

**INTERIM RULES AMENDMENTS AND RULES ADDITIONS
TO IMPLEMENT CHANGES MADE BY THE
2005 BANKRUPTCY REFORM LEGISLATION**

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Act”) exceeds 500 pages in length and touches on nearly every aspect of bankruptcy cases. It introduces the concept of a means test as a requirement of eligibility for chapter 7 relief, adds an entirely new chapter to the Code (chapter 15 governing cross border insolvencies), and creates new categories of debtors and cases (health care businesses and small business cases), among other things. Many of these provisions necessitate the amendment or creation of bankruptcy rules and forms.

The provisions of the Act generally are effective on October 17, 2005. Several of its provisions were effective upon the enactment date, April 20, 2005, while several others have individualized effective dates. Most importantly, however, the general effective date of 180 days after enactment does not provide sufficient time to promulgate rules under the Rules Enabling Act to implement the statutory changes. Thus, the attached proposed rules are offered for adoption through standing or general orders by each of the district courts. The proposed forms are offered for adoption by the Judicial Conference as Official Forms. For the sake of clarity, these rules and forms are titled “Interim Rules and Forms” to denote that they are expected to apply to bankruptcy cases only from October 17, 2005, until final rules and forms are promulgated and effective under the regular Rules Enabling Act process.

Adoption of these Interim Rules and Forms will bridge the gap between the Act’s effective date and the promulgation of rules by the Supreme Court through the regular Rules Enabling Act process. In the meantime, the Advisory Committee on Bankruptcy Rules and the Committee on the Rules of Practice and Procedure will be moving forward with the study and preparation for publication of proposed rules and forms to implement the changes to the Bankruptcy Code contained in the Act. These proposals likely will include all of the attached Interim Rules and Forms, either in their current form, or as the Committees might revise them prior to further publication. Other proposed amendments will also be included in the package of proposals that will be published for comment, most likely in August 2006. The Committees hope and expect that practice under these proposed rules will generate commentary on the rules that will guide them in the process of the proposal of amendments under the Rules Enabling Act.

The amendments and additions are broken out into five categories of rules amendments: consumer; business; health care; cross border; and appeals. Several rules are amended by more than one category of the Interim Rules, and each amendment is described within each category. A total of forty rules either are added to or amended by these Interim Rules. There are ten new rules. Among the Consumer Rules, Rule 5008 is new, and Rule 1020 is the only new rule in the Business Rules. New rules included in the Health Care Rules are Rules 1020.1, 2007.2, 2015.1, 2015.2, 2021, and 6014. The Cross Border rules include new rules 1002.1 and 5012.

A number of the amendments are relatively brief and technical in nature. Others are more extensive because they implement entirely new concepts added to the Code by the Act.

Those amendments that are designated as technical are those that simply update the rule to adopt new terminology or definitions included in the Act, or that adopt a deadline set out in the statute. The designation of a particular rule as “technical” appears immediately after the boldface identification of the rule. The following is a brief description of the Interim Rules set out by the separate categories.

CONSUMER RULES

Rule 1006 is amended to implement the provisions in the Act that, for the first time on a nationwide basis, authorize the courts to waive the payment of filing fees by debtors. The amendment directs the debtor to use the Official Form for requesting a fee waiver. The amendment also permits the court to allow the payment of the filing fee in installments even if the debtor has made a payment to an attorney in connection with the case.

Rule 1007 is amended to reflect the expanded obligations of debtors to file a variety of documents and materials by the Act. The amendments address the filing of current monthly income statements and other forms to implement the means test imposed by the 2005 bankruptcy reform legislation. There are also changes to require debtors to file additional materials such as payment advices and education income retirement accounts, as well as certificates for the completion of credit counseling and financial management programs mandated by the legislation. **This rule is also otherwise amended by the Business and Cross Border Rules.**

Rule 1009 (technical) is amended to correct a cross reference to the Bankruptcy Code due to the restructuring of § 521 of the Code by the Act.

Rule 1017 is amended to implement the amendments to § 707(b) of the Code by the Act that permit parties in interest to move to dismiss the chapter 7 case of an individual whose debts are primarily consumer debts as abusive. The amendments to subdivision (e) of the rule preserve the time limits already in place for § 707 motions. The rule also requires that a motion filed under § 707(b)(3) state with particularity the circumstances that present the alleged abuse.

Rule 1019 is amended because the Act is likely to lead to more conversions of cases to and from chapters 7 and 13. This creates additional problems with deadlines for filing actions to determine the dischargeability of debts under § 523(a)(6) of the Code, and the rule is amended to address those issues. It preserves a creditor’s right to bring these actions in the event that a case is converted from chapter 13 to chapter 7. The amendments also preserve deadlines for motions to dismiss a case under § 707(b) upon conversion of a case from chapter 13 to chapter 7.

Rule 2002 is amended to reflect the 2005 revisions to § 704 of the Bankruptcy Code in the Act requiring the court to provide a copy to all creditors of a statement by the United States trustee as to whether the debtor’s case would be presumed to be an abuse under § 707(b) not later than five days after receiving it. **This rule is also otherwise amended by the Business and Cross Border Rules.**

Rule 3002 is amended to conform to changes in the Code made by the Act. Under § 502(b)(9),

governmental units asserting claims based on tax returns filed under § 1308 during a chapter 13 case have a different time period for filing proofs of those claims. Paragraph (c)(1) is amended to conform to §502(b)(9). **This rule is also otherwise amended by the Business Rules.**

Rule 4002 is amended to implement the provisions of the Act that expand the obligation of debtors to provide additional evidence of personal identity, current income, and recent Federal income tax returns or tax transcripts. Amendments to the rule had been published for comment in August 2004, and this amendment carries forward from that proposed amendment the debtor's obligation to provide evidence of financial accounts existing at the time of the commencement of the case.

Rule 4003 is amended to reflect the Act's addition of § 522(q) to the Bankruptcy Code. Section 522(q) imposes a \$125,000 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Bankruptcy Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522 late in the case, and thus the 30-day period for objections would not be appropriate for this provision. Thus, a new subdivision (b)(2) is added to provide a separate time limit for this provision.

Rule 4004 is amended to implement several provisions added to the Bankruptcy Code by the Act. The amendments address the postponement of the court's entry of a discharge pending the debtor's completion of a financial management program as well as the need to postpone the discharge to consider whether the debtor has committed a felony or owes a debt arising from certain causes of action within a particular time frame.

Rule 4006 is amended to reflect the Act's revision of the Bankruptcy Code that requires individual debtors to complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, no discharge will be entered, but the case may be closed. The amended rule provides notice to parties in interest, including the debtor, that no discharge was entered.

Rule 4007 is amended because the Act expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c). Subdivision (d) is amended to expand the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within § 523(c). However, the 2005 revisions to § 1328(a) do not include a reference to § 523(a)(6), which is the third provision to which § 523(c) refers. Thus, subdivision (d) establishes a deadline for filing a complaint in a chapter 13 case only for § 523(a)(6), rather than for all of the categories of claims under § 523(c).

Rule 4008 is amended to reflect the Act's addition of §§ 524(k)(6)(A) and 524(m) to the Bankruptcy Code. The provisions require that a debtor file a signed statement in support of a reaffirmation, and authorize a court to review the agreements if, based on the assertions on the statement, the agreement is presumed to be an undue hardship. The rule revision requires that an accompanying statement show the total income and expense figures from schedules I and J and

an explanation of any discrepancies. This will allow the court to evaluate the reaffirmation for undue hardship as § 524(m) requires.

Rule 5008 is new. The 2005 revisions to § 342 of the Bankruptcy Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, this rule requires that the clerk send a second notice.

BUSINESS RULES

Rule 1007 (technical) is amended to recognize the limitation on the extension of the time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Bankruptcy Code by the Act in 2005, establishes a specific standard for the courts to apply in the event that the debtor in possession or the trustee seeks an extension for the filing of these forms for a period beyond 30 days after the order for relief. **This rule is also otherwise amended by the Consumer and Cross Border Rules.**

Rule 1020 is essentially a new rule that reflects the change in the definition of a small business debtor made by the Act. The former rule is deleted, and the new rule provides a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor. It also provides procedures for bringing to the court disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor's self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule. Subdivision (c), which relates the presence and activity of a committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor."

Rule 2002 is amended in several respects to implement amendments made to the Bankruptcy Code by the Act. Subdivision (c) is amended to require that a trustee leasing or selling personally identifiable information under section 363(b)(1)(A) or (B) of the Code include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information. Subdivision (p)(1) is added to the rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses now required by § 1514(d) of the Code. This portion of the rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest. Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may

extend the notice period for creditors with foreign addresses. The court also may shorten the additional notice time if circumstances so warrant. **This rule is also otherwise amended by the Consumer Rules and the Cross Border Rules.**

Rule 2003 (technical) is amended to implement the Act's amendment to § 341(e) of the Bankruptcy Code. The amendment to the rule authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened if the debtor had solicited acceptances of a plan prior to the commencement of the case. The amended rule recognizes that a meeting of creditors may not be held in those cases.

Rule 2007.1 is amended to reflect the change in the manner of the election and appointment of trustees in chapter 11 cases. The 2005 amendments to the Bankruptcy Code reduce somewhat the role of the United States trustee in the appointment process, so the amendments to Rule 2007.1 limit that role and require the elected trustee to file an affidavit setting forth information regarding that person's connections with creditors and others with an interest in the case.

Rule 3002 is amended to implement several provisions of the Bankruptcy Code amended or added to the Code by the Act. Paragraph (c)(1) of the rule is amended to conform to §502(b)(9) under which governmental units asserting claims based on tax returns filed under § 1308 during a chapter 13 case have a different time period for filing proofs of those claims. **An alternative form of this amendment is also contained in the "Consumer" amendments set out above.** Paragraph (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with Section 1514(d), which was added to the Code in 2005 and requires that the rules provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code. *[The Business Subcommittee is still considering whether the amendment to subdivision (c)(6) should be withdrawn from the package of interim rules and just included in the package of final rules.]*

Rule 3003 (technical) is amended to implement § 1514(d), which was added to the Code by the Act in 2005, by making the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. Section 1514(d) requires that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims. *[The Business Subcommittee is still considering whether this amendment should be withdrawn from the package of interim rules and just included in the package of final rules.]*

Rule 3016 is amended to recognize that, in 2005, the Act added §1125(f)(1) to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases. The Act also requires the promulgation of official forms for plans and disclosure statements in small business cases. Section 1125(f)(2) provides that the court may approve a disclosure statement

submitted on the appropriate official form promulgated under these rules or on a standard form approved by the court. New subdivision (d) of this rule is added to implement those provisions. *[The Advisory Committee will consider forms for plans and disclosure statements in small business cases at its September meeting.]*

Rule 3017.1 (technical) is amended to implement the Act's amendment to the Bankruptcy Code that permits the court in a small business chapter 11 case to conditionally approve a plan intended to provide adequate information. The plan is then treated as a disclosure statement under this rule.

Rule 3019 is amended because the Act added to the Bankruptcy Code a provision for the modification of plans filed by individual debtors in chapter 11 cases. The rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

Rule 5003 (technical) is amended to implement the addition of § 505(b) (1) to the Code by the Act in 2005. That section allows taxing authorities to designate addresses to use for the service of a request under that subsection.

Rule 6004 is amended to implement sections 332 and 363(b)(1)(B), which the Act added to the Code in 2005. Those sections require the appointment of a consumer privacy ombudsman in certain circumstances when a debtor proposes to sell personally identifiable information.

Rule 9006 (technical) is amended to recognize that extensions of time for filing schedules and a statement of financial affairs by small business debtors cannot be extended beyond the time set in § 1116(3) of the Code as added by the Act in 2005. This amendment operates in tandem with the amendment to Rule 1007(c) to recognize this restriction on expanding the time to file these documents in small business cases.

HEALTH CARE RULES

Rule 1021 is new. It is added to the rules to implement § 101(27A) of the Code, added by the Act in 2005. That section defines health care businesses, and the rule authorizes parties in interest to seek an order identifying a debtor as a health care business. The debtor, in a voluntary case and the petitioning creditors in an involuntary case will make the health care business identification on the petition. If a party in interest disagrees with the determination by the debtor or petitioning creditors that the debtor is not a health care business, the party can move for an order designating the debtor as a health care business.

Rule 2007.2 is new. It is added to the rules to govern the appointment of a health care ombudsman in the first 30 days of all health care business cases unless the court finds that the appointment is not necessary for the protection of patients. This is a new obligation created by § 333 of the Code added by the Act in 2005. The rule recognizes this obligation and provides that any party in interest that believes that the appointment of a health care ombudsman is unnecessary in the case must file its objection to the appointment within the first twenty days of the case. That entity also must notify other interested parties that the objection has been filed.

The court will then consider the objection and determine whether to order the United States trustee to make the appointment. In the absence of any timely objections, the court will enter an order directing the United States trustee to appoint the ombudsman. The rule also permits parties in interest to file motions either to appoint or terminate the appointment of these ombudsmen, and it sets forth the procedure for approving the appointment.

Rule 2015.1 is new. It is added to implement § 333(b) and (c) added to the Code in 2005 by the Act. The rule requires ten days notice of reports to be made by the health care ombudsman and sets out the entities to whom the notice must be given. The rule permits the notice to relate to a single report or to periodic reports to be given throughout the course of the case. That is, the notice may serve as notice of all reports to be given by the ombudsman at specified intervals during the case. Interested parties will then be able to review the written reports or attend the hearings at which oral reports might be given. The Rule also implements § 333(c)(1) added to the Code in 2005 by the Act. The statute requires court approval of the ombudsman's review of the patient records with the imposition of appropriate restrictions to protect the confidentiality of the records. The rule requires the ombudsman to notify the United States trustee, the patient, and any family member or contact person whose name and address have been given to the trustee or the debtor that the ombudsman is seeking access to otherwise confidential patient records. This provides an opportunity for the patient and United States trustee to appear and be heard on the matter and should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality.

Rule 2015.2 is new. It is added to implement § 704(a)(12) which was added to the Code in 2005 by the Act. That section authorizes the trustee to relocate patients when a health care business debtor's facility is being closed. The statute permits the trustee to take this action without the need for any order from the court, but the notice required by this rule will enable patients who contend that the trustee's actions violate § 704(a)(12) to have those issues resolved.

Rule 6011 is new. It is added to implement § 351(1) which was added to the Code in 2005 by the Act. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The statute also requires that individualized notice be sent to each patient and every family member and other contact person to whom the debtor is providing information about the patient's health. Under subdivision (a) of the rule, the court must approve the notice. Subdivision (b) establishes minimum requirements for the notice to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (c) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process.

CROSS BORDER RULES

Rule 1002.1 is new. It is added to implement the provisions of § 1511 of the Code enacted in 2005 as a part of the Act. That provision requires the foreign representative to advise the court that granted recognition of the foreign proceeding that the representative intends to commence a case under another chapter of the Code. Interested parties can then be notified of the

representative's intentions and can take appropriate action in that court.

Rule 1007 is amended to require that any entity filing a petition for recognition to commence a case under chapter 15 of the Code file a list of entities with whom the debtor is engaged in litigation in the United States. This chapter was added to the Code by the Act. The recognition of a foreign proceeding makes § 362 of the Code operative in the case, so the amendment to the rule requires the entity filing a petition for recognition to file a list of parties to pending litigation with the debtor. These entities can then be notified prior to the imposition of the automatic stay that the petitioner has sought relief under chapter 15. **This rule is also otherwise amended by the Consumer and Business Rules.**

Rule 1010 is amended to implement the changes to the Code made by the Act. It repealed § 304 of the Code and replaced it with chapter 15 governing both ancillary and cross-border cases. Under that chapter, a foreign representative commences a case by filing a petition for recognition of a pending foreign proceeding. This amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. The rule also provides that the court may direct that service be made on additional entities as appropriate.

Rule 1011 (technical) is amended to reflect the 2005 enactment of the Act which repealed § 304 of the Code and added chapter 15 to the Code. Section 304 covered cases "ancillary to foreign proceedings", while chapter 15 of the Code governs cross-border insolvencies and introduces the concept of a petition for recognition of a foreign proceeding. The amendment implements this new terminology.

Rule 2002 is amended by adding subdivision (p) to the rule to require that notice be given to the debtor and entities against whom provisional relief is sought that a petition for recognition of a foreign proceeding has been filed. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors. **This rule is also otherwise amended by the Business and Consumer Rules.**

Rule 2015 is amended by inserting a new subdivision (d) to implement the 2005 enactment of § 1518 of the Code as a part of the Act. That section directs the foreign representative to make reports to the court, and the rule sets the time for the filing of those reports. Former subdivision (d) is renumbered as subdivision (e). **This rule is also amended by the Business Rules.**

Rule 5012 is new. It is added to implement § 1525 of the Code which was added by the Act. The rule provides an opportunity for parties in the case to take appropriate action prior to the communication between courts to establish procedures for the manner of the communication and the right to participate in the communication.

DIRECT APPEAL RULES

Rule 8001 is amended to implement the direct appeal provisions that the Act added in 2005. The Act amended 28 U.S.C. § 158 to authorize appeals directly to the courts of appeals upon certification either by the bankruptcy or district court or the bankruptcy appellate panel. Certification is also available to the parties either on request to the court, or if all of the parties agree. The rule sets out the procedure for obtaining a certification, whether by the court on its own initiative, or upon request of a party. The rule also provides that review by the court of appeals, which is at its discretion, requires that a party file a timely notice of appeal.

Rule 8003 is amended to implement the direct appeal provisions that the Act added in 2005. It provides that a certification by the lower court or the allowance of leave to appeal by the court of appeals is deemed to satisfy the requirement for leave to appeal even if no motion for leave to appeal has been filed.

Rule 8004 (technical) is amended to add to the clerk's service obligations the duty to serve notice of the initiation of a certification proceeding under amended Rule 8001.