

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is a comprehensive regulation of representation in chapter 9 municipality and in chapter 11 reorganization cases. It is derived from §§209–213 of the Act and former Chapter X Rule 10–211.

Subdivision (b) is derived from §§212, 213 of the Act. As used in clause (2), “other authorization” would include a power or warrant of attorney which are specifically mentioned in §212 of the Act. This rule deals with representation provisions in mortgages, trust deeds, etc. to protect the beneficiaries from unfair practices and the like. It does not deal with the validation or invalidation of security interests generally. If immediate compliance is not possible, the court may permit a representative to be heard on a specific matter, but there is no implicit waiver of compliance on a permanent basis.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivision (a) is amended to exclude from the requirements of this rule committees of retired employees appointed pursuant to §1114 of the Code. The words “with the clerk” are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 2020. Review of Acts by United States Trustee

A proceeding to contest any act or failure to act by the United States trustee is governed by Rule 9014.

(Added Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1991

The United States trustee performs administrative functions, such as the convening of the meeting of creditors and the appointment of trustees and committees. Most of the acts of the United States trustee are not controversial and will go unchallenged. However, the United States trustee is not a judicial officer and does not resolve disputes regarding the propriety of its own actions. This rule, which is new, provides a procedure for judicial review of the United States trustee’s acts or failure to act in connection with the administration of the case. For example, if the United States trustee schedules a §341 meeting to be held 90 days after the petition is filed, and a party in interest wishes to challenge the propriety of that act in view of §341(a) of the Code and Rule 2003 which requires that the meeting be held not more than 40 days after the order for relief, this rule permits the party to do so by motion.

This rule provides for review of acts already committed by the United States trustee, but does not provide for advisory opinions in advance of the act. This rule is not intended to limit the discretion of the United States trustee, provided that the United States trustee’s act is authorized by, and in compliance with, the Code, title 28, these rules, and other applicable law.

PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3001. Proof of Claim

(a) **FORM AND CONTENT.** A proof of claim is a written statement setting forth a creditor’s claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) **WHO MAY EXECUTE.** A proof of claim shall be executed by the creditor or the creditor’s authorized agent except as provided in Rules 3004 and 3005.

(c) **CLAIM BASED ON A WRITING.** When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(d) **EVIDENCE OF PERFECTION OF SECURITY INTEREST.** If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) **TRANSFERRED CLAIM.**

(1) *Transfer of Claim Other Than for Security Before Proof Filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) *Transfer of Claim Other Than for Security After Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

(3) *Transfer of Claim for Security Before Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(4) *Transfer of Claim for Security After Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of

the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(5) *Service of Objection or Motion; Notice of Hearing.* A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.

(f) **EVIDENTIARY EFFECT.** A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

(g)¹ To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

(As amended Pub. L. 98-353, title III, §354, July 10, 1984, 98 Stat. 361; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rules 301 and 302. The Federal Rules of Evidence, made applicable to cases under the Code by Rule 1101, do not prescribe the evidentiary effect to be accorded particular documents. Subdivision (f) of this rule supplements the Federal Rules of Evidence as they apply to cases under the Code.

Subdivision (c). This subdivision is similar to former Bankruptcy Rule 302(c) and continues the requirement for the filing of any written security agreement and provides that the filing of a duplicate of a writing underlying a claim authenticates the claim with the same effect as the filing of the original writing. Cf. Rules 1001(4) and 1003 of F.R. of Evid. Subdivision (d) together with the requirement in the first sentence of subdivision (c) for the filing of any written security agreement, is designed to facilitate the determination whether the claim is secured and properly perfected so as to be valid against the trustee.

Subdivision (d). "Satisfactory evidence" of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection. The secured creditor may not be required to file a proof of claim under this rule if he is not seeking allowance of a claim for a deficiency. But see §506(d) of the Code.

Subdivision (e). The rule recognizes the differences between an unconditional transfer of a claim and a transfer for the purpose of security and prescribes a procedure

for dealing with the rights of the transferor and transferee when the transfer is for security. The rule clarifies the procedure to be followed when a transfer precedes or follows the filing of the petition. The interests of sound administration are served by requiring the post-petition transferee to file with the proof of claim a statement of the transferor acknowledging the transfer and the consideration for the transfer. Such a disclosure will assist the court in dealing with evils that may arise out of post-bankruptcy traffic in claims against an estate. *Monroe v. Scofield*, 135 F.2d 725 (10th Cir. 1943); *In re Philadelphia & Western Ry.*, 64 F. Supp. 738 (E.D. Pa. 1946); cf. *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939). Both paragraphs (1) and (3) of this subdivision, which deal with a transfer before the filing of a proof of claim, recognize that the transferee may be unable to obtain the required statement from the transferor, but in that event a sound reason for such inability must accompany the proof of claim filed by the transferee.

Paragraphs (3) and (4) clarify the status of a claim transferred for the purpose of security. An assignee for security has been recognized as a rightful claimant in bankruptcy. *Feder v. John Engelhorn & Sons*, 202 F.2d 411 (2d Cir. 1953). An assignor's right to file a claim notwithstanding the assignment was sustained in *In re R & L Engineering Co.*, 182 F. Supp. 317 (S.D. Cal. 1960). Facilitation of the filing of proofs by both claimants as holders of interests in a single claim is consonant with equitable treatment of the parties and sound administration. See *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939).

Paragraphs (2) and (4) of subdivision (e) deal with the transfer of a claim after proof has been filed. Evidence of the terms of the transfer required to be disclosed to the court will facilitate the court's determination of the appropriate order to be entered because of the transfer.

Paragraph (5) describes the procedure to be followed when an objection is made by the transferor to the transferee's filed evidence of transfer.

NOTES OF ADVISORY COMMITTEE ON RULES—1987

Subdivision (g) was added by §354 of the 1984 amendments.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (a) is amended in anticipation of future revision and renumbering of the Official Forms.

Subdivision (e) is amended to limit the court's role to the adjudication of disputes regarding transfers of claims. If a claim has been transferred prior to the filing of a proof of claim, there is no need to state the consideration for the transfer or to submit other evidence of the transfer. If a claim has been transferred other than for security after a proof of claim has been filed, the transferee is substituted for the transferor in the absence of a timely objection by the alleged transferor. In that event, the clerk should note the transfer without the need for court approval. If a timely objection is filed, the court's role is to determine whether a transfer has been made that is enforceable under non-bankruptcy law. This rule is not intended either to encourage or discourage postpetition transfers of claims or to affect any remedies otherwise available under nonbankruptcy law to a transferor or transferee such as for misrepresentation in connection with the transfer of a claim. "After notice and a hearing" as used in subdivision (e) shall be construed in accordance with paragraph (5).

The words "with the clerk" in subdivision (e)(2) and (e)(4) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

REFERENCES IN TEXT

The United States Warehouse Act, referred to in subd. (g), is Part C of act Aug. 11, 1916, ch. 313, 39 Stat. 486, as amended, which is classified generally to chap-

¹ So in original. Subsec. (g) enacted without a catchline.

ter 10 (§241 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 241 of Title 7 and Tables.

AMENDMENT BY PUBLIC LAW

1984—Subd. (g). Pub. L. 98-353 added subd. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

Rule 3002. Filing Proof of Claim or Interest

(a) **NECESSITY FOR FILING.** An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.

(b) **PLACE OF FILING.** A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) **TIME FOR FILING.** In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under §341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under §1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under §1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.

(6) If notice of the time to file a proof of claim has been mailed to a creditor at a for-

ign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a) of this rule is substantially a restatement of the general requirement that claims be proved and filed. The exceptions refer to Rule 3003 providing for the filing of claims in chapter 9 and 11 cases, and to Rules 3004 and 3005 authorizing claims to be filed by the debtor or trustee and the filing of a claim by a contingent creditor of the debtor.

A secured claim need not be filed or allowed under §502 or §506(d) unless a party in interest has requested a determination and allowance or disallowance under §502.

Subdivision (c) is adapted from former Bankruptcy Rule 302(e) but changes the time limits on the filing of claims in chapter 7 and 13 cases from six months to 90 days after the first date set for the meeting of creditors. The special rule for early filing by a secured creditor in a chapter 13 case, in former Rule 13-302(e)(1) is not continued.

Although the claim of a secured creditor may have arisen before the petition, a judgment avoiding the security interest may not have been entered until after the time for filing claims has expired. Under Rule 3002(c)(3) the creditor who did not file a secured claim may nevertheless file an unsecured claim within the time prescribed. A judgment does not become final for the purpose of starting the 30 day period provided for by paragraph (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. *In re Tapp*, 61 F. Supp. 594 (W.D. Ky. 1945).

Paragraph (1) is derived from former Bankruptcy Rule 302(e). The governmental unit may move for an extension of the 90 day period. Pursuant to §501(c) of the Code, if the government does not file its claim within the proper time period, the debtor or trustee may file on its behalf. An extension is not needed by the debtor or trustee because the right to file does not arise until the government's time has expired.

Paragraph (4) is derived from former chapter rules. (See, e.g., Rule 11-33(a)(2)(B). In light of the reduced time it is necessary that a party with a claim arising from the rejection of an executory contract have sufficient time to file that claim. This clause allows the court to fix an appropriate time.

Paragraph (5) of subdivision (c) is correlated with the provision in Rule 2002(e) authorizing notification to creditors of estates from which no dividends are anticipated. The clause permits creditors who have refrained from filing claims after receiving notification to be given an opportunity to file when subsequent developments indicate the possibility of a dividend. The notice required by this clause must be given in the manner provided in Rule 2002. The information relating to the discovery of assets will usually be obtained by the clerk from the trustee's interim reports or special notification by the trustee.

Provision is made in Rule 2002(a) and (h) for notifying all creditors of the fixing of a time for filing claims against a surplus under paragraph (6). This paragraph does not deal with the distribution of the surplus. Reference must also be made to §726(a)(2)(C) and (3) which permits distribution on late filed claims.

Paragraph (6) is only operative in a chapter 7 case. In chapter 13 cases, the plan itself provides the distribution to creditors which is not necessarily dependent on the size of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Subdivision (a) is amended by adding a reference to Rule 1019(4). Rule 1019(4) provides that claims actually filed by a creditor in a chapter 11 or 13 case shall be treated as filed in a superseding chapter 7 case. Claims deemed filed in a chapter 11 case pursuant to §1111(a) of the Code are not considered as filed in a superseding chapter 7 case. The creditor must file a claim in the superseding chapter 7 case.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivision (a) is amended to conform to the renumbering of subdivisions of Rule 1019. Subdivision (c) is amended to include chapter 12 cases. Subdivision (c)(4) is amended to clarify that it includes a claim arising from the rejection of an unexpired lease.

NOTES OF ADVISORY COMMITTEE ON RULES—1996
AMENDMENT

The amendments are designed to conform to §§502(b)(9) and 726(a) of the Code as amended by the Bankruptcy Reform Act of 1994.

The Reform Act amended §726(a)(1) and added §502(b)(9) to the Code to govern the effects of a tardily filed claim. Under §502(b)(9), a tardily filed claim must be disallowed if an objection to the proof of claim is filed, except to the extent that a holder of a tardily filed claim is entitled to distribution under §726(a)(1), (2), or (3).

The phrase “in accordance with this rule” is deleted from Rule 3002(a) to clarify that the effect of filing a proof of claim after the expiration of the time prescribed in Rule 3002(c) is governed by §502(b)(9) of the Code, rather than by this rule.

Section 502(b)(9) of the Code provides that a claim of a governmental unit shall be timely filed if it is filed “before 180 days after the date of the order for relief” or such later time as the Bankruptcy Rules provide. To avoid any confusion as to whether a governmental unit’s proof of claim is timely filed under §502(b)(9) if it is filed on the 180th day after the order for relief, paragraph (1) of subdivision (c) provides that a governmental unit’s claim is timely if it is filed not later than 180 days after the order for relief.

References to “the United States, a state, or subdivision thereof” in paragraph (1) of subdivision (c) are changed to “governmental unit” to avoid different treatment among foreign and domestic governments.

GAP Report on Rule 3002. After publication of the proposed amendments, the Bankruptcy Reform Act of 1994 amended sections 726 and 502(b) of the Code to clarify the rights of creditors who tardily file a proof of claim. In view of the Reform Act, proposed new subdivision (d) of Rule 3002 has been deleted from the proposed amendments because it is no longer necessary. In addition, subdivisions (a) and (c) have been changed after publication to clarify that the effect of tardily filing a proof of claim is governed by §502(b)(9) of the Code, rather than by this rule.

The amendments to §502(b) also provide that a governmental unit’s proof of claim is timely filed if it is filed before 180 days after the order for relief. Proposed amendments to Rule 3002(c)(1) were added to the published amendments to conform to this statutory change and to avoid any confusion as to whether a claim by a governmental unit is timely if it is filed on the 180th day.

The committee note has been re-written to explain the rule changes designed to conform to the Reform Act.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Subdivision (c)(1) is amended to reflect the addition of §1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision

(c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. The amendment also allows the governmental unit to move for additional time to file a proof of claim prior to expiration of the applicable filing period.

Subdivision (c)(5) of the rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days’ notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditors to be more accurate regarding the deadline than was possible under the prior rule. The rule previously began the 90 day notice period from the time of the mailing of the notice, a date that could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.

Subdivision (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with §1514(d), added to the Code by the 2005 amendments, and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Other changes are stylistic.

Changes Made After Publication. Subdivision (c)(1) was amended to allow governmental units to move for an enlargement of the time to file a proof of claim. The Committee Note was amended to describe this addition to the rule.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

(a) **APPLICABILITY OF RULE.** This rule applies in chapter 9 and 11 cases.

(b) **SCHEDULE OF LIABILITIES AND LIST OF EQUITY SECURITY HOLDERS.**

(1) *Schedule of Liabilities.* The schedule of liabilities filed pursuant to §521(1) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

(2) *List of Equity Security Holders.* The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.

(c) **FILING PROOF OF CLAIM.**

(1) *Who May File.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) *Who Must File.* Any creditor or equity security holder whose claim or interest is not

scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).

(4) *Effect of Filing Claim or Interest.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to §521(a)(1) of the Code.

(5) *Filing by Indenture Trustee.* An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) **PROOF OF RIGHT TO RECORD STATUS.** For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a). This rule applies only in chapter 9 and chapter 11 cases. It is adapted from former Chapter X Rule 10-401 and provides an exception to the requirement for filing proofs of claim and interest as expressed in §§925 and 1111(a) of the Code.

Subdivision (b). This general statement implements §§925 and 1111(a) of the Code.

Subdivision (c). This subdivision permits, in paragraph (1), the filing of a proof of claim but does not make it mandatory. Paragraph (2) requires, as does the Code, filing when a claim is scheduled as disputed, contingent, or unliquidated as to amount. It is the creditor's responsibility to determine if the claim is accurately listed. Notice of the provision of this rule is provided for in Official Form No. 16, the order for the meeting of creditors. In an appropriate case the court may order creditors whose claims are scheduled as disputed, contingent, or unliquidated be notified of that fact but the procedure is left to the discretion of the court.

Subdivision (d) is derived from former Chapter X Rule 10-401(f).

Except with respect to the need and time for filing claims, the other aspects concerning claims covered by Rules 3001 and 3002 are applicable in chapter 9 and 11 cases.

Holders of equity security interests need not file proofs of interest. Voting and distribution participation is dependent on ownership as disclosed by the appropriate records of a transfer agent or the corporate or other business records at the time prescribed in Rules 3017 and 3021.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Paragraph (3) of subdivision (c) is amended to permit the late filing of claims by infants or incompetent persons under the same circumstances that permit late filings in cases under chapter 7, 12, or 13. The amendment

also provides sufficient time in which to file a claim that arises from a postpetition judgment against the claimant for the recovery of money or property or the avoidance of a lien. It also provides for purposes of clarification that upon rejection of an executory contract or unexpired lease, the court shall set a time for filing a claim arising therefrom despite prior expiration of the time set for filing proofs of claim.

The caption of paragraph (4) of subdivision (c) is amended to indicate that it applies to a proof of claim.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Subdivision (c)(3) is amended to implement §1514(d) of the Code, which was added by the 2005 amendments. It makes the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. This change was necessary so that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims.

Changes Made After Publication. No changes were made after publication.

Rule 3004. Filing of Claims by Debtor or Trustee

If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 25, 2005, eff. Dec. 1, 2005.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 303 but conforms with the changes made by §501(c) of the Code. Rule 303 permitted only the filing of tax and wage claims by the debtor. Section 501(c) of the Code, however, permits the filing by the debtor or trustee on behalf of any creditor.

It is the policy of the Code that debtors' estates should be administered for the benefit of creditors without regard to the dischargeability of their claims. After their estates have been closed, however, discharged debtors may find themselves saddled with liabilities, particularly for taxes, which remain unpaid because of the failure of creditors holding non-dischargeable claims to file proofs of claim and receive distributions thereon. The result is that the debtor is deprived of an important benefit of the Code without any fault or omission on the debtor's part and without any objective of the Code being served thereby.

Section 501(c) of the Code authorizes a debtor or trustee to file a proof of claim for any holder of a claim. Although all claims may not be nondischargeable, it may be difficult to determine, in particular, whether tax claims survive discharge. See Plumb, *Federal Tax Liens and Priorities in Bankruptcy*, 43 Ref. J. 37, 43-44 (1969); 1 Collier, *Bankruptcy* ¶17.14 (14th ed. 1967); 3 *id.* ¶523.06 (15th ed. 1979). To eliminate the necessity of the resolution of this troublesome issue, the option accorded the debtor by the Code does not depend on the nondischargeability of the claim. No serious administrative problems and no unfairness to creditors seemed to develop from adoption of Rule 303, the forerunner to §501(c). The authority to file is conditioned on the creditor's failure to file the proof of claim on or before the first date set for the meeting of creditors, which is the date a claim must ordinarily be filed in order to be voted in a chapter 7 case. Notice to the creditor is provided to enable him to file a proof of claim pursuant to Rule 3002, which proof, when filed, would supersede the proof filed by the debtor or trustee. Notice to the trustee would serve to alert the trustee to the special character of the proof and the possible need for supplementary evidence of the validity and amount of the

claim. If the trustee does not qualify until after a proof of claim is filed by the debtor pursuant to this rule, he should be notified as soon as practicable thereafter.

To the extent the claim is allowed and dividends paid thereon, it will be reduced or perhaps paid in full. If the claim is also filed pursuant to Rule 3005, only one distribution thereon may be made. As expressly required by Rule 3005 and by the purpose of this rule such distribution must diminish the claim.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Under the rule as amended, the debtor or trustee in a chapter 7 or 13 case has 120 days from the first date set for the meeting of creditors to file a claim for the creditor. During the first 90 days of that period the creditor in a chapter 7 or 13 case may file a claim as provided by Rule 3002(c). If the creditor fails to file a claim, the debtor or trustee shall have an additional 30 days thereafter to file the claim. A proof of claim filed by a creditor supersedes a claim filed by the debtor or trustee only if it is timely filed within the 90 days allowed under Rule 3002(c).

COMMITTEE NOTES ON RULES—2005 AMENDMENT

The rule is amended to conform to §501(c) of the Code. Under that provision, the debtor or trustee may file proof of a claim if the creditor fails to do so in a timely fashion. The rule previously authorized the debtor and the trustee to file a claim as early as the day after the first date set for the meeting of creditors under §341(a). Under the amended rule, the debtor and trustee must wait until the creditor's opportunity to file a claim has expired. Providing the debtor and the trustee with the opportunity to file a claim ensures that the claim will participate in any distribution in the case. This is particularly important for claims that are nondischargeable.

Since the debtor and trustee cannot file a proof of claim until after the creditor's time to file has expired, the rule no longer permits the creditor to file a proof of claim that will supersede the claim filed by the debtor or trustee. The rule leaves to the courts the issue of whether to permit subsequent amendment of such proof of claim.

Other changes are stylistic.

Changes Made After Publication and Comment. No changes were made after publication. The Advisory Committee concluded that Mr. Van Allsburg's suggestion goes beyond the scope of the published proposal. Consequently, the Committee declined to adopt the suggestion but may consider it in greater detail at a future meeting.

Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor

(a) **FILING OF CLAIM.** If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), any entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or Rule 3003(c) whichever is applicable. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution.

(b) **FILING OF ACCEPTANCE OR REJECTION; SUBSTITUTION OF CREDITOR.** An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c)

or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 25, 2005, eff. Dec. 1, 2005.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Rules 304 and 10-402. Together with §501(b) of the Code, the rule makes clear that anyone who may be liable on a debt of the debtor, including a surety, guarantor, indorser, or other codebtor, is authorized to file in the name of the creditor of the debtor.

Subdivision (a). Rule 3002(c) provides the time period for filing proofs of claim in chapter 7 and 13 cases; Rule 3003(c) provides the time, when necessary, for filing claims in a chapter 9 or 11 case.

Subdivision (b). This subdivision applies in chapter 9 and 11 cases as distinguished from chapter 7 cases. It permits voting for or against a plan by an obligor who files a claim in place of the creditor.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The words "with the court" in subdivision (b) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

COMMITTEE NOTES ON RULES—2005 AMENDMENT

The rule is amended to delete the last sentence of subdivision (a). The sentence is unnecessary because if a creditor has filed a timely claim under Rule 3002 or 3003(c), the codebtor cannot file a proof of such claim. The codebtor, consistent with §501(b) of the Code, may file a proof of such claim only after the creditor's time to file has expired. Therefore, the rule no longer permits the creditor to file a superseding claim. The rule leaves to the courts the issue of whether to permit subsequent amendment of the proof of claim.

The amendment conforms the rule to §501(b) by deleting language providing that the codebtor files proof of the claim in the name of the creditor.

Other amendments are stylistic.

Changes Made After Publication and Comment:

(a) The reference on line 2 of Rule 3005 to "Rule 3002 or 3003(c)" was changed to read "Rule 3002(c) or 3003(c)" to make it parallel to the language in Rule 3004.

(b) The phrase "file a proof of the claim" from line 7 of the proposed rule was moved up to line 4 of the proposed amendment immediately after the word "may". This makes the structure of Rules 3004 and 3005 more consistent.

Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to §705(a) or appointed pursuant to §1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Rules 305 and 10-404. Since 1938 it has generally been held that Rule 41 F.R.Civ.P. governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F. Supp. 974, 976 (S.D.N.Y.), aff'd sub nom. *Kleid v. Ruthbell Coal Co.*, 131 F.2d 372, 373 (2d Cir. 1942); *Kelso v. MacLaren*, 122 F.2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F. Supp. 532, 533 (W.D. Wash. 1940). Accordingly, the cited cases held that after an objection has been filed a proof of claim may be withdrawn only subject to approval by the court. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier *Bankruptcy*, ¶57.12 (14th ed. 1961); Note, 20 Bost. U. L. Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) F.R.Civ.P. to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) F.R.Civ.P. requires leave of court to obtain dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), *Kleid v. Ruthbell Coal Co.*, *supra*, *Kelso v. MacLaren*, *supra*, and *In re Hills*, *supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw proof of claim on the ground of estoppel or election of remedies. 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); *cf.* 3 Collier, *supra* ¶57.12, at 201 (1964). Voting a claim for a trustee was an important factor in the denial of a request to withdraw in *Standard Varnish Works v. Haydock*, 143 Fed. 318, 319-20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661, 662 (W.D. Pa. 1931). And it has frequently been recognized that a creditor should not be allowed to withdraw a claim after accepting a dividend. *In re Friedmann*, 1 Am. B. R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); *cf.* *In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, the creditor was entitled under Rule 41(a)(1) F.R.Civ.P. to withdraw the claim as of right by filing a notice of withdrawal before the trustee filed an objection under §57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the inference drawn in the *Hazen* case that Rule 41(a) F.R.Civ.P. supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive the creditor of the right to withdraw the claim, a creditor who has accepted a dividend or who has voted in the election of a trustee or otherwise participated actively in proceedings in a case should be permitted to withdraw only with the approval of the court on terms it deems appropriate after notice to the trustee. 3 Collier 205-06 (1964).

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This amendment is stylistic. Notice of the hearing need not be given to committees of equity security

holders appointed pursuant to §1102 or committees of retired employees appointed pursuant to §1114 of the Code.

Rule 3007. Objections to Claims

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.

(b) DEMAND FOR RELIEF REQUIRING AN ADVERSARY PROCEEDING. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

(c) LIMITATION ON JOINDER OF CLAIMS OBJECTIONS. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

(d) OMNIBUS OBJECTION. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because:

- (1) they duplicate other claims;
- (2) they have been filed in the wrong case;
- (3) they have been amended by subsequently filed proofs of claim;
- (4) they were not timely filed;
- (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;
- (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;
- (7) they are interests, rather than claims; or
- (8) they assert priority in an amount that exceeds the maximum amount under §507 of the Code.

(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection shall:

- (1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection;
- (2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims;
- (3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;
- (4) state in the title the identity of the objector and the grounds for the objections;
- (5) be numbered consecutively with other omnibus objections filed by the same objector; and
- (6) contain objections to no more than 100 claims.

(f) FINALITY OF OBJECTION. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as

though the claim had been subject to an individual objection.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from §47a(8) of the Act and former Bankruptcy Rule 306. It prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant. The requirement of a writing does not apply to an objection to the allowance of a claim for the purpose of voting for a trustee or creditors' committee in a chapter 7 case. See Rule 2003.

The contested matter initiated by an objection to a claim is governed by rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim. The filing of a counterclaim ordinarily commences an adversary proceeding subject to the rules in Part VII.

While the debtor's other creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally exercised by the trustee. Pursuant to §502(a) of the Code, however, any party in interest may object to a claim. But under §704 the trustee, if any purpose would be served thereby, has the duty to examine proofs of claim and object to improper claims.

By virtue of the automatic allowance of a claim not objected to, a dividend may be paid on a claim which may thereafter be disallowed on objection made pursuant to this rule. The amount of the dividend paid before the disallowance in such event would be recoverable by the trustee in an adversary proceeding.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

The words "with the court" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint, which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of a kind specified in Rule 7001.

The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present a significant opportunity for the efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were filed by the same entity, or if the objections are based solely on the grounds set out in subdivision (d) of the rule. Objections of the type listed in subdivision (d) often can be resolved without material factual or legal disputes. Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e). Among those requirements is the requirement

in subdivision (e)(5) that these omnibus objections be consecutively numbered. Since these objections may not join more than 100 objections in any one omnibus objection, there may be a need for several omnibus objections to be filed in a particular case. Consecutive numbering of each omnibus objection and the identification of the objector in the title of the objection is essential to keep track of the objections on the court's docket. For example, the objections could be titled Debtor in Possession's First Omnibus Objection to Claims, Debtor in Possession's Second Omnibus Objection to Claims, Creditors' Committee's First Omnibus Objection to Claims, and so on. Titling the objections in this manner should avoid confusion and aid in tracking the objections on the docket.

Subdivision (f) provides that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment. Moreover, use of an omnibus objection generally does not preclude the objecting party from raising a subsequent objection to the claim on other grounds. See Restatement (Second) of Judgments §26(1)(d) (1982) (generally applicable rule barring multiple actions based on same transaction or series of transactions is overridden when a statutory scheme permits splitting of claims).

Changes Made After Publication. There were several changes made to the rule after its publication. The Advisory Committee declined to follow Mr. Sabino's suggestion, concluding that the rule as proposed includes sufficient flexibility, and that expanding the flexibility might lead to excessive deviation from the appropriate format for omnibus claims objections. The Advisory Committee also declined to follow Mr. Horsley's suggestion because the deadline for filing a proof of claim varies based on the nature of the creditor (governmental units have different deadlines from other creditors) as well as on the chapter under which the case is pending. The Advisory Committee rejected Judge Grant's suggestion that a party proposing an omnibus claims objection be required to demonstrate some special cause to allow the joinder of the objections. The Advisory Committee concluded that the rule includes sufficient protections for claimants such that omnibus objections should be allowed without the need for a special showing by the claims objector that joinder is proper.

The Advisory Committee did accept several of Judge Grant's suggestions, and the rule was amended by deleting the grounds for objection to claims based on the filing of a superceding proof of claim under proposed subdivision (d)(3) and the transfer of claims under proposed subdivision (d)(4). Subdivision (d)(3) now permits objections to claims that have been amended by a subsequently filed proof of claim and the paragraphs within subdivision (d) have been renumbered to reflect the deletion. The Committee Note also no longer includes any reliance on §502(j) for the statement indicating that a subsequent claim objection can be filed to a claim that was previously included in an omnibus claim objection.

Rule 3008. Reconsideration of Claims

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 502(j) of the Code deals only with the reconsideration of allowed claims as did former §57k of the

Act and General Order 21(b). It had sometimes been held that a referee had no jurisdiction to reconsider a disallowed claim, or the amount or priority of an allowed claim, at the instance of the claimant. See, e.g., *In re Gouse*, 7 F. Supp. 106 (M.D. Pa. 1934); *In re Tomlinson & Dye, Inc.*, 3 F. Supp. 800 (N.D. Okla. 1933). This view disregarded §2a(2) of the Act and the “ancient and elementary power” of a referee as a court to reconsider orders. *In re Pottasch Brow. Co., Inc.*, 79 F.2d 613, 616 (2d Cir. 1935); *Castaner v. Mora*, 234 F.2d 710 (1st Cir. 1956). This rule recognizes, as did former Bankruptcy Rule 307, the power of the court to reconsider an order of disallowance on appropriate motion.

Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court. The right to seek reconsideration of an allowed claim, like the right to object to its allowance, is generally exercised by the trustee if one has qualified and is performing the duties of that office with reasonable diligence and fidelity. A request for reconsideration of a disallowance would, on the other hand, ordinarily come from the claimant.

A proof of claim executed and filed in accordance with the rules in this Part III is prima facie evidence of the validity and the amount of the claim notwithstanding a motion for reconsideration of an order of allowance. Failure to respond does not constitute an admission, though it may be deemed a consent to a reconsideration. *In re Goble Boat Co.*, 190 Fed. 92 (N.D.N.Y. 1911). The court may decline to reconsider an order of allowance or disallowance without notice to any adverse party and without affording any hearing to the movant. If a motion to reconsider is granted, notice and hearing must be afforded to parties in interest before the previous action in the claim taken in respect to the claim may be vacated or modified. After reconsideration, the court may allow or disallow the claim, increase or decrease the amount of a prior allowance, accord the claim a priority different from that originally assigned it, or enter any other appropriate order.

The rule expands §502(j) which provides for reconsideration of an allowance only before the case is closed. Authorities have disagreed as to whether reconsideration may be had after a case has been reopened. Compare 3 Collier *Bankruptcy* ¶57.23[4] (14th ed. 1964), see generally 3 *id.* ¶502.10 (15th ed. 1979), with 2 Remington, *Bankruptcy* 498 (Henderson ed. 1956). If a case is reopened as provided in §350(b) of the Code, reconsideration of the allowance or disallowance of a claim may be sought and granted in accordance with this rule.

Rule 3009. Declaration and Payment of Dividends in a Chapter 7 Liquidation Case

In a chapter 7 case, dividends to creditors shall be paid as promptly as practicable. Dividend checks shall be made payable to and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another entity to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other entity and shall be mailed to the other entity.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Rules 308 and 11-35(a). The preparation of records showing dividends declared and to whom payable is subject to prescription by the Director of the Administrative Office pursuant to Rule 5003(e). The rule governs distributions to creditors having priority as well as to general unsecured creditors. Notwithstanding the detailed statutory provisions regulating the declaration of dividends, a necessarily wide discretion over this matter has been recognized to reside in the court. See 3A Collier, *Bank-*

ruptcy ¶65.03 (14th ed. 1975); 1 *Proceedings of Seminar for Newly Appointed Referees in Bankruptcy* 173 (1964). Although the rule leaves to the discretion of the court the amount and the times of dividend payments, it recognizes the creditors’ right to as prompt payment as practicable.

The second and third sentences of the rule make explicit the method of payment of dividends and afford protection of the interests of the creditor and the holder of a power of attorney authorized to receive payment.

The rule does not permit variance at local option. This represents a marked change from former Bankruptcy Rule 308.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

This rule is amended to delete the requirement that the court approve the amounts and times of distributions in chapter 7 cases. This change recognizes the role of the United States trustee in supervising trustees. Other amendments are stylistic and make no substantive change.

Rule 3010. Small Dividends and Payments in Chapter 7 Liquidation, Chapter 12 Family Farmer’s Debt Adjustment, and Chapter 13 Individual’s Debt Adjustment Cases

(a) CHAPTER 7 CASES. In a chapter 7 case no dividend in an amount less than \$5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in §347 of the Code.

(b) CHAPTER 12 AND CHAPTER 13 CASES. In a chapter 12 or chapter 13 case no payment in an amount less than \$15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates \$15. Any funds remaining shall be distributed with the final payment.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule permits a court to eliminate the disproportionate expense and inconvenience incurred by the issuance of a dividend check of less than \$5 (or \$15 in a chapter 13 case). Creditors are more irritated than pleased to receive such small dividends, but the money is held subject to their specific request as are unclaimed dividends under §347(a) of the Code. When the trustee deposits undistributed dividends pursuant to a direction in accordance with this rule the trustee should file with the clerk a list of the names and addresses, so far as known, of the persons entitled to the money so deposited and the respective amounts payable to them pursuant to Rule 3011. In a chapter 13 case, the small dividend will accumulate and will be payable at the latest, with the final dividend. Local rule or order may change the practice permitted in this rule and, in that connection, the order may be incorporated in the order confirming a chapter 13 plan.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (b) is amended to include chapter 12 cases.

Rule 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases

The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to §347(a) of the Code.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Bankruptcy Rule 310. The operative provisions of that rule, however, are contained in §347(a) of the Code, requiring the trustee to stop payment of checks remaining unpaid 90 days after distribution. The rule adds the requirement of filing a list of the names and addresses of the persons entitled to these dividends. This rule applies in a chapter 7 or 13 case but not in a chapter 9 or 11 case. The latter cases are governed by §347(b) of the Code which provides for unclaimed distributions to be returned to the debtor or other entity acquiring the assets of the debtor.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The title of this rule is amended to include chapter 12 cases. The words "with the clerk" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 3012. Valuation of Security

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Pursuant to §506(a) of the Code, secured claims are to be valued and allowed as secured to the extent of the value of the collateral and unsecured, to the extent it is enforceable, for the excess over such value. The valuation of secured claims may become important in different contexts *e.g.*, to determine the issue of adequate protection under §361, impairment under §1124, or treatment of the claim in a plan pursuant to §1129(b) of the Code. This rule permits the issue to be raised on motion by a party in interest. The secured creditor is entitled to notice of the hearing on the motion and the court may direct that others in the case also receive such notice.

An adversary proceeding is commenced when the validity, priority, or extent of a lien is at issue as prescribed by Rule 7001. That proceeding is relevant to the basis of the lien itself while valuation under Rule 3012 would be for the purposes indicated above.

Rule 3013. Classification of Claims and Interests

For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§1122, 1222(b)(1), and 1322(b)(1) of the Code.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Sections 1122 and 1322(b)(1) set the standards for classifying claims and interests but provide that such clas-

sification is accomplished in the plan. This rule does not change the standards; rather it recognizes that it may be desirable or necessary to establish proper classification before a plan can be formulated. It provides for a court hearing on such notice as the court may direct.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to include chapter 12 cases.

Rule 3014. Election Under §1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case

An election of application of §1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of §1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by §1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

(As amended Apr. 11, 1997, eff. Dec. 1, 1997.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Pursuant to §1111(b)(1) of the Code, a nonrecourse secured loan is converted, automatically, into a recourse loan thereby entitling the creditor to an unsecured deficiency claim if the value of the collateral is less than the debt. The class, however, may retain the loan as a nonrecourse loan by electing application of §1111(b)(2) by the majorities stated in §1111(b)(1)(A)(i). That section does not specify any time periods for making the election.

Rule 3014 provides that if no agreement is negotiated, the election of §1111(b)(2) of the Code may be made at any time prior to conclusion of the hearing on the disclosure statement. Once the hearing has been concluded, it would be too late for a secured creditor class to demand different treatment unless the court has fixed a later time. This would be the case if, for example, a public class of secured creditors should have an approved disclosure statement prior to electing under §1111(b).

Generally it is important that the proponent of a plan ascertain the position of the secured creditor class before a plan is proposed. The secured creditor class must know the prospects of its treatment under the plan before it can intelligently determine its rights under §1111(b). The rule recognizes that there may be negotiations between the proponent of the plan and the secured creditor leading to a representation of desired treatment under §1111(b). If that treatment is approved by the requisite majorities of the class and culminates in a written, signed statement filed with the court, that statement becomes binding and the class may not thereafter demand different treatment under §1111(b) with respect to that plan. The proponent of the plan is thus enabled to seek approval of the disclosure statement and transmit the plan for voting in anticipation of confirmation. Only if that plan is not confirmed may the class of secured creditors thereafter change its prior election.

While this rule and the Code refer to a class of secured creditors it should be noted that ordinarily each secured creditor is in a separate and distinct class. In that event, the secured creditor has the sole power to

determine application of §1111(b) with respect to that claim.

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

This amendment provides a deadline for electing application of §1111(b)(2) in a small business case in which a conditionally approved disclosure statement is finally approved without a hearing.

GAP Report on Rule 3014. No changes to the published draft.

Rule 3015. Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case

(a) CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by §1221 of the Code.

(b) CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) DATING. Every proposed plan and any modification thereof shall be dated.

(d) NOTICE AND COPIES. The plan or a summary of the plan shall be included with each notice of the hearing on confirmation mailed pursuant to Rule 2002. If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed pursuant to subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan. An objection to confirmation is governed by Rule 9014. 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.

(g) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan pursuant to §1229 or §1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 20 days notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a sum-

mary thereof, shall be included with the notice. If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 1321 provides only that the "debtor shall file a plan." No time periods are specified, nor is any other detail provided. The rule requires a chapter 13 plan to be filed either with the petition or within 15 days thereafter. The court may, for cause, extend the time. The rule permits a summary of the plan to be transmitted with the notice of the hearing on confirmation. The court may, however, require the plan itself to be transmitted and the debtor to supply enough copies for this purpose. In the former rules under Chapter XIII the plan would accompany the notice of the first meeting of creditors. It is more important for the plan or a summary of its terms to be sent with the notice of the confirmation hearing. At that hearing objections to the plan will be heard by the court.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to include chapter 12 plans. Section 1221 of the Code requires the debtor to file a chapter 12 plan not later than 90 days after the order for relief, except that the court may extend the period if an extension is "substantially justified."

Subdivision (e) enables the United States trustee to monitor chapter 12 and chapter 13 plans pursuant to 28 U.S.C. §586(a)(3)(C).

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Subdivision (b) is amended to provide a time limit for filing a plan after a case has been converted to chapter 13. The substitution of "may" for "shall" is stylistic and makes no substantive change.

Subdivision (d) is amended to clarify that the plan or a summary of the plan must be included with each notice of the confirmation hearing in a chapter 12 case pursuant to Rule 2002(a).

Subdivision (f) is added to expand the scope of the rule to govern objections to confirmation in chapter 12 and chapter 13 cases. The subdivision also is amended to include a provision that permits the court, in the absence of an objection, to determine that the plan has been proposed in good faith and not by any means forbidden by law without the need to receive evidence on these issues. These matters are now governed by Rule 3020.

Subdivision (g) is added to provide a procedure for post-confirmation modification of chapter 12 and chapter 13 plans. These procedures are designed to be similar to the procedures for confirmation of plans. However, if no objection is filed with respect to a proposed modification of a plan after confirmation, the court is not required to hold a hearing. See §1229(b)(2) and §1329(b)(2) which provide that the plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved. See §102(1). The notice of the time fixed for filing objections to the proposed modification should set a date for a hearing to be held in the event that an objection is filed.

Amendments to the title of this rule are stylistic and make no substantive change.

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement under §1125 of the Code or evidence showing compliance with §1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under §1125(f)(1). If the plan is intended to provide adequate information under §1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.

(c) INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.

(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small business case, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule implements the Code provisions concerning the filing of plans in chapters 9 and 11.

Chapter 9 Cases. Section 941 provides that the debtor may file a plan with the petition or thereafter but within a time fixed by the court. A rule, therefore, is unnecessary to specify the time for filing chapter 9 plans.

Chapter 11 Nonrailroad Cases. Section 1121 contains detailed provisions with respect to who may file a chapter 11 plan and, in part, the time period. Section 1121(a) permits a debtor to file a plan with the petition or at any time during the case. Section 1121(b) and (c) grants exclusive periods of 120 days and 180 days for the debtor to file and obtain acceptance of a plan. Failure to take advantage of these periods or the appointment of a trustee would permit other parties in interest to file a plan. These statutory provisions are not repeated in the rules.

Chapter 11 Railroad Cases. Pursuant to subchapter IV of chapter 11, §1121 of the Code is applicable in railroad cases; see §§1161, 103(g). A trustee, however, is to be appointed in every case; thus, pursuant to §1121(c), any party in interest may file a plan. See discussion of subdivision (a) of this rule, *infra*.

Subdivision (a). Section 1121(c), while permitting parties in interest a limited right to file plans, does not provide any time limitation. This subdivision sets as the deadline, the conclusion of the hearing on the disclosure statement. The court may, however, grant additional time. It is derived from former Chapter X Rule 10-301(c)(2) which used, as the cut-off time, the conclusion of the hearing on approval of a plan. As indicated, *supra*, §1121(a) permits a debtor to file a plan at any time during the chapter 11 case. Under §1121(c), parties other than a debtor may file a plan only after a trustee is appointed or the debtor's exclusive time expires.

Subdivision (b) requires plans to be properly identified.

Subdivision (c). This provision is new. In chapter 9 and 11 cases (including railroad reorganization cases) post-petition solicitation of votes on a plan requires transmittal of a disclosure statement, the contents of which have been approved by the court. See §1125 of the Code. A prepetition solicitation must either have been in conformity with applicable nonbankruptcy law or, if none, the disclosure must have been of adequate information as set forth in §1125 of the Code. See §1126(b). Subdivision (c) of this rule provides the time for filing the disclosure statement or evidence of compliance with §1126(b) which ordinarily will be with the plan but the court may allow a later time or the court may, pursuant to the last sentence, fix a time certain. Rule 3017 deals with the hearing on the disclosure statement. The disclosure statement, pursuant to §1125 is to contain adequate information. "Adequate information" is defined in §1125(a) as information that would permit a reasonable creditor or equity security holder to make an informed judgment on the plan.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivision (a) is amended to enlarge the time for filing competing plans. A party in interest may not file a plan without leave of court only if an order approving a disclosure statement relating to another plan has been entered and a decision on confirmation of the plan has not been entered. This subdivision does not fix a deadline beyond which a debtor may not file a plan.

NOTES OF ADVISORY COMMITTEE ON RULES—1996
AMENDMENT

Section 1121(c) gives a party in interest the right to file a chapter 11 plan after expiration of the period when only the debtor may file a plan. Under §1121(d), the exclusive period in which only the debtor may file a plan may be extended, but only if a party in interest so requests and the court, after notice and a hearing, finds cause for an extension. Subdivision (a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a plan without satisfying the requirements of §1121(d). The abrogation of subdivision (a) does not affect the court's discretion with respect to the scheduling of hearings on the approval of disclosure statements when more than one plan has been filed.

The amendment to subdivision (c), redesignated as subdivision (b), is stylistic.

GAP Report on Rule 3016. No changes since publication, except for a stylistic change.

COMMITTEE NOTES ON RULES—2001 AMENDMENT

Subdivision (c) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, are given adequate notice of the proposed injunction. The validity and effect of any injunction are substantive law matters that are beyond the scope of these rules.

Specific and conspicuous language is not necessary if the injunction contained in the plan is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 3016(c) would not apply because that conduct would be enjoined nonetheless under §524(a)(2). But if a plan provides that creditors will be permanently enjoined from asserting claims against persons who are not debtors in the case, the plan and disclosure statement must highlight the injunctive language and comply with the requirements of Rule 3016(c). See §524(e).

The requirement in this rule that the plan and disclosure statement identify the entities that would be subject to the injunction requires reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the plan and disclosure statement may describe

them by class or category. For example, it may be sufficient to identify the subjects of the injunction as “all creditors of the debtor.”

Changes Made After Publication and Comments. The word “highlighted” in the parenthesis was replaced with “underlined” because highlighted documents are difficult to scan electronically for inclusion in the clerks’ files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules. Other stylistic changes were made to the Committee Note.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Subdivision (b) is amended to recognize that, in 2005, §1125(f)(1) was added to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

Subdivision (d) is added to the rule to implement §433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which requires the promulgation of Official Forms for plans and disclosure statements in small business cases. Section 1125(f)(2) of the Code provides that the court may approve a disclosure statement submitted on the appropriate Official Form or on a standard form approved by the court. The rule takes no position on whether a court may require a local standard form disclosure statement or plan of reorganization in lieu of the Official Forms.

Other amendments are stylistic.

Changes Made After Publication. No changes were made after publication.

Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) HEARING ON DISCLOSURE STATEMENT AND OBJECTIONS. Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 25 days’ notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed 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 the disclosure statement is approved or by an earlier date as the court may fix. In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided in this subdivision.

(b) DETERMINATION ON DISCLOSURE STATEMENT. Following the hearing the court shall determine whether the disclosure statement should be approved.

(c) DATES FIXED FOR VOTING ON PLAN AND CONFIRMATION. On or before approval of the disclo-

sure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) TRANSMISSION AND NOTICE TO UNITED STATES TRUSTEE, CREDITORS, AND EQUITY SECURITY HOLDERS. Upon approval of a disclosure statement,—¹ except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

(1) the plan or a court-approved summary of the plan;

(2) the disclosure statement approved by the court;

(3) notice of the time within which acceptances and rejections of the plan may be filed; and

(4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. If the court opinion is not transmitted or only a summary of the plan is transmitted, the court opinion or the plan shall be provided on request of a party in interest at the plan proponent’s expense. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent’s expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.

(e) TRANSMISSION TO BENEFICIAL HOLDERS OF SECURITIES. At the hearing held pursuant to subdivision (a) of this rule, the court shall consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.

(f) NOTICE AND TRANSMISSION OF DOCUMENTS TO ENTITIES SUBJECT TO AN INJUNCTION UNDER A

¹ So in original. The comma probably should not appear.

PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with:

- (1) at least 25 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and
- (2) to the extent feasible, a copy of the plan and disclosure statement.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 23, 2001, eff. Dec. 1, 2001.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Rule 10-303 which dealt with the approval of a Chapter X plan by the court. There is no requirement for plan approval in a chapter 9 or 11 case under the Code but there is the requirement that a disclosure statement containing adequate financial information be approved by the court after notice and a hearing before votes on a plan are solicited. Section 1125(b) of the Code is made applicable in chapter 9 cases by §901(a). It is also applicable in railroad reorganization cases under subchapter IV of chapter 11; see §1161 of the Code.

Subdivision (a) of this rule provides for the hearing on the disclosure statement. Thus, a hearing would be required in all cases; whether it may be ex parte would depend on the circumstances of the case, but a mere absence of objections would not eliminate the need for a hearing; see §102(1) of the Code.

No provision similar to former Rule 10-303(f) is included. That subdivision together with former Rule 10-304 prohibited solicitation of votes until after entry of an order approving the plan. Section 1125(b) of the Code explicitly provides that votes on a plan may not be solicited until a disclosure statement approved by the court is transmitted. Pursuant to the change in rulemaking power, a comparable provision in this rule is unnecessary. 28 U.S.C. §2075.

Copies of the disclosure statement and plan need not be mailed with the notice of the hearing or otherwise transmitted prior to the hearing except with respect to the parties explicitly set forth in the subdivision.

It should be noted that, by construction, the singular includes the plural. Therefore, the phrase "plan or plans" or "disclosure statement or statements" has not been used although the possibility of multiple plans and statements is recognized.

Subdivision (d) permits the court to require a party other than the clerk of the bankruptcy court to bear the responsibility for transmitting the notices and documents specified in the rule when votes on the plan are solicited. Ordinarily the person responsible for such mailing will be the proponent of the plan. In rare cases the clerk may be directed to mail these documents, particularly when the trustee would have the responsibility but there is insufficient money in the estate to enable the trustee to perform this task.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

Subdivision (d). Section 1125(c) of the Code requires that the entire approved disclosure statement be provided in connection with voting on a plan. The court is authorized by §1125(c) to approve different disclosure statements for different classes. Although the rule does not permit the mailing of a summary of the disclosure statement in place of the approved disclosure statement, the court may approve a summary of the disclosure statement to be mailed with the complete disclosure statement to those voting on the plan.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

This rule is amended to enable the United States trustee to monitor and comment with regard to chapter 11 disclosure statements and plans. The United States trustee does not perform these functions in a chapter 9 municipal debt adjustment case. See 28 U.S.C. §586(a)(3)(B).

Subdivision (d) is amended to give the court the discretion to direct that one or more unimpaired classes shall not receive disclosure statements, plans, or summaries of plans. Members of unimpaired classes are not entitled to vote on the plan. Although disclosure statements enable members of unimpaired classes to make informed judgments as to whether to object to confirmation because of lack of feasibility or other grounds, in an unusual case the court may direct that disclosure statements shall not be sent to such classes if to do so would not be feasible considering the size of the unimpaired classes and the expense of printing and mailing. In any event, all creditors are entitled to notice of the time fixed for filing objections and notice of the hearing to consider confirmation of the plan pursuant to Rule 2002(b) and the requirement of such notice may not be excused with respect to unimpaired classes. The amendment to subdivision (d) also ensures that the members of unimpaired classes who do not receive such documents will have sufficient information so that they may request these documents in advance of the hearing on confirmation. The amendment to subdivision (d) is not intended to give the court the discretion to dispense with the mailing of the plan and disclosure statement to governmental units holding claims entitled to priority under §507(a)(7) because they may not be classified. See §1123(a)(1).

The words "with the court" in subdivision (a) are deleted as unnecessary. See Rules 5005(a) and 9001(3). Reference to the Official Form number in subdivision (d) is deleted in anticipation of future revision and renumbering of the Official Forms.

Subdivision (e) is designed to ensure that appropriate measures are taken for the plan, disclosure statement, ballot and other materials which are required to be transmitted to creditors and equity security holders under this rule to reach the beneficial holders of securities held in nominee name. Such measures may include orders directing the trustee or debtor in possession to reimburse the nominees out of the funds of the estate for the expenses incurred by them in distributing materials to beneficial holders. In most cases, the plan proponent will not know the identities of the beneficial holders and therefore it will be necessary to rely on the nominal holders of the securities to distribute the plan materials to the beneficial owners.

NOTES OF ADVISORY COMMITTEE ON RULES—1997 AMENDMENT

Subdivision (a) is amended to provide that it does not apply to the extent provided in new Rule 3017.1, which applies in small business cases.

Subdivision (d) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to receive documents pursuant to this subdivision. For example, if there may be a delay between the oral announcement of the judge's order approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents.

The court may set a record date pursuant to subdivision (d) only after notice and a hearing as provided in §102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes a record date pursuant to subdivision (d) with respect to the holders of securities, and

the holders are impaired by the plan, the judge also should order that the same record date applies for the purpose of determining eligibility for voting pursuant to Rule 3018(a).

Other amendments to this rule are stylistic.

GAP Report on Rule 3017. No changes to the published draft.

COMMITTEE NOTES ON RULES—2001 AMENDMENT

Subdivision (f) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, and who will not receive the documents listed in subdivision (d) because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction. It does not address any substantive law issues relating to the validity or effect of any injunction provided under a plan, or any due process or other constitutional issues relating to notice. These issues are beyond the scope of these rules and are left for judicial determination.

This rule recognizes the need for adequate notice to subjects of an injunction, but that reasonable flexibility under the circumstances may be required. If a known and identifiable entity would be subject to the injunction, and the notice, plan, and disclosure statement could be mailed to that entity, the court should require that they be mailed at the same time that the plan, disclosure statement and related documents are mailed to creditors under Rule 3017(d). If mailing notices and other documents is not feasible because the entities subject to the injunction are described in the plan and disclosure statement by class or category and they cannot be identified individually by name and address, the court may require that notice under Rule 3017(f)(1) be published.

Changes Made After Publication and Comments. No changes were made in the text of the proposed amendments since publication. The Committee Note was revised to put in a more prominent position the statement that the rule does not address related substantive law issues which are beyond the scope of the rules.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case

(a) **CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT.** In a small business case, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. 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.

(Added Apr. 11, 1997, eff. Dec. 1, 1997; amended Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1997

This rule is added to implement §1125(f) that was added to the Code by the Bankruptcy Reform Act of 1994.

The procedures for electing to be considered a small business are set forth in Rule 1020. If the debtor is a small business and has elected to be considered a small business, §1125(f) permits the court to conditionally approve a disclosure statement subject to final approval after notice and a hearing. If 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.

GAP Report on Rule 3017.1. No change to the published draft.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Section 101 of the Code, as amended in 2005, defines a “small business case” and “small business debtor,” and eliminates any need to elect that status. Therefore, the reference in the rule to an election is deleted.

As provided in the amendment to Rule 3016(b), a plan intended to provide adequate information in a small business case under §1125(f)(1) may be conditionally approved and is otherwise treated as a disclosure statement under this rule.

Changes Made After Publication. No changes were made after publication.

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) **ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION.** A plan may be accepted or rejected in accordance with §1126 of the Code within the time fixed by the court pursuant to Rule 3017. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

(b) **ACCEPTANCES OR REJECTIONS OBTAINED BEFORE PETITION.** An equity security holder or creditor whose claim is based on a security of record who accepted or rejected the plan before

the commencement of the case shall not be deemed to have accepted or rejected the plan pursuant to §1126(b) of the Code unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with §1126(b) of the Code.

(c) FORM OF ACCEPTANCE OR REJECTION. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate a preference or preferences among the plans so accepted.

(d) ACCEPTANCE OR REJECTION BY PARTIALLY SECURED CREDITOR. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule applies in chapter 9, 11 and 13 cases under the Code. The references in the rule to equity security holders will not, however, be relevant in chapter 9 or 13 cases. The rule will be of little utility in a chapter 13 case because only secured creditors may be requested to vote on a plan; unsecured creditors are not entitled to vote; see §1325(a)(4), (5) of the Code.

Subdivision (a) is derived from former Rule 10-305(a). It substitutes, in a reorganization case, entry of the order approving the disclosure statement for the order approving a plan in conformity with the differences between Chapter X and chapter 11. In keeping with the underlying theory it continues to recognize that the lapse of time between the filing of the petition and entry of such order will normally be significant and, during that interim, bonds and equity interests can change ownership.

Subdivision (b) recognizes the former Chapter XI practice permitting a plan and acceptances to be filed with the petition, as does §1126(b) of the Code. However, because a plan under chapter 11 may affect shareholder interests, there should be reference to a record date of ownership. In this instance the appropriate record date is that used in the prepetition solicitation materials because it is those acceptances or rejections which are being submitted to the court.

While §1126(c), (d), and (e) prohibits use of an acceptance or rejection not procured in good faith, the added provision in subdivision (b) of the rule is somewhat more detailed. It would prohibit use of prepetition acceptances or rejections when some but not all impaired creditors or equity security holders are solicited or when they are not given a reasonable opportunity to

submit their acceptances or rejections. This provision together with §1126(e) gives the court the power to nullify abusive solicitation procedures.

Subdivision (c). It is possible that multiple plans may be before the court for confirmation. Pursuant to §1129(c) of the Code, the court may confirm only one plan but is required to consider the preferences expressed by those accepting the plans in determining which one to confirm.

Subdivisions (d) and (e) of former Rule 10-305 are not continued since comparable provisions are contained in the statute; see §1126(c), (d), (e).

It should be noted that while the singular “plan” is used throughout, by construction the plural is included; see §102(7).

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivisions (a) and (b) are amended to delete provisions that duplicate §1126 of the Code. An entity who is not a record holder of a security, but who claims that it is entitled to be treated as a record holder, may file a statement pursuant to Rule 3003(d).

Subdivision (a) is amended further to allow the court to permit a creditor or equity security holder to change or withdraw an acceptance or rejection for cause shown whether or not the time fixed for voting has expired.

Subdivision (b) is also amended to give effect to a prepetition acceptance or rejection if solicitation requirements were satisfied with respect to substantially all members of the same class, instead of requiring proper solicitation with respect to substantially all members of all classes.

Subdivision (c) is amended to delete the Official Form number in anticipation of future revision and renumbering of the Official Forms.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

The title of this rule is amended to indicate that it applies only in a chapter 9 or a chapter 11 case. The amendment of the word “Plans” to “Plan” is stylistic.

NOTES OF ADVISORY COMMITTEE ON RULES—1997 AMENDMENT

Subdivision (a) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to vote on the plan. For example, if there may be a delay between the oral announcement of the judge’s decision approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date for voting purposes so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents in connection with the solicitation of votes.

The court may set a record date pursuant to subdivision (a) only after notice and a hearing as provided in §102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes the record date for voting purposes, the judge also should order that the same record date shall apply for the purpose of distributing the documents required to be distributed pursuant to Rule 3017(d).

GAP Report on Rule 3018. No changes to the published draft.

Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) MODIFICATION OF PLAN BEFORE CONFIRMATION. In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirma-

tion, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

(b) **MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE.** If the debtor is an individual, a request to modify the plan under §1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 20 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule implements §§942, 1127 and 1323 of the Code. For example, §1127 provides for modification before and after confirmation but does not deal with the minor modifications that do not adversely change any rights. The rule makes clear that a modification may be made, after acceptance of the plan without submission to creditors and equity security holders if their interests are not affected. To come within this rule, the modification should be one that does not change the rights of a creditor or equity security holder as fixed in the plan before modification.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

This rule is amended to limit its application to chapter 9 and chapter 11 cases. Modification of plans after confirmation in chapter 12 and chapter 13 cases is governed by Rule 3015. The addition of the comma in the second sentence is stylistic and makes no substantive change.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The 2005 amendments to §1127 of the Code provide for modification of a confirmed plan in an individual debtor or chapter 11 case. Therefore, the rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

Changes Made After Publication. The last sentence of the published rule provided that an objection to modification of a plan is governed by Rule 9014. The sentence is deleted and the reference to Rule 9014 is moved to the first sentence of subdivision (b) of the rule. The Committee Note was revised to make the reference to the 2005 amendments to the Bankruptcy Code consistent with their identification in other Committee Notes.

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) **DEPOSIT.** In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.

(b) **OBJECTION TO AND HEARING ON CONFIRMATION IN A CHAPTER 9 OR CHAPTER 11 CASE.**

(1) *Objection.* An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and any other entity designated by the court, within a time fixed by the court. Unless the case is a chapter 9 municipality case, a copy of every objection to confirmation shall be transmitted by the objecting party to the United States trustee within the time fixed for filing objections. An objection to confirmation is governed by Rule 9014.

(2) *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.

(c) **ORDER OF CONFIRMATION.**

(1) The order of confirmation shall conform to the appropriate Official Form. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction.

(2) Notice of entry of the order of confirmation shall be mailed promptly to the debtor, the trustee, creditors, equity security holders, other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code.

(3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).

(d) **RETAINED POWER.** Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.

(e) **STAY OF CONFIRMATION ORDER.** An order confirming a plan is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 23, 2001, eff. Dec. 1, 2001.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Rules 10-307, 11-38, and 13-213. It applies to cases filed under chapters 9, 11 and 13. Certain subdivisions of the earlier rules have

not been included, such as, a subdivision revesting title in the debtor because §541 of the Code does not transfer title out of the debtor as did §70a of the Bankruptcy Act; see also §§1141(b), 1327(b). Subdivision (b) of former Rule 13-213 is not included because its provisions are contained in the statute; see §§1322, 1325(b), 105.

Subdivision (a) gives discretion to the court to require in chapter 11 cases the deposit of any consideration to be distributed on confirmation. If money is to be distributed, it is to be deposited in a special account to assure that it will not be used for any other purpose. The Code is silent in chapter 11 with respect to the need to make a deposit or the person with whom any deposit is to be made. Consequently, there is no statutory authority for any person to act in a capacity similar to the disbursing agent under former Chapter XI practice. This rule provides that only the debtor in possession or trustee should be appointed as the recipient of the deposit. Any consideration other than money, *e.g.*, notes or stock may be given directly to the debtor in possession or trustee and need not be left in any kind of special account. In chapter 9 cases, §944(b) provides for deposit with a disbursing agent appointed by the court of any consideration to be distributed under the plan.

Subdivision (d) clarifies the authority of the court to conclude matters pending before it prior to confirmation and to continue to administer the estate as necessary, *e.g.*, resolving objections to claims.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The United States trustee monitors chapter 11, chapter 12, and chapter 13 plans and has standing to be heard regarding confirmation of a plan. See 28 U.S.C. §586(a)(3). The amendments to subdivisions (b)(1) and (c) of this rule facilitate that role of the United States trustee. Subdivision (b)(1) is also amended to require service on the proponent of the plan of objections to confirmation. The words “with the court” in subdivision (b)(1) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

In a chapter 12 case, the court is required to conduct and conclude the hearing on confirmation of the plan within the time prescribed in §1224 of the Code.

Subdivision (c) is also amended to require that the confirmation order be mailed to the trustee. Reference to the Official Form number is deleted in anticipation of future revision and renumbering of the Official Forms.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

This rule is amended to limit its application to chapter 9 and chapter 11 cases. The procedures relating to confirmation of plans in chapter 12 and chapter 13 cases are provided in Rule 3015. Other amendments are stylistic and make no substantive change.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

Subdivision (e) is added to provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under chapter 9 or chapter 11 of the Code before the plan is implemented and an appeal becomes moot. Unless the court orders otherwise, any transfer of assets, issuance of securities, and cash distributions provided for in the plan may not be made before the expiration of the 10-day period. The stay of the confirmation order under subdivision (e) does not affect the time for filing a notice of appeal from the confirmation order in accordance with Rule 8002.

The court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately. Alternatively, the court may order that the stay under Rule 3020(e) is for a fixed period less than 10 days.

GAP Report on Rule 3020. No changes since publication.

COMMITTEE NOTES ON RULES—2001 AMENDMENT

Subdivision (c) is amended to provide notice to an entity subject to an injunction provided for in a plan

against conduct not otherwise enjoined by operation of the Code. This requirement is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The requirement that the order of confirmation identify the entities subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the order may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient to identify the entities as “all creditors of the debtor.”

Changes Made After Publication and Comments. No changes were made in the text of the proposed amendments. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of injunctions provided for in plans is beyond the scope of the rules.

Rule 3021. Distribution Under Plan

Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.

(As amended Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 1999, eff. Dec. 1, 1999.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from former Chapter X Rule 10-405(a). Subdivision (b) of that rule is covered by §1143 of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

This rule is amended to provide flexibility in fixing the record date for the purpose of making distributions to holders of securities of record. In a large case, it may be impractical for the debtor to determine the holders of record with respect to publicly held securities and also to make distributions to those holders at the same time. Under this amendment, the plan or the order confirming the plan may fix a record date for distributions that is earlier than the date on which distributions commence.

This rule also is amended to treat holders of bonds, debentures, notes, and other debt securities the same as any other creditors by providing that they shall receive a distribution only if their claims have been allowed. Finally, the amendments clarify that distributions are to be made to all interest holders—not only those that are within the definition of “equity security holders” under §101 of the Code—whose interests have not been disallowed.

GAP Report on Rule 3021. No changes to the published draft.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

This amendment is to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case. The other amendments are stylistic.

GAP Report on Rule 3021. No changes since publication.

Rule 3022. Final Decree in Chapter 11 Reorganization Case

After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 350 of the Code requires the court to close the case after the estate is fully administered and the trustee has been discharged. Section 1143 places a five year limitation on the surrender of securities when required for participation under a plan but this provision should not delay entry of the final decree.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

The court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to §350(b) of the Code. For example, on motion of a party in interest, the court may reopen the case to revoke an order of confirmation procured by fraud under §1144 of the Code. If the plan or confirmation order provides that the case shall remain open until a certain date or event because of the likelihood that the court's jurisdiction may be required for specific purposes prior thereto, the case should remain open until that date or event.

PART IV—THE DEBTOR: DUTIES AND BENEFITS

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

(a) RELIEF FROM STAY; PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY.

(1) *Motion.* A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to §363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to §705 or appointed pursuant to §1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to §1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

(2) *Ex Parte Relief.* Relief from a stay under §362(a) or a request to prohibit or condition

the use, sale, or lease of property pursuant to §363(e) may be granted without prior notice only if (A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief under this subdivision and §362(f) or §363(e) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such adverse party or parties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion.

(3) *Stay of Order.* An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

(b) USE OF CASH COLLATERAL.

(1) *Motion; Service.*

(A) *Motion.* A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order.

(B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions, including:

(i) the name of each entity with an interest in the cash collateral;

(ii) the purposes for the use of the cash collateral;

(iii) the material terms, including duration, of the use of the cash collateral; and

(iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected.

(C) *Service.* The motion shall be served on:

(1) any entity with an interest in the cash collateral; (2) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, the creditors included on the list filed under Rule 1007(d); and (3) any other entity that the court directs.

(2) *Hearing.* The court may commence a final hearing on a motion for authorization to use