08-BK-M

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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January 9, 2009

Advisory Committee on Bankruptcy Rules
c/o Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, DC 20544

Re: Fed.R.Bankr.P 2019

To the Members of the Advisory Committee:

I understand that representatives of investors in distressed debt are lobbying the Committee to repeal Fed R. Bankr. P. 2019 Their efforts arise in the context of two written decisions of another judge in my court,[1] with which I fully concur, enforcing Rule 2019 as it was written, and an oral decision of another bankruptcy judge, who declined to apply Rule 2019 to require disclosures by an *ad hoc* committee[2] of investors in distressed debt in a case before him [3] These issues are a matter of increasing discussion in the legal literature.[4] I write to urge the Advisory Committee on Bankruptcy Rules to update Bankruptcy Rule 2019—but not to repeal it.

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1 *See In re Northwest Airlines Corp*, 363 B R 701 (Bankr S D N Y 2007); *In re Northwest Airlines Corp*, 363 B R 704 (Bankr S D.N Y 2007)

2 "*Ad hoc* committees" can mean different things in different cases (and may in the future be less common, as a device to circumvent Rule 2019 as it now is drafted), but typically are groups of distressed debt investors who retain common counsel, and who sometimes, but not always, have committee by-laws or other procedures for making decisions as to joint courses of action During the pendency of a chapter 11 case, *ad hoc* committees or their members do not receive reimbursement for their legal expenses, but at the end of the case, they not infrequently seek reimbursement for their legal expenses for "substantial contribution" to the outcome of the case under section 503(b) of the Code, or arrange for their entitlement to reimbursement for their legal fees as part of a settlement and/or under a chapter 11 plan

3 Hearing Transcript at 4-5, *In re Scotia Development, LLC*, No 07-20027-C-11 (Bankr S D Tex Apr 17, 2007)

4 *See generally* Note, *Who Is at the Table? Interpreting Disclosure Requirements for Ad Hoc Groups of Institutional Investors Under Federal Rule of Bankruptcy Procedure 2019* 76 FORDHAM L REV 2561 (2008), Note, *The Rule 2019 Battle When Hedge Funds Collide with the Bankruptcy Code* 73 BROOK L REV 1411 (2008), Menachem O Zelmanovitz & Matthew W Olsen, *Rule 2019 A Long Neglected Rule of Disclosure Gains Increasing Prominence in Bankruptcy*, PRATT'S J BANKR L (July-Aug 2007)

Background

My experience in large chapter 11 cases, principally as a bankruptcy judge who has presided over a host of them,[5] has given me a useful perspective on Rule 2019, and the judicial—and business—environment in which Rule 2019 operates. Since I started in bankruptcy about 35 years ago, the dynamics of the reorganization process has changed dramatically. In many, if not most, of the largest cases, the traditional creditors in chapter 11 cases—those left holding the bag when businesses fail—have in large part been replaced as players in the chapter 11 process by investors in distressed debt who become stakeholders in the reorganization process by choice.

That by itself is not necessarily bad, and is sometimes a good thing. Investors in distressed debt provide an escape mechanism for the predecessor creditors who were (or would be) left unpaid at the time of the bankruptcy filing. With distressed debt investors buying up the debt, the predecessor creditors can then sell their bonds, claims, or participations in bank debt, and thereby realize some recovery on their positions at an earlier time, and with greater certainty, than they might ultimately achieve in distributions on their claims.[6] And in some cases, investors in distressed debt provide other valuable services, such as needed financing or bidding for assets before the end of the chapter 11 case

But it is also the case that investors in distressed debt, like investors generally, have their own agendas, which not infrequently consist of simply maximizing return for themselves, in the shortest possible time horizon, without a broader regard for spending the time and effort

[5] Since I came on the bench in 2000, the overwhelming bulk of my time has been spent on large chapter 11 cases, and the plenary litigation relating to them My present docket includes about a hundred chapter 11 cases, of which about a dozen have more than $100 million in debt, and about half a dozen have more than $1 billion in debt

[6] As one commentator has explained

> Distressed debt traders normally purchase debt claims at substantial discounts . These investors rely on the basic legal principle '[A] claim or interest in the hands of a purchaser has the same rights and disabilities as it did in the hands of the original claimant or shareholder ' Creditors involved in a Chapter 11 process often need to find liquidity, and the sale of their claims to vulture investors offsets the risks posed by the uncertainties of Chapter 11 Chapter 11 distressed debt traders decide to invest in debt claims based on two calculations (1) that the reorganization will yield a higher return than the cost of the claim, and (2) that the plan of reorganization will be confirmed and consummated before the investor's cost of carrying the investment—the time value of money —consumes whatever profit the investor hopes to make on the discount

Harvey Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND L REV 1987, 2014-2015 (2002) (footnote omitted)

necessary to stabilize the business, and/or to maximize its value for the good of all.[7] Often that involves selling previously acquired debt during the pendency of the case, without awaiting the case's outcome. And by short selling—or the use of derivatives with the same economic effect—some distressed debt investors have placed economic bets on the failure of the chapter 11 case, or on pain to other constituencies

When distressed debt investors buy into the case and participate in it as passive investors (achieving their returns by their skill in knowing when to invest and for how much, by reason of superior financial analysis), their presence is at least generally benign But increasingly, we see distressed investors—often, but not always, by means of *ad hoc* committees—attempting to influence the outcome of the chapter 11 case. They do so not just by voting their claims and determining what kind of reorganization plan will be to their liking, but also by taking positions on issues in the case, and/or litigating with other creditor constituencies—who increasingly are simply other distressed debt investors They do so, of course, to advance their own personal investment objectives.

In that connection, I think it might be helpful for the Committee to drill down on the kinds of decisions we bankruptcy judges make. When we are deciding a disputed issue of fact or ruling on a disputed question of law, litigants' personal motivations are at least usually irrelevant. But a major element of any bankruptcy judge's workload, at least in the larger cases, is on matters of discretion. We exercise our discretion to determine what is best for the future of

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7 *See* Robert J. Rosenberg & Michael J Riela, *Hedge Funds The New Masters of the Bankruptcy Universe*, 17 NORTON J BANKR L & PRAC. 5 Art 7 (2008) As observed there

> Some hedge funds seek a "quick flip" of their investments, while others engage in a "loan to own" strategy, in which they make loans to a distressed company with the intent to convert that debt to equity after the company defaults on the loans and restructures the debt In sum, hedge funds are more likely than more traditional investors to seek short-term returns that are not necessarily tied to the debtor's successful reorganization
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> [H]edge fund involvement in Chapter 11 cases can create a number of concerns for debtors, creditors, and shareholders Partly as a result of hedge funds' short-term investment horizon and investments in multiple segments of a company's capital structure, hedge funds' interests are not always aligned with those of debtors and other parties The focus by a number of hedge funds on the maximization of short-term returns often has caused tensions among the parties to a restructuring and may conflict with the Bankruptcy Code's emphasis on the rehabilitation of debtors [D]istressed debt trading and changes in bankruptcy relationships have frayed the symbiotic relationship between debtors and creditors Creditors who purchase debt at substantial discounts are likely to be much more interested in the return on their investment, than in the debtors' long-term viability

the case—a decision that can involve a host of concerns, but which typically includes efforts to maximize the value of the estate, to maximize the ultimate return to creditors, and to save as many rank-and-file jobs as possible. On those discretionary calls, and there are many of them,[8] stakeholders—including, and perhaps especially, distressed debt investors, or *ad hoc* committees of them—regularly weigh in. They frequently say—often in the first paragraph of their submissions—how big their positions are, and impliedly, that we should listen to them because of their importance[9] When they are professing to say what is good for the estate, their reasons for advancing their point of view—*i e* , their personal agendas, and any conflicts of interest that might accompany that point of view—often matter.

Need for Repair—But Not Repeal—of Rule 2019

Thus we get to why Rule 2019 should be updated but not repealed Rule 2019 has its origins in pre-Code practice, going back to the 1930s or earlier, when "protective committees," ostensibly speaking for what was good for bondholders or other creditors, but with side deals (often with incumbent management), conflicts of interest and other private agendas, were prevalent. Dealing with abuses of that type was plainly essential, but with the passage of time, they are no longer a matter of material concern New regulatory needs have replaced them. Now, with the passage of time, when applied to chapter 11 as we now see it in the larger cases, Rule 2019 asks for some information that is not essential and that may chill legitimate distressed debt investing But as importantly or more so, Rule 2019 is not as clear as it should be in requiring information that is essential—and Rule 2019 is insufficiently broad in covering the classes of stakeholders who should be making disclosure before they are heard on discretionary matters involving the future of the estate.

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8 They include, by way of example, motions to extend or limit "exclusivity" (the time during which the debtor has the exclusive right to propose a reorganization plan); to approve settlements, to approve asset sales and financing arrangements, to appoint a trustee, to convert the case to chapter 7, and to "designate" (*i e* , disqualify) other creditors' votes on a reorganization plan

9 *See*, *e g* , one of many like pleadings I saw in the *Adelphia Communications Corporation* case, one of the large chapter 11 cases before me Its first paragraph began, in relevant part

> The Ad Hoc Committee of Arahova Noteholders ., as holders (or indenture trustee on behalf of, or investment advisors to, holders) of over $500 million in senior notes issued by Debtor Arahova Communications, Inc hereby files its (A) motion and (B) preliminary objection

Motion of the Ad Hoc Committee of Arahova Noteholders , *In re Adelphia Communications Corp* , No 02-41729 (REG), (S D N Y June 16, 2005) (Doc 7801)

Rule 2019 As It Is Now Operating

My experience with Rule 2019 has caused me to see the following phenomena

(1) In the absence of a court order requiring otherwise, failures to provide the information actually required by Rule 2019, as it is now written,[10] are widespread, and failures to make all of the required disclosures are the rule, not the exception. Much of the time, a submission purporting to be made in accordance with Rule 2019 is filed In fact, the better law firms file them religiously. But while my colleagues may have had better fortune than I have had, I have never seen a purported Rule 2019 submission in a case before me where all of the information Rule 2019 requires was actually provided Rather, in all of the Rule 2019 submissions I have seen, an *ad hoc* committee or other investor group has described the ownership of the bonds or other debt of its members in the aggregate, without disclosure of the individual ownership by members of the committee or group Nor have I ever seen any disclosure on behalf of a distressed debt investor or investor group of the dates of acquisition of the bonds or other debt acquired (other than saying that it was acquired at "various times," or "on a number of dates"), nor the prices paid for it. Nor has any Rule 2019 filing I have ever seen included information on *sales* of the bonds, claims, or other debt—a matter significant not only in its own right, but also because it would reveal short positions in bonds, resulting in an interest in

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[10] Rule 2019 now provides, in relevant part

> In a . . chapter 11 reorganization case, every entity or committee representing more than one creditor or equity security holder shall file a verified statement setting forth (1) the name and address of the creditor or equity security holder, (2) the nature *and amount* of the claim or interest and *the time of acquisition thereof* unless it is alleged to have been acquired more than one year prior to the filing of the petition, (3) a recital of the pertinent facts and circumstances in connection with the employment of the entity or indenture trustee, and, in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act, and (4) with reference to the time of the employment of the entity, the organization or formation of the committee, or the appearance in the case of any indenture trustee, the amounts of claims or interests owned by the entity, the members of the committee or the indenture trustee, *the times when acquired*, the *amounts paid* therefor, and *any sales or other disposition* thereof.

FED R BANKR P 2019(a) (Portions irrelevant to the present discussion deleted, matter particularly relevant to the present discussion, and including areas where disclosure is required but has not been made, italicized)

the failure of the chapter 11 case, or in lower distributions to other creditors long in those bonds.[11]

(2) Most parties in interest disregard others' violations of Rule 2019, very possibly because they do not wish to comply with Rule 2019 any more than the others do.

(3) When parties do seek strict enforcement of Rule 2019, they often do so to advance private agendas of their own (such as to torment their opponents, or to get bargaining leverage), rather than by reason of abstract interests in the integrity of the chapter 11 process.

(4) Many distressed debt investors continue to buy and sell debtors' debt during the pendency of the chapter 11 case (as compared and contrasted to simply buying the debt and then awaiting the case outcome), and some *ad hoc* committees try to influence proceedings in the case even while their members are buying and selling debt whose prices or value might be affected by the rulings on the matters as to which they have sought to influence the court. These trading activities are normally not disclosed, even when the trader investors are members of *ad hoc* committees subject to Rule 2019.

(5) Investors in distressed debt are beginning to argue, even when they retain common counsel and act jointly, that the groups they form are not "committees" or otherwise within the reach of Rule 2019, and therefore that they need not make the disclosures Rule 2019 requires. In *Scotia Development*, that argument was successful.

In my view, none of these is a good thing The underlying reasons for disclosure of the type Rule 2019 requires have changed, but the need for disclosure in this area is as important as ever. We frequently speak of the importance of transparency in the bankruptcy process, and of the importance that things "seem right."[12] Yet we here have an area where less transparency is the goal. Transparency must be maintained to permit parties in interest to participate

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[11] Thus, in the *Adelphia Communications Corporation* case, before me, investors long in bonds of Adelphia Parent admitted to other investors that they had a short position in bonds of Arahova Communications, one of the Parent's subsidiaries The investors' short position gave them an economic stake in a lower recovery for Arahova creditors—and, as some argued, an economic stake from which the investors would profit from the failure or delay of the entire chapter 11 case But the Rule 2019 statement filed on behalf of the *ad hoc* committee of which those investors were members, while listing the long positions in bonds, made no mention of the short positions—a matter that was highly relevant when the *ad hoc* committee was professing to speak as to what was in the best interests of the various debtors in the case The short positions at least seemingly could have resulted only from a sale of the subsidiary debtor's bonds, for which Rule 2019 would require disclosure But even if it were read otherwise, disclosure of the short positions would seem to be essential to make that which was said about the long positions not misleading

[12] *See In re Ira Haupt & Co*, 361 F 2d 164, 168 (2d Cir 1966) (Friendly, J) ("The conduct of bankruptcy proceedings not only should be right but must seem right ")

meaningfully in cases (and to take their own positions where warranted),[13] and to permit judges to continue to act to maximize value and to achieve the best outcome for all, except in those relatively rare cases where our duties under the law require a different outcome.

Observations re Improvement

Obviously, distressed debt investors, and the organizations that lobby on their behalf, regard their profit maximization strategies as highly confidential—even sacred. To the extent that such investors do not try to influence the outcome of a bankruptcy case, I am not troubled by that, and think their desires can be accommodated. And in most cases, what they paid for their claims (and how much profit they will make as a consequence of intercreditor negotiations, or various case outcomes) will be a matter of indifference to the Court, and will not require disclosure. But when anyone in the case—*ad hoc* committee or not, or distressed debt investor or not[14] —professes to speak on what is best for the estate (and/or for its creditors, equity security holders, employees, and the communities in which our debtors operate), and/or to influence the outcome of the case, its private agenda can matter If it does not want to reveal basic information as to its holdings in the case (which are an important indicator of "where it is coming from" in connection with the position it advocates), it should not be trying to influence the court

Apart from the widespread failures to provide the information Rule 2019 requires, evolution in chapter 11 practice has resulted in areas where Rule 2019 needs to catch up with modern times, so that when Rule 2019 is complied with (a goal I think we should strive for), important information is forthcoming. When applied to investment strategies that we are now seeing, Rule 2019 has a requirement—disclosure of price paid—that probably is unnecessary But on the other hand, Rule 2019 fails sufficiently to cover important matters, and fails to make certain of its requirements sufficiently unequivocal These include ambiguities and loopholes as to *what* is covered, and *who* is covered In particular, my concerns include the following

(1) Parties in interest no longer simply hold long positions in the underlying debt, with the understandable desire to be repaid as much as circumstances will permit We now see strategies under which some acquire short positions in securities of one or more of the debtors,[15] which typically have the effect (and, presumably, the purpose) of placing

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[13] Contrary to popular myth, the bulk of the controversies in the larger cases, in my experience, have not been between the debtor(s) and creditors, but rather have been between one group of creditors and another group of creditors—often with distressed debt investors on both sides

[14] Other instances where creditors have private agendas can exist, as in telecommunications cases, where competitors happen also to be creditors, and use their status as creditors to be heard as to the future of the case. But their competing agendas are normally already apparent to the other parties in interest

[15] In most large chapter 11 cases, there are many debtors in the single, jointly administered, case, some or all of which will be part of a larger, partly or wholly integrated, enterprise And in many such cases, there will

an economic bet on the failure of the chapter 11 case, on delay in creditors' receiving payment, or on decreased recoveries by another creditor constituency [16] Bets of that character should be disclosed. Information of that character is of the highest importance when people profess to be arguing for what is in the best interests of the estate

(2) Derivatives—securities or instruments whose value turns on the value of another security or instrument—are in increasing use in chapter 11 cases, as they are in the economy generally. In particular, credit default swaps are an increasingly important presence in large chapter 11 cases Credit default swaps will at least usually result in a situation where an alternative entity bears the economic risk, or will reap the rewards, that would otherwise be borne or enjoyed by the original creditor. That could have the effect, in at least some cases, of entities participating in the chapter 11 process without "skin in the game." Interests in derivatives—and especially credit default swaps—should be disclosed.[17]

(3) Rule 2019 submissions can be misleading when they omit information necessary to avoid half-truths. A classic example of this is disclosure of long positions without also disclosing short positions As we do under the federal securities laws, we should require inclusion in submissions to bankruptcy courts of matter necessary to make that which was said not misleading

(4) One of the most important things we should accomplish by Rule 2019 is protecting the system when decisions are made as to discretionary matters—*e g* , what is in the best interests of the estate—and advocates taking positions as to that have private agendas. Creditors from different constituencies often express different views on such matters While disclosure of what investors paid for their claims or for the bonds they hold is rarely relevant when making determinations as to the future of a chapter 11 case (though *when* investors bought or sold debt often would be, especially if the trading took place very shortly before the investors sought to be heard), disclosure of their holdings often is important to evaluate their contentions [18] That is particularly so when they have

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be interdebtor obligations—sometimes with interdebtor disputes—apart from the intercreditor disputes that can arise with respect to a single debtor

16 The advocates for repeal of Rule 2019 acknowledge that investors in distressed debt take short positions (*see* SIFMA/LSTA Ltr. of Nov. 30, 2007) ("SIFMA/LSTA Ltr ") at 23, *cf id* at 24), but do not address the significance of such a strategy

17 Once more, the advocates for repeal acknowledge distressed debt investors' use of derivatives in chapter 11 cases, see *id* at 23, but do not address the implications of their use

18 As stated by counsel for the Creditors' Committee in the *Adelphia Communications Corporation* cases (every one of whose voting members was a distressed debt investor)

> 2019 is a provision that requires public disclosure of what people hold for obvious reasons It is appropriate to know when somebody stands

positions in both the debt and equity of a debtor, in debt in different classes or of different debtors in the case,[19] or, as so often is the case, they themselves put their holdings forward, so as to suggest that their views deserve weight [20]

(5) I agree with Professor Gibson's observation[21] that Rule 2019 is ambiguous in addressing whether it requires disclosure of claims or interests "held by the representative or those represented." To address the problems we face in the real world, Rule 2019 should make it clear that disclosure must be made with respect to "those represented," except, perhaps, in those rare cases where the representative also has its own holdings or positions to report.

(6) We are increasingly hearing of instances in which entities are seeking to circumvent Rule 2019 by ceasing to call their groups "*ad hoc* committees," or "committees" at all, but simply act in concert (often with common counsel, whose costs they share) while refraining from calling themselves anything. The parlance that was used in *Scotia Development* was that there was "just one law firm representing a bunch of creditors "[22] The notion that Rule 2019, and particularly its purposes, properly can be circumvented in that fashion is troublesome to me If we are to cover any and all groups acting in concert, whether or not called a "committee" (and I think we should), we should make that clear

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> up in court, somebody takes a position, somebody files pleadings, it's appropriate to know who their clients are and what their positions are "

Note, 76 FORDHAM L REV at 2564, n 22 , quoting Transcript of Hearing on Sep 11, 2006 at 66 1-8, *In re Adelphia Communications Corp* , No 02-41729 (REG) (Bankr S D N Y Sep. 13, 2006)

19 That presumably is what the advocates for repeal are referring to when they refer to the "diversification" that is an element of the "aggressive and complex investment strategies" that "distressed investors such as hedge funds employ " *See* SIFMA/LSTA Ltr at 23

20 The advocates for repeal argue that it is unfair that they should have to make disclosures of the type Rule 2019 requires, while members of official committees, such as Creditors' Committees, do not I understand their point, and perhaps we should consider broadening disclosure obligations to cover members of official committees as well But if we do, we will also want to consider whether we want to chill membership on official committees, whose members serve very important interests in chapter 11 cases, who, unlike members of *ad hoc* committees, assume fiduciary duties to their constituents when they assume their committee membership roles, and who at least normally become "restricted," precluding them from trading during the pendency of the case because they have access to confidential information, and/or create communications "walls" to separate the traders in their organizations from those serving on the official committee

21 *See* Gibson, Memorandum, "Case Law Interpreting Rule 2019" (Aug 9, 2008), at 3-4

22 Note, 76 FORDHAM L REV at 2604, quoting Transcript of Hearing at 4-5, *In re Scotia Development LLC* , No 07-20027-C-11 (Bankr S D Tex Apr 17, 2007)

(7) Many of the concerns that trouble me apply, in my view, to individual parties in interest, just as they apply to ad hoc committees.[23] If others agree, we should require the same disclosures when individual parties in interest seek to influence the court as to the future of the case, just as Rule 2019 requires such for committees.

Recommendations

Thus I would recommend that the Committee not repeal Rule 2019. Instead, Rule 2019 should be amended to make certain things unequivocal, and to modernize it:

(1) Clarify Rule 2019 to make clear that it requires disclosure of short positions, or derivatives with the same economic substance.

(2) Add to Rule 2019 a requirement for disclosure of any interests in derivatives (such as credit default swaps) that result in a decoupling of record or beneficial ownership and economic risk.

(3) Add to Rule 2019 a requirement that any disclosures must include such additional information as is necessary to make that which was said not misleading.

(4) Add to Rule 2019 a requirement for disclosure of any position or interest that would result in a financial gain upon the failure or delay of the chapter 11 case, or upon decreased recoveries by any other constituency.

(5) Clarify Rule 2019 to make clear that it requires disclosure of the required information for each individual member of any group, and that disclosure merely in the aggregate is insufficient.

(6) Clarify Rule 2019 to make clear that (unless broadened further in the manner I would recommend in #7 below) it covers any instance in which multiple creditors are represented by the same counsel, whether or not they call themselves a "committee."

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[23] Those urging repeal of Rule 2019 say very nearly the same thing. *See* SIFMA/LSTA Ltr. at 15 ("If the information required by Rule 2019 were truly important to bankruptcy reorganizations, it would be required of all active participants and not merely those who form *ad hoc* committees. ... In light of that disparity, the Rule is irrational, because it is under-inclusive and does not apply to investors who are not members of *ad hoc* committees but who may nonetheless pursue the same strategies the Rule ostensibly deters."); *id.* at 17 (recognizing that wrongdoers in the *Papercraft* and *Mirant* cases were individual creditors, noting that "if transparency truly allows the court and the debtor to 'root out' investors who act in bad faith or to uncover conflicts of interest between committee members and their representatives, then the Rule should apply *equally* to all participants in a bankruptcy case and not just to members of *ad hoc* committees.") (emphasis in original).

(7) Broaden Rule 2019 to provide that without having first made the disclosures Rule 2019 requires (or having made the required disclosure as an attachment to the written submission in question), no party in interest (including a single party in interest, or committee or group of parties in interest)

(a) shall make any representation to the Court as to the amount or nature of its ownership or control of any debt of (or interest in) the debtor (or any of the debtors in a multi-debtor case),

(b) shall be heard on any motion involving a determination by the bankruptcy court that reasonably can be expected to be subject to judicial discretion, or to involve consideration of what is in the best interests of a debtor, its creditors, or equity security holders.

(8) If most or all of the previous recommendations were implemented, we could delete from Rule 2019 the requirement of disclosure as to price paid. We would nevertheless have to make it clear, however, that the Court could still require disclosure, by discovery under Rule 2004 or the contested matter or adversary proceeding rules, in those cases where it is appropriate.

I would hope that recent developments in the financial markets have taught us to be wary of contentions that we should decrease regulation, by invoking fears that regulation—or the transparency that we routinely require in the other aspects of chapter 11 cases—might chill investment. I would urge the Committee to resist entreaties to repeal Rule 2019, and instead to continue with a Rule 2019, as updated, as an important disclosure device, providing significant benefits to the bankruptcy bench and to parties in interest in chapter 11 cases.

I would be happy to discuss any of these matters further with any members of the Committee or its Reporter if there is such a desire

Very truly yours,

s/Robert E Gerber

Robert E Gerber