upon all creditors. In such instance, the Clerk shall effectuate service by including the following language, or words of similar import, in the Notice of Commencement of Case that it serves upon all creditors:~~

~~An application has been made to extend payments under the debtor's chapter 13 plan over a period that is longer than three years. Such application may be granted unless an objection is filed not later than 15 days before the date set for the hearing on confirmation of the plan. A copy of the application is available in the Clerk's Office at the Court. If an objection is filed, a hearing shall be held on the date and at the time set for the confirmation hearing.~~

(b) *Notice and Hearing for Attorney's Fees to be Treated as Administrative Expense.* If the compensation, or any portion thereof, of the attorney for a chapter 13 debtor is to be treated as an administrative expense under the plan, the attorney shall provide adequate notice of that fact to the trustee, the United States Trustee, and all creditors. The notice shall be deemed adequate if the plan, or a summary of the plan, is transmitted timely to all parties in interest and states with particularity the timing and amount of any payments to be made to the attorney.

(c) *Service of Plan.* If the notice of commencement of a chapter 13 case is served without a copy of the plan or a summary of the plan, the debtor shall serve the plan or a summary of the plan on the chapter 13 trustee and all creditors.

Rule 3017-1

**PROPOSED DISCLOSURE STATEMENTS IN CHAPTER 9 AND
CHAPTER 11 CASES: TRANSMITTAL AND DISCLAIMER**

(a) *Transmittal.* Unless the Court orders otherwise, the proponent of a plan shall transmit all notices and documents required to be transmitted by Bankruptcy Rule 3017(a). Upon request, the Clerk shall supply the proponent, at a reasonable cost, with any available matrix of creditors for the purpose of preparing address labels.

(b) *Disclaimer Other Than in Small Business Cases.* Except in a case where the debtor ~~has elected to be considered~~is a small business, before a proposed disclosure statement has been approved by the Court, the proposed disclosure statement shall have on its cover, in boldface type, the following language, or words of similar import:

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

(c) *Disclaimer in Small Business Cases.* In a case where the debtor ~~has elected to be considered~~is a small business, after conditional approval but before final approval of a proposed disclosure statement has been given, the proposed disclosure statement shall have on its cover, in boldface type, the following language, or words of similar import:

THE DEBTOR IN THIS CASE ~~HAS ELECTED TO BE CONSIDERED~~IS A SMALL BUSINESS. AS A RESULT, THE DEBTOR IS PERMITTED TO DISTRIBUTE AND HAS DISTRIBUTED THIS DISCLOSURE STATEMENT BEFORE ITS FINAL APPROVAL BY THE COURT. IF AN OBJECTION TO THIS DISCLOSURE STATEMENT IS FILED BY A PARTY IN INTEREST, FINAL APPROVAL OF THIS DISCLOSURE STATEMENT WILL BE CONSIDERED AT OR BEFORE THE HEARING ON CONFIRMATION OF THE PLAN.

Rule 6006-1

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

(a) *Motion to Assume, Reject, or Assign Executory Contract or Unexpired Lease.* A motion to assume, reject, or assign an executory contract or unexpired lease shall be served in accordance with the time limits set forth in Local Bankruptcy Rule 9006-1(b), which may be waived or modified upon the written consent of all parties entitled to notice of the motion. In the event that a nonconsensual order is sought on less than 10 days' notice, Local Bankruptcy Rule 9077-1 shall govern and an actual hearing shall be held.

(b) *Motion to Assume Executory Contract or Unexpired Lease in Chapter 7 Case.* Unless the Court orders otherwise, in a chapter 7 case, a trustee moving to assume an executory contract or unexpired lease of residential real property or personal property of the debtor shall seek to obtain a return date for the hearing on the motion that is within 60 days after the order for relief or, if the time to assume has been extended, before the expiration of such extended period. If the trustee files a motion to assume or to extend the time to assume or reject an executory contract or unexpired lease of residential real property or personal property, and the motion is filed not later than 60 days after the order for relief (or, if the time to assume or reject the executory contract or unexpired lease has been extended previously by order of the Court, before the expiration of the extended time) with a return date no later than 14 days from the date of such filing, the time to assume or reject the executory contract or unexpired lease shall be extended automatically and without court order until the entry of the order resolving the motion.

(c) *Motion to Assume Unexpired Lease of Nonresidential Real Property.* Unless the Court orders otherwise, in a case under any chapter, a debtor, debtor in possession, or trustee moving to assume an unexpired lease of nonresidential real property under which the debtor is the lessee shall seek to obtain a return date for the hearing on the motion that is within ~~60~~120 days after the order for relief or, if the time to assume has been extended, before the expiration of such extended period. If the debtor, debtor in possession, or the trustee files a motion to assume or to extend the time to assume or reject an unexpired lease of nonresidential real property, and the motion is filed not later than ~~60~~120 days after the order for relief (or, if the time to assume or reject the unexpired lease has been extended previously by order of the Court, before the expiration of the extended time) with a return date no later than 14 days from the date of such filing, the time to assume or reject the unexpired lease will be extended automatically and without court order until the entry of the order resolving the motion, except that the time for the debtor, debtor in possession, or trustee to assume or reject such unexpired lease shall not be extended beyond the date that is 210 days after the entry of the order for relief without the prior written consent of the landlord.

(d) *Aircraft Equipment and Vessels.* Unless the Court orders otherwise, a debtor in possession or trustee moving for approval of an agreement to perform all obligations of the debtor pursuant to § 1110(a)(1)(A) of the Bankruptcy Code shall seek to obtain a return date for the hearing on the motion that is within 60 days after the order for relief or, if the time to assume has been extended by order of the Court, before the expiration of such extended period.

(e) *Rolling Stock Equipment.* Unless the Court orders otherwise, a trustee moving for approval of an agreement to perform all obligations of the debtor pursuant to § 1168(a)(1)(A) of the Bankruptcy Code shall seek to obtain a return date for the hearing on the motion that is within 60 days after the date of commencement of the case or, if the time to assume has been extended by order of the Court, before the expiration of such extended period.

**PROCEDURAL GUIDELINES FOR PREPACKAGED
CHAPTER 11 CASES IN THE
UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**III. CRITERIA FOR PREPACKAGED CHAPTER 11 CASE; CONTENTS OF
PREPACK SCHEDULING MOTION.**

A. Content of Prepack Scheduling Motion.

The Prepack Scheduling Motion shall:

(i) represent that (x) the solicitation of all votes to accept or reject the Debtor's plan required for confirmation of that plan was completed prior to commencement of the Debtor's Chapter 11 case or in accordance with §1125(g), and that no additional solicitation of votes on that plan is contemplated by the Debtor, or (y) the solicitation of all votes to accept or reject the Debtor's plan required for confirmation of that plan has been deemed adequate by the Court pursuant to Part III. C.(ii) below such that no additional solicitation will be required;

(ii) represent that the requisite acceptances of such plan have been obtained from each class of claims or interests as to which solicitation is required except as provided in Part III.A.(iii) below; and

(iii) with respect to any class of interests that has not accepted the plan whether or not it is deemed not to have accepted the plan under §1126(g), represent that the Debtor is requesting confirmation under §1129(b); and

(iv) request entry of an order scheduling the hearing (x) on confirmation of the plan and (y) to determine whether the Debtor has satisfied the requirements of either 11 U.S.C. § 1126(b)(1) or 11 U.S.C. § 1126(b)(2), for a date that is not more than ninety (90) days following the petition date.

* * *

C. Filing of Petition After Solicitation Has Commenced But Before Expiration of Voting
Deadline.

Unless the Court orders otherwise, if a Chapter 11 case is commenced by or against the Debtor, or if a Chapter 7 case is commenced against the Debtor and converted to a Chapter 11 case by the Debtor pursuant to 11 U.S.C. § 706(a), after the Debtor has transmitted all solicitation materials to holders of claims and interests whose vote is sought but before the deadline for casting acceptances or rejections of the Debtor's plan (the "Voting Deadline"),

(i) the Debtor and other parties in interest shall be permitted to accept but not solicit ballots until the Voting Deadline; and

(ii) After notice and a hearing the Court shall determine the effect of any and all such votes.

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VIII. ORGANIZATIONAL MEETING; CREDITORS' COMMITTEE.

A. ~~After~~ **Unless the Court finds that a meeting of creditors need not be convened pursuant to §341(e), after** the filing of the Chapter 11 petition, the Debtor shall notify creditors of the date, time and place of the meeting of creditors pursuant to 11 U.S.C. § 341(a), as well as the other information set forth in Part X.B.2 below. The date set for the § 341(a) meeting should be no more than forty (40) days after the filing of the petition.

B. If a meeting of creditors pursuant to 11 U.S.C. § 341(a) has not yet been convened prior to the date upon which the plan is confirmed, no such meeting will be convened if the order confirming the plan or order entered substantially contemporaneously therewith contains a provision waiving the convening of such a meeting.

C. Typically, no creditors' committee will be appointed in a prepackaged Chapter 11 case where the unsecured creditors are unimpaired. However, where members of a pre-petition committee seek to serve as a member of an official creditors' committee, they shall demonstrate to the United States Trustee their compliance with Fed.R.Bankr.P. 2007(b).