

SUPREME COURT APPROVES PROPOSED AMENDMENT TO BANKRUPTCY RULE 2019

April 29, 2011

To Our Clients and Friends:

On April 26, 2011, the Supreme Court of the United States adopted an amendment to Rule 2019 of the Federal Rules of Bankruptcy Procedure and submitted the amendment to Congress for approval. The proposed amendment will take effect on December 1, 2011 unless Congress makes changes to the amendment. As described in our prior Client Updates, the amendment was proposed by the Judicial Conference Advisory Committee on Bankruptcy Rules and has been approved by the Standing Committee on Rules of Practice and Procedure and the Judicial Conference.¹ While generally expanding the scope of Rule 2019 and expressly subjecting *ad hoc* committees and informal groups of creditors and equity security holders to the rule, the proposed amendment would eliminate the controversial disclosure requirement with respect to the price and time of acquisition of any claim or interest.

¹ For more background concerning Rule 2019 and its application, please see our Client Update of December 17, 2009, entitled *Bankruptcy Court Compels Washington Mutual Noteholder Group to Disclose the Amounts of Their Claims and Prices Paid for Such Claims*, available at <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=7f651a88-dce4-42e8-a3a8-402f28f99e93>, Client Update of January 19, 2010, entitled *Delaware Bankruptcy Court Declines to Compel Six Flags Noteholder Group to Disclose the Amounts of Their Claims and Prices Paid for Such Claims*, available at <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=83176dfe-f3ed-4307-8775-abdef5b8ff62>, Client Update of January 27, 2010, entitled *One More Decision from the Delaware Bankruptcy Court Concerning Bankruptcy Rule 2019*, available at <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=ac60b766-0474-4787-a470-1dfa70cd9ede>, Client Update of February 9, 2010, entitled *New Developments Concerning Bankruptcy Rule 2019*, available at <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=783f09c3-a775-482b-9475-c2cfb2c0f539> and Client Update of June 23, 2010, entitled *Advisory Committee Recommends Revised Proposed Amendment to Bankruptcy Rule 2019*, available at <http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=2542d4ad-830a-4b01-8d9a-421015df806a>

BACKGROUND

The current Rule 2019 requires any entity or committee, other than an official committee, representing more than one creditor or equity security holder to disclose: (i) the amounts of claims or interests owned by the members of the committee, (ii) the time of acquisition of such claims or interests, (iii) the amounts paid for such claims or interests and (iv) any sales or other dispositions of such claims or interests.

As described in our prior Client Updates, the Bankruptcy Courts for the Southern District of New York, the District of Delaware and several other jurisdictions have recently handed down a series of sometimes contradictory decisions concerning the application of the rule to *ad hoc* committees and informal groups of creditors and equity security holders. Notwithstanding multiple and inconsistent decisions, no higher court has yet ruled on this issue.

PROPOSED AMENDMENT TO RULE 2019

Against this backdrop, the Advisory Committee proposed an amendment to Rule 2019, making the disclosure requirements under the rule explicitly applicable to *ad hoc* committees and informal groups of creditors and equity security holders. In addition, the proposed amendment requires disclosure with respect to not only claims or interests but any “disclosable economic interest,” a concept broadly defined to include any economic interest that could affect the legal and strategic positions a stakeholder takes in a Chapter 11 case, including derivative transactions. As originally proposed by the Advisory Committee, the amendment also required disclosure of the date when each disclosable economic interest was acquired and, if directed by the court, the amount paid for such disclosable economic interest. However, in response to opposition by a number of industry groups and distressed investors, the Advisory Committee revised the proposed amendment to require the time of acquisition to be disclosed only by each member of a committee that claims to represent any entity in addition to the members of the committee and to limit the disclosure required under such circumstance to the quarter and year in which each disclosable economic interest was acquired. The proposed amendment does not require the disclosure of the price paid for a disclosable economic interest, although the amendment clarifies

that the rule does not affect the right of any party to obtain information not required to be disclosed by the rule by means of discovery or as ordered by the court under its authority outside the rule.

A copy of the proposed amendment to Rule 2019 can be downloaded at:

http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Supreme%20Court%202011/BK_Clean_Rules.pdf

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