

## COMMITTEE NOTES ON RULES—2003 AMENDMENT

The rule is amended to reflect the enactment of subchapter V of chapter 7 of the Code governing multi-lateral clearing organization liquidations. Section 782 of the Code provides that the designation of a trustee or alternative trustee for the case is made by the Federal Reserve Board. Therefore, neither the United States trustee nor the creditors can appoint or elect a trustee in these cases.

Other amendments are stylistic.

*Changes Made After Publication and Comments.* No changes since publication.

**Rule 2010. Qualification by Trustee; Proceeding on Bond**

(a) **BLANKET BOND.** The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

(b) **PROCEEDING ON BOND.** A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the entity injured by the breach of the condition.

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

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

*Subdivisions (a) and (b).* Subdivision (a) gives authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed, the trustee qualifies under subdivision (b) of the rule by filing an acceptance of the office.

*Subdivision (c)* prescribes the evidentiary effect of a certified copy of an order approving the trustee's bond given by a trustee under this rule or, when a blanket bond has been authorized, of a certified copy of acceptance. This rule supplements the Federal Rules of Evidence, which apply in bankruptcy cases. See Rule 1101 of the Federal Rules of Evidence. The order of approval should conform to Official Form No. 25. See, however, §549(c) of the Code which provides only for the filing of the petition in the real estate records to serve as constructive notice of the pendency of the case. See also Rule 2011 which prescribes the evidentiary effect of a certificate that the debtor is a debtor in possession.

*Subdivision (d)* is derived from former Bankruptcy Rule 212(f). Reference should be made to §322(a) and (d) of the Code which requires the bond to be filed with the bankruptcy court and places a two year limitation for the commencement of a proceeding on the bond. A bond filed under this rule should conform to Official Form No. 25. A proceeding on the bond of a trustee is governed by the rules in Part VII. See the Note accompanying Rule 7001. See also Rule 9025.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

*Subdivision (b)* is deleted because of the amendment to Rule 2008.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to conform to the 1986 amendment of §322 of the Code. The United States trustee determines the amount and sufficiency of the trustee's

bond. The amendment to subdivision (a) is derived from Rule X-1004(b).

*Subdivision (b)* is abrogated because an order approving a bond is no longer necessary in view of the 1986 amendments to §322 of the Code. Subdivision (c) is redesignated as subdivision (b).

**Rule 2011. Evidence of Debtor in Possession or Qualification of Trustee**

(a) Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

(b) If a person elected or appointed as trustee does not qualify within the time prescribed by §322(a) of the Code, the clerk shall so notify the court and the United States trustee.

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

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule prescribes the evidentiary effect of a certificate issued by the clerk that the debtor is a debtor in possession. See Official Form No. 26. Only chapter 11 of the Code provides for a debtor in possession. See §1107(a) of the Code. If, however, a trustee is appointed in the chapter 11 case, there will not be a debtor in possession. See §§1101(1), 1105 of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to provide a procedure for proving that a trustee has qualified in accordance with §322 of the Code. *Subdivision (b)* is added so that the court and the United States trustee will be informed if the person selected as trustee pursuant to §§701, 702, 1104, 1202, 1302, or 1163 fails to qualify within the time prescribed in §322(a).

**Rule 2012. Substitution of Trustee or Successor Trustee; Accounting**

(a) **TRUSTEE.** If a trustee is appointed in a chapter 11 case or the debtor is removed as debtor in possession in a chapter 12 case, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.

(b) **SUCCESSOR TRUSTEE.** When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code (1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and (2) the successor trustee shall prepare, file, and transmit to the United States trustee an accounting of the prior administration of the estate.

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

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

Paragraph (1) of this rule implements §325 of the Code. It provides that a pending action or proceeding continues without abatement and that the trustee's successor is automatically substituted as a party whether it be another trustee or the debtor returned to possession, as such party.

Paragraph (2) places it within the responsibility of a successor trustee to file an accounting of the prior administration of the estate. If an accounting is impossible to obtain from the prior trustee because of death or lack of cooperation, prior reports submitted in the earlier administration may be updated.