

**SUMMARY OF NATIONAL CAPITAL MANAGEMENT'S FEBRUARY 5, 2010
TESTIMONY ON PROPOSED AMENDMENTS TO FED. BANKR. R. 3001(c)**

1) Introduction.

- a) National Capital Management, LLC (“NCM”) purchases and services credit debt obligations which are the subject of secured and unsecured bankruptcy claims from credit issuers in a broad range of industries.
- b) NCM respectfully opposes the proposed amendments that add new requirements to Bankruptcy Rule of Procedure 3001(c) currently under consideration by the Advisory Committee.

2) Reasons for Opposition.

- a) The proposed amendments to the Rule are not necessary because, aside from isolated anecdotal cases, there is *no* evidence that that creditors or claim buyers routinely file overstated proofs of claim.
 - i) No data. There is no data in the Advisory Committee’s record that would justify the proposed changes. The Advisory Committee’s record is silent as to any evidence demonstrating a widespread problem of unsecured creditors filing unsupportable claims in Chapter 13 cases that existing rules of procedures are failing to address.
 - ii) Exaggerated Anecdotes. Some supporters of the proposed rules, particularly the National Consumer Law Center and the National Association of Consumer Bankruptcy Attorneys, partisan and stridently pro-debtor organizations that are not detached and objectively-minded, cite exaggerated anecdotes of claim filing abuses.
 - iii) Existing Penalties. Creditors are restrained by Rule 9011. Federal criminal law presently provides a penalty of up to \$500,000 or imprisonment of up to five years, or both, for filing a fraudulent proof of claim in a bankruptcy case. 18 U.S.C. §§152, 3571.
- b) The proposed amendments may impermissibly abridge and modify a creditor’s (or debtbuyer as successor) statutorily-grounded substantive right to have its claim deemed allowed so long as that claim does not offend any of the nine (9) exceptions set forth in Bankruptcy Code Section 502(b).
 - i) The Rules Enabling Act. A rule of procedure may not abridge, enlarge or modify any substantive legal right.
 - ii) Bankruptcy Code 502(b). A creditor’s claim may be objected to only for the reasons set forth in §502(b); in other words, a creditor’s right to have its claim “deemed allowed” is a substantive, statutorily-grounded right; a right that may not be abridged by a rule of procedure.

- iii) Abridging a Creditor's Substantive Rights. By creating an independent basis for objecting to a creditor's claim or exposing a creditor to sanctions and attorney's fee for merely procedural defects in its proof of claim, the proposed changes constitute an abridgment of that creditor's substantive rights.
- c) The proposed amendments will markedly increase objections to proofs of claim in cases where the debtor has asserted under oath in its bankruptcy Schedule F that debtor owes *without dispute* the very claim that is the subject of the objection.
 - i) Debtor's Bankruptcy Schedules. The debtor's Schedule F typically identifies the creditor (sometimes an intermediary assignee), the amount of the debt and a partial account number. In the overwhelming number of consumer Chapter 13 cases, debtors list creditor's claims *without dispute*.
 - ii) 3001(c) Objections. Debtors routinely object to claims on the grounds that the proof of claim filed by the creditor lacked sufficient documentation, notwithstanding that the very claim being objected to may be listed with specificity in Schedule F without dispute.
 - iii) Internal Inconsistency. These proposed changes not only would do nothing to address that internally inconsistency, but would amplify it by adding newly-created procedurally-based grounds for filing claim objections.
- d) The proposed changes will supersede the long-standing directive that the bankruptcy rules be construed to secure the "just, speedy, and inexpensive determination of every case and proceeding" by heaping unnecessary burdens, sanctions, attorney's fees and costs on creditors who desire to participate in the process.
 - i) De facto Disallowance. Given the exposure to "sanctions" and "attorney's fees", creditors and claim buyers may opt not to file proofs of claim in cases where they are unable, or unwilling, to meet the proposed change's procedural requirements. Under the pretense of requiring documents to substantiate a claim, the proposed changes constitute an unjust, and indeed a camouflaged, attempt to discourage creditors from filing and selling bankruptcy claims.
- 3) Recommendation: Absent significant evidence supporting the need for any amendment and demonstrating that any proposed amendments are tailored that proven need, we recommend the Advisory Committee decline to adopt the proposed amendments to Rule 3001(c) as unnecessary and inconsistent with the just, speedy and inexpensive determination of claims.