

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: BUSINESS RULES
DATE: JULY 23, 2005

While the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Act”) is mostly widely recognized for its consumer bankruptcy provisions, it also includes many changes to the business provisions of the Code. Most of the changes do not create any need for amendments or additions to the Bankruptcy Rules, but some of the changes require rules amendments to implement the Act.

The rules amendments and additions will implement changes to the Bankruptcy Code that redefine small business debtors and small business cases and create certain consequences from holding that status. For example, small business debtors have a different final deadline for filing schedules and a statement of affairs. There are new reporting requirements, and there is the potential for a chapter 11 small business debtor’s plan to serve also as a disclosure statement.

The Act also amends chapter 11 significantly as it applies to individual debtors. The discharge is postponed as compared to current law, and the standards for confirmation of plans in those cases has changed as well. The Act also introduces the concept of a consumer privacy ombudsman who protects the interests of those whose personal identifiers might be sold to a third party typically through the sale of customer lists and the like. These changes all require corresponding amendments or additions to the rules.

The rules amendments or additions can be generally broken down into three categories.

Several of the changes are “technical amendments” in that they simply amend the rules to correct or insert cross references. The bulk of the changes are “conforming amendments” in that they amend or add to the rule language necessary to conform to the statutory amendment of the Code by the Act. Finally, some of the rules amendments and additions are “significant amendments” in that they implement the provisions of the Act in a manner beyond simply conforming to the statutory change.

The amendments to Rules 3003 and 9006 are **technical amendments** and will not be described further in this memorandum. The amendment to Rule 3003, while technical, may be postponed depending on action taken by the Committee on Rule 3002(c)(6) which is discussed below in the significant amendments.

The following **conforming amendments** are briefly described in numerical order:

Rule 1007 is amended to reflect that § 1116(3) of the Code limits extensions of time to file schedules and a statement of affairs in a small business case;

Rule 2002(b) is amended to recognize that under § 1125(f) the court may find that a plan can serve as a disclosure statement;

Rule 2002(c) is amended to require a specific statement in notice of a sale of personally identifiable information under § 363(b)(1)(A) or (B) of the Code;

Rule 2003 is amended to recognize that under § 341(e) of the Code, the court can order that no meeting of creditors be held in the case;

Rule 2007.1 is amended to implement the amendments to § 1104(b)(2) of the Code by providing

that the United States trustee will certify the election of a chapter 11 trustee;

Rule 3016 is amended to reflect the possibility of a combined plan and disclosure statement in a small business chapter 11 case and to recognize that proponents of plans may file standard form plans and disclosure statements. Although this is just a conforming amendment, the Advisory Committee must decide whether the proposed new Rule 3016(d) should be excluded from the package of Suggested Interim Rules. Rule 3016(d) provides that a court in a small business case may confirm a plan and approve a disclosure statement that conforms to the official form or to a local form. Since we do not have an official form for the plan and disclosure statement at this time, and will not have it ready for publication before the September meeting, perhaps it makes sense to exclude Rule 3016(d) from the Suggested Interim Rules;

Rule 3017.1 is amended to conform to the changed definition of a small business whereby an election to be a small business is no longer available under the Code;

Rule 3019 is amended to conform to the changes in the provisions governing individual debtors in chapter 11 cases and the new provisions governing the modification of confirmed plans; and

Rule 5003 is amended to recognize the expanded coverage of § 505(b)(1) which allows Federal, State, and local governmental units to designate addresses at which they wish to receive notices.

The Business Rules include the following **significant amendments**:

Rule 1020 is amended to implement the new definition of small business debtor. The definition, set out in § 101(51D) of the Code, turns on a combination of factors including the amount of indebtedness and whether there is an active creditors' committee in the case. This presents a series of problems because no committee is likely to exist at the commencement of the case, and the level of activity of the committee could vary during the case. The rule attempts to navigate

through these problems by providing opportunities to raise the issue and to provide a procedure applicable to an action seeking such relief.

Rule 2002(p) is amended to implement a provision of chapter 15 of the Code. That is the cross border chapter, but the Business Committee took responsibility for preparing an amendment to the rules to implement § 1514(d) of the Code. That section provides that “foreign” creditors may be entitled to additional time with regard to notices concerning the filing of a proof of claim. The rule defines who “foreign creditors” are by stating that they are creditors to whom “notices under these rules are mailed” at foreign address. Thus, the clerk and parties in interest can determine whether a particular creditor is a foreign creditor according to the mailing address for notices in the case. See also the discussion of Rule 3002(c)(6).

Rule 2015 is amended to reflect the amendments to the Code that place additional reporting requirements on small business debtors. This rule, however, is not intended to be included in the Suggested Interim Rules because § 308 of the Act, which introduced this requirement for small business debtors, will not become effective until 60 days after the promulgation of national rules and forms designed to implement it. Rule 2015 amendments should be included only in the package of amendments to the national rules which will be published for public comment later this year or next year.

Rule 3002(c)(1) is amended to establish a deadline for the filing of a proof of claim for taxes based on a return filed under § 1308 of the Code. The solution chosen by the Business Committee to implement this statutory change differs from the solution being offered to resolve the identical problem by the Consumer Committee. The Business Committee’s draft gives the governmental unit 60 days after the filing of the tax return within which to file a proof of claim.

The Consumer Committee version gives the governmental unit the later of that 60 day period or 180 days from the order for relief.

Rule 3002(c)(6) is amended to provide the court with discretion to extend the time for foreign creditors to file a proof of claim. The Business Subcommittee was not in agreement as to whether the proposed amendments to Rule 3002(c)(6) and Rule 3003 should be included in the Suggested Interim Rules. These rule amendments would have the effect of extending the bar date for filing claims for foreign creditors. A concern was expressed that changing rules on bar dates is not appropriate for local rulemaking or standing orders. In any event, the Subcommittee agreed that it should be included in the package of proposed amendments to the national rules to be published for comment.

Rule 6004(g) is added to the rules to implement the new provisions of the Code regarding a consumer privacy ombudsman. Under § 363(b)(1), the court must order the United States trustee to appoint a consumer privacy ombudsman in some situations. The rule sets out requirements for the motion and the appointment of the ombudsman.