

ORDER CONDITIONALLY APPROVING DISCLOSURE STATEMENT, FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN, AND THE TIME FOR FILING OBJECTIONS TO THE DISCLOSURE STATEMENT AND TO THE CONFIRMATION OF THE PLAN, COMBINED WITH NOTICE THEREOF AND OF THE HEARING ON FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND THE HEARING ON CONFIRMATION OF THE PLAN

Applicable Law and Rules

1. Section 1125(f) of the Bankruptcy Code (11 U.S.C. § 1125(f)) states:

[I]n a case in which the debtor has elected under section 1121(e) to be considered a small business --

(1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

(2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement as long as the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed at least 10 days prior to the date of the hearing on confirmation of the plan; and

(3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan.

2. Fed. R. Bankr. P. 3017.1(a) states:

(a) **Conditional Approval of Disclosure Statement.** If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Rule 3016(b). On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

(b) **Application of Rule 3017.** Rule 3017(a), (b), (c) and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).

(c) **Final Approval**

(1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.

(2) *Objections.* Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix.

(3) *Hearing.* If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

3. Fed. R. Bankr. P. 3020(b)(2) states:

Hearing. The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

General Information for the Clerk

Section 1125(b) of the Bankruptcy Code requires court approval of a disclosure statement before votes may be solicited for or against a plan in a chapter 11 reorganization case. If the debtor has elected to be considered a small business under section 1121(e) of the Code, however, the court may conditionally approve a disclosure statement for the purpose of seeking acceptances or rejections of the plan. The hearing on final approval of the disclosure statement may be combined with the hearing on confirmation of the plan, but a copy of the conditionally approved disclosure statement must be mailed at least 10 days prior to the hearing.

This form may be used to fix (1) the last date for accepting or rejecting the plan, (2) the date for the combined hearing on final approval of the disclosure statement and on confirmation of the plan, and (3) the last date for filing and serving objections to the disclosure statement and confirmation of the plan.

Pursuant to Fed. R. Bankr. P. 3017(c)(2), written objections to the disclosure statement or confirmation of the plan may be filed at any time prior to the combined hearing, unless the court fixes an earlier time. The Committee Note to the rule states that, “[i]f a disclosure statement is conditionally approved, and no timely objection to the disclosure statement is filed, it is not necessary for the court to hold a hearing on final approval.”

Ordinarily, the clerk will prepare the order for the bankruptcy judge’s signature. Generally, the debtor-in-possession or other plan proponent will send the notice and file a certificate of service, as provided in Fed. R. Bankr. P. 2002. The notice must be transmitted to the United States trustee and given to the debtor, the trustee, all creditors and indenture trustees, and any other entity designated by the court.

Rule 2002(b) provides that 25 days notice must be given of “(1) the time fixed for filing objections and the hearing to consider approval of a disclosure statement; and (2) the time fixed for filing objections and the hearing to consider confirmation of a chapter 9, chapter 11, or chapter 13 plan.”