

## Rules Committee Proposes Revised Rule 2019 Protecting Distressed Investors

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The distressed investment community received some good news in June when the Advisory Committee on Bankruptcy Rules (the “Rules Committee”) published revisions to its proposed amendment to Bankruptcy Rule 2019. The amendment, which could still be subject to further modification, is not expected to become effective until December 1, 2011.

### Background

Bankruptcy Rule 2019 currently provides that “every entity or committee representing more than one creditor” must file a verified statement disclosing information about its claims, including, among other things, (i) the nature and amount of its claims or interests, (ii) the date of acquisition of its claims or interests acquired in the year before filing of the bankruptcy cases, (iii) the amount paid and (iv) any subsequent sales of claims or interests.<sup>1</sup> Historically, law firms representing ad hoc committees have complied with Rule 2019 by disclosing the names of the members of their group and the aggregate amount of claims held by such members. However, in light of recent court decisions, courts are divided on requiring the members of ad hoc committees to comply strictly with all of Rule 2019’s disclosure requirements, including disclosure of the price paid for a claim in bankruptcy and the date such claim was acquired.<sup>2</sup>

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In August 2009, the Rules Committee first published proposed amendments to Rule 2019 that would have required, among other things, each member of an ad hoc committee to disclose the price paid and the date each claim or economic interest was acquired, if directed by the court. At a February 5, 2010, public hearing before the Rules Committee that included testimony from Akin Gump Strauss Hauer & Feld LLP financial restructuring partner Abid Qureshi and, among others, Elliot Ganz of the Loan Syndications and Trading Association, the Rules Committee was strongly urged to drop the price and date disclosure requirements in its proposed revised Rule 2019. Those giving testimony argued that such information was both irrelevant to the bankruptcy process and proprietary in nature.

### Amending Rule 2019

The Rules Committee last month issued a significantly revised proposal for amending Rule 2019, in which, among other things, the price disclosure requirement was removed from the proposed revised Rule 2019.

Some of the highlights of the proposed amended Rule 2019 include the following:

- expanding the definition of “disclosable economic interest” to cover any economic interest that could affect the legal and strategic positions a stakeholder takes in a Chapter 11 case beyond just claims and interests owned by a stakeholder to include, among other things, short positions, credit default swaps and total return swaps;
- removing price disclosure requirement for any claim or economic interest;
- removing date purchased disclosure requirement, except when a member of an unofficial group or committee claims to represent any entity in addition to the

members of the group or committee, and, even then, the date disclosed is limited to only the quarter and year of acquisition;

- requiring disclosure about the nature and amount of a disclosable economic interest to be provided on a member-by-member basis, not in the aggregate;
- requiring the filing of additional verified 2019 statements only when a fact disclosed in the most recently filed Rule 2019 statement has changed materially, and
- exempting administrative agents under credit agreements and groups composed entirely of insiders or affiliates from having to file a Rule 2019 statement, unless ordered by the court.

Now that the Rules Committee has published its proposed amendments to Rule 2019, it must be approved by the Committee on Rules of Practice and Procedure, the Judicial Conference of the United States and the U.S. Supreme Court before it becomes effective. This process will continue in the coming months, and it is expected to conclude with a revised Rule 2019 coming into force on December 1, 2011. Until then, the existing Rule 2019 remains in full force and effect, though ad hoc committees resisting its application will likely point to the proposed amendment for support.

<sup>1</sup> *Fed. R. Bankr. P. 2019(a).*

<sup>2</sup> *In re Philadelphia Newspapers, LLC, Case No. 09-11204 (Bankr. D. Del. Feb. 4, 2010) (court did not require price and date disclosure); In re Accuride Corporation Case No. 09-13449 (Bankr. D. Del. Jan. 25, 2010) (court required price and date disclosure); In re Premier International Holdings, Inc. Case No. 09-12019 (Bankr. D. Del. Jan. 9, 2010) (court did not require price and date disclosure); In re Washington Mutual, Inc. Case No. 08-12229 (Bankr. D. Del. Dec. 2, 2009) (court required price and date disclosure). See our client alerts titled Rule 2019 Does Not Apply to Steering Groups, published February 5, 2010, and Rule 2019 Does Not Apply to Ad Hoc Committees, published January 12, 2010.*

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