

PROCEDURAL GUIDELINES FOR COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN, COMBINED HEARINGS ON APPROVAL OF DISCLOSURE STATEMENT AND CONFIRMATION OF CHAPTER 11 PLAN, AND CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT

The Court has promulgated the following Guidelines to provide the bar and public with a common set of procedures generally to be followed by proponents of chapter 11 plans that seek under 11 U.S.C. § 105(d)(2)(B)(vi) to combine the hearings on the proponent's requests for (x) approval of the disclosure statement for such plan and (y) confirmation of the plan. These Guidelines do not apply in Prepackaged Chapter 11 Cases, which are covered by separate guidelines promulgated by the Court. Nor do they apply in cases under Subchapter V of chapter 11 of the Bankruptcy Code.

Nothing in these Guidelines prevents a judge of this Court from modifying these Guidelines based on the facts before the judge, including in applying 11 U.S.C. § 1125(f) in a small business case under 11 U.S.C. § 101(51)(C).

- (a) A disclosure statement and chapter 11 plan may be combined into one document as long as such document contains adequate information for purposes of 11 U.S.C. § 1125.
- (b) A plan proponent may file a motion, referring to these Guidelines, that requests (i) conditional approval of a disclosure statement, whether combined in one document with the proposed chapter 11 plan or as a separate document with the proposed plan attached as an exhibit; and/or (ii) the scheduling of a joint hearing to consider final approval of the adequacy of a disclosure statement and confirmation of the proposed chapter 11 plan to which it relates; and (iii) related approval of solicitation procedures and forms of ballots and notices.

(c) Before filing a motion under paragraph (b) of these Guidelines, the plan proponent shall file a request on the docket of the case that the Court hold a conference for the purpose of discussing the plan proponent's intention to file such a motion.

(i) A request for a conference pursuant to paragraph (c) above shall, in addition to stating the proponent's reasons for seeking relief under paragraph (b) of these Guidelines, state whether the proponent will seek to:

(A) confirm the proposed plan pursuant to 11 U.S.C. § 1129(b) in the event that the requirements of 11 U.S.C. § 1129(a)(8) are not satisfied because at least one class of claims or interests has voted to reject the proposed plan or is deemed not to have accepted the proposed plan under 11 U.S.C. § 1126(g);

(B) obtain (1) consent to the waiver of any right or claim of any party in interest against any non-debtor party, including, but not limited to, deemed consent to a release or injunction of any right or claim of any party in interest against any non-debtor party, or (2) a non-consensual release or injunction of any right or claim of any party in interest against any non-debtor party, to the extent permitted by applicable law;

(C) provide for treatment under the proposed chapter 11 plan with respect to any class or parties in interest that shall depend on, and differ in accordance with, whether the applicable class or parties in interest vote to accept or reject the plan;

- (D) settle pursuant to the proposed plan any claims of the debtor's estate against insiders, as defined in 11 U.S.C. § 101(31), or by insiders against the debtor's estate;
- (E) settle pursuant to the proposed plan any claims against any third party without such party's consent or with such party's deemed consent;
- (F) seek to expedite or limit the solicitation of acceptances of the plan and/or the notice periods for consideration of the disclosure statement and confirmation of the plan under Fed. R. Bankr. P. 2002 and 3017; and/or
- (G) obtain the Court's conditional approval of the proposed disclosure statement before its service on parties in interest, the solicitation of ballots, and notice of the combined hearing on the proponent's request for final approval of the disclosure statement and confirmation of the chapter 11 plan.

(ii) The Court may in its discretion determine not to hold a conference under paragraph (c) above before the filing of a motion under paragraph (b) of these Guidelines upon the Court's satisfaction with the information provided in any request made in accordance with paragraph (c)(i) above.

(d) Upon obtaining authorization from the Court to file a motion under paragraph (b) of these Guidelines, either at the conference under paragraph (c)(i) above or as determined

by the Court under paragraph (c)(ii) above, the plan proponent may file a motion for relief under paragraph (b) of these Guidelines conforming with paragraph (e) of these Guidelines.

- (i) The motion shall be served on the Office of the United States Trustee for Region 2, any statutory committee (or, if such a committee of unsecured creditors has not been formed, the twenty (20) largest unsecured creditors), and all parties who have formally requested notice and service in the case. The notice served with such motion shall prominently state that the Court may grant the motion if no objection thereto is filed and served in the manner described in section (d)(ii) below.
- (ii) Any objections to a motion under paragraph (d) above must be filed within fourteen (14) days of service of the notice provided in paragraph (d)(i) hereof. Upon the filing and provision to chambers of a certification of no objection, the Court may enter an order granting the motion. If an objection is timely filed, a hearing on the motion will not occur less than three (3) days after expiration of the objection period.
- (iii) The failure to object to a request for conditional approval does not constitute a waiver of any objection to the final approval of a disclosure statement or confirmation of a proposed chapter 11 plan.
- (iv) Under unusual circumstances, such as clear party-in-interest consensus or emergency time constraints imposed on a proposed transaction, the Court may shorten the time periods in (d)(i) and (d)(ii) of these Guidelines.

- (v) The Court also may lengthen the time periods in (d)(i) and (ii) of these Guidelines based on the facts of the case.
- (e) Provisions to be Highlighted. All motions under these Guidelines requesting a joint disclosure statement and confirmation hearing must (i) recite whether the proposed form of confirmation order and/or proposed chapter 11 plan contains any provision(s) of the type listed in paragraph (c)(i) of these Guidelines, and (ii) identify the location of any such provision(s) in the proposed form of confirmation order and/or proposed chapter 11 plan.
- (f) Conditional Approval of the Disclosure Statement. A motion conforming with these Guidelines may seek the Court's conditional approval of the proposed disclosure statement before (i) service of the proposed disclosure statement on parties in interest, (ii) the solicitation of acceptances of the chapter 11 plan, and (iii) notice of the hearing on the proponent's request for a combined hearing on final approval of the disclosure statement and confirmation of the plan.
- (i) When considering such a motion, the Court may require the proposed disclosure statement and any exhibits thereto, including the proposed plan, to be submitted to chambers in editable form;
- (ii) The Court may hold a status conference and communicate either (x) any revisions to the disclosure statement required to obtain the Court's conditional approval, or (y) the Court's view that it cannot conditionally approve the disclosure statement because of flaws in the disclosure statement and/or the plan that require more than relatively simple revisions.

If no objections to the motion are filed, and the Court determines not to propose any revisions to the disclosure statement, then the Court may enter an order conditionally approving the disclosure statement, approving solicitation procedures, and approving the form of notice of the combined hearing on the proponent's request for final approval of the disclosure statement and confirmation of the plan.

1. The plan proponent may accept such proposed revisions and (x) file the amended disclosure statement on the docket and (y) submit to the Court, in accordance with the Court's procedure therefor, a proposed order conditionally approving the disclosure statement (with a copy of the disclosure statement and exhibits thereto marked to show any revisions from the version previously provided to the Court), approving solicitation procedures, and approving the form of notice of the combined hearing on the proponent's request for final approval of the disclosure statement and confirmation of the plan;
2. The plan proponent may schedule a hearing (x) on approval of the disclosure statement as previously provided to the Court with any changes that the proponent determines to make in addition or in response to the Court's comments, as well as (y) to consider any proposed solicitation and notice procedures, but (z) not also jointly on confirmation of the plan; or

3. The plan proponent may withdraw the proposed disclosure statement and plan.

(iii) Any order conditionally approving a disclosure statement, as well as any related notice and the conditionally approved disclosure statement itself, shall prominently state that (1) the Court has only conditionally approved the disclosure statement, subject to notice and a hearing on the proponent's request for final approval thereof, and such conditional approval is subject to the right of any party in interest to timely object to final approval of the disclosure statement and/or confirmation of the chapter 11 plan, (2) the Court's denial of final approval of the disclosure statement may result in the invalidation of the solicitation of ballots submitted prior to such denial, and (3) by such conditional approval, the Court has not determined whether the disclosure statement should be approved on a final basis or whether the chapter 11 plan to which it relates should be confirmed.