

2017 COMMITTEE NOTE

Official Form 426, *Periodic Report Regarding Value, Operations, and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest*, is revised and renumbered as part of the Forms Modernization Project. It implements section 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which requires a chapter 11 debtor to file periodic reports on the profitability of any entities in which the estate holds a substantial or controlling interest. The form is to be used when required by Rule 2015.3, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule.

In addition to formatting revisions, certain aspects of Official Form 426 are changed to make the form easier for the debtor to complete and to better identify the kinds of information that a debtor must disclose in accordance with section 419 of BAPCPA and Rule 2015.3.

Official Form 426 limits its application to entities in which the debtor has a substantial or controlling interest, which the rule defines as a "Controlled Non-Debtor Entity." The scope of this defined term is guided by subdivisions (a) and (c) of Rule 2015.3.

Official Form 426 eliminates the requirement to file a valuation of the Controlled Non-Debtor Entity. Exhibit A to Official Form 426 requires only periodic filings of the Controlled Non-Debtor Entity's most recently available balance sheet, statement of income (*loss*), statement of cash flows, and statement of changes in shareholders' or partners' equity (*deficit*), together with summarized footnotes for such financial statements. If any of these financial statements are not available, the debtor can seek relief under Rule 2015.3(d).

Official Form 426 (Committee Note)

Exhibit B to Official Form 426 requires a description of the Controlled Non-Debtor Entity's business, which was required by Exhibit C of former Rule 26.

Exhibits C, D, and E to Official Form 426 are new. Exhibit C requires a description of claims between a Controlled Non-Debtor Entity and any other Controlled Non-Debtor Entity. Exhibit D requires disclosure of information relating to the allocation of taxable income, losses, and other attributes among Controlled Non-Debtor Entities. Exhibit E requires disclosure about a Controlled Non-Debtor Entity's payment of claims or administrative expenses that would otherwise have been payable by a debtor.

The caption block for this form is formatted for a non-individual debtor. An individual chapter 11 debtor should use the caption block formatted for individual debtors, including a joint case involving more than one individual debtor, such as the caption found in Official Form 309I.

HISTORICAL COMMITTEE NOTES

2008 COMMITTEE NOTE

This form is new. It implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which requires a chapter 11 debtor to file periodic reports on the profitability of any entities in which the estate holds a substantial or controlling interest. The form is to be used when required by Bankruptcy Rule 2015.3, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule. The form includes instructions and examples of the types of information needed to complete it.