

Legal Update

Proposed Bankruptcy Amendments to Require Expanded Creditor Disclosure

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Proposed amendments to the Federal Rules of Bankruptcy Procedure would require unprecedented disclosure by participants in chapter 11 cases and would likely result in greater transparency of their trading and investment strategies. A hearing on the proposed amendments is scheduled to be held in New York City on February 5th. Written comments are required by February 16th.

As discussed in our [prior alert](#), recent controversial decisions interpreting Bankruptcy Rule 2019 have held that when a single entity (such as a law firm) or a committee (other than an official committee) represents more than one creditor or equity security holder the Rule requires disclosure of the amounts of claims or equity securities held, the times when the claims or equity securities were acquired, the amounts paid for the claims or equity securities, and the details of any sales or other dispositions. Proposed amendments to Rule 2019 would not only expressly incorporate most aspects of these decisions but also further expand the scope of the disclosure required by the Rule.

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Among the highlights of the proposed amended Rule 2019:

- Disclosure is required by every “entity, group or committee that consists of or represents more than one creditor or equity security holder.” Thus, for example, agent banks could be required to disclose information relating to each lender in the syndicate.
- The information required to be disclosed includes all “economic interests” held in relation to the debtor by each member of the committee or group, and the date each such interest was acquired (unless acquired at least one year pre-petition). The Committee Note states that the definition of “economic interest” is “intended to be sufficiently broad to cover any economic interest that could affect the legal and strategic positions a stakeholder takes” in a chapter 11 case.
- The Court has discretion to require the disclosure of the amount paid for each economic interest.
- The disclosure must be updated on a monthly basis.
- The Court may require similar disclosure from any entity that seeks or opposes the granting of relief, even if such entity is not acting in concert with other entities. This provision, which goes beyond anything required under any interpretations of current Rule 2019, could have a chilling effect upon an entity’s willingness to take an active role in a chapter 11 case.

If you are interested in submitting written comments in this regard, please contact us as indicated above.

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