

## 2017 COMMITTEE NOTE

Official Form 425B, *Disclosure Statement for Small Business Under Chapter 11*, replaces Official Form 25B, *Disclosure Statement in Small Business Case Under Chapter 11*. It is revised as part of the Forms Modernization Project, making it easier to read, and includes formatting and stylistic changes throughout the form. Where possible, the form parallels how businesses commonly keep their financial records. It is intended to provide an illustrative format for disclosure, rather than a specific prescription for the form's language or content.

Part I, *Introduction*, is revised to clarify that the disclosure statement is being provided for purposes of voting on the plan. The instructions that the recipient discuss the plan and disclosure statement with an attorney are revised to clarify that, if the recipient has an attorney, the recipient is not required to consult with the attorney, but may wish to consult with an attorney regardless of whether it has one.

Part I.B., *Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing*, is revised to provide for the court's entry of a separate order setting time frames for hearings and deadlines, *see* Official Form 313, and to delete those dates from the form as redundant. Also, this part is revised to clarify that requests for additional information about the voting procedure, in addition to the plan, should be directed to the plan proponent's representative.

In Part I.C., *Disclaimer*, the instruction to provide the date by which an objection to final approval of the disclosure statement must be filed is eliminated as duplicative of the court's order required under Part I.B. Repetitive language indicating that the court's approval of the disclosure statement is not final is eliminated.

In Part II.C., *Management of the Debtor During the Bankruptcy*, the title is revised to eliminate the reference to the debtor's management before the bankruptcy, and the instruction is revised to limit the required disclosure to those current officers, directors, managing members, and other persons in control who will not retain a position after confirmation. The instruction to

Official Form 425B (Committee Note)

provide information regarding the debtor's pre-petition management is deleted because similar information is required in the *Statement of Financial Affairs of Non-Individuals Filing for Bankruptcy*, Official Form 207. The instruction to provide information regarding the debtor's post-confirmation management is incorporated in Part III.D.2, *Post-confirmation Management*, of the form.

In Part III.B.1, *Administrative expenses, involuntary gap claims, and quarterly and Court fees*, the title and form are revised to clarify that the debtor must provide for the treatment of all fees and expenses owed under 28 U.S.C. § 1930, including quarterly fees and court fees. *See* 11 U.S.C. § 1129(a)(12). Also, the title and form are revised to include involuntary "gap" period claims in an involuntary case under section 502(f) of the Bankruptcy Code. *See* 11 U.S.C. §§ 507(a)(3), 1129(a)(9)(A). The reference to the provision governing the allowance of administrative expenses is corrected and changed from section 507(a) to 503(b) of the Bankruptcy Code. The example is revised to include compensation for services and reimbursement of expenses awarded by the court under section 330(a) of the Bankruptcy Code. The requirement that any agreement to pay professional fees and expenses and other unclassified administrative expenses on a date other than the effective date be in writing is deleted. *See* 11 U.S.C. § 1129(a)(9). The list is revised to include a single category of administrative expenses allowed under section 503(b) of the Bankruptcy Code, deleting as redundant the specific categories for reclamation claims under section 503(b)(9) and approved professional fees and expenses under section 503(b)(2), and to clarify that any holder of an allowed administrative expense claim may agree to payment other than in full on the effective date. *Id.*

Part III.B.2, *Priority tax claims*, is revised to include a reference to section 511 of the Bankruptcy Code governing the rate of interest on tax claims.

Part III.C.2, *Classes of priority unsecured claims*, is revised to comply with section 1129(a)(9)(B), including the addition that any particular claimant may agree to treatment other than cash payment in full on the effective date and to clarify that any class

Official Form 425B (Committee Note)

may agree to deferred cash payments. See 11 U.S.C. § 1129(a)(9)(B).

Part III.D.2, *Post-confirmation Management*, is revised to comply with section 1129(a)(5) of the Bankruptcy Code.

Part III.F., *Executory Contracts and Unexpired Leases*, is revised to incorporate changes to Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*. “Exhibit 5.1” is changed to “Article 6” of the plan. References to the assumption of executory contracts and unexpired leases are expanded to include assignment, if applicable, including the requirement that a party objecting to the assignment of an executory contract or unexpired lease under the plan must timely file and serve an objection to the plan. The form is revised to clarify that executory contracts and unexpired leases that have been previously assumed, and if applicable assigned, or are the subject of a pending motion to assume, and if applicable assign, as of plan confirmation are also excluded from presumed rejection under the plan.

In Part IV, *Confirmation Requirements and Procedures*, the introduction is revised to delete references to subsections (a) and (b) to clarify that a plan must satisfy all of the requirements of section 1129 of the Bankruptcy Code. Also, the form is revised to clarify that the requirement to obtain the acceptance of at least one impaired accepting class of claims, excluding any acceptance by an insider, applies only if the plan proposes to impair at least one class of claims. See 11 U.S.C. § 1129(a)(10).

In Part IV.B.1, *Votes necessary for a class to accept the plan*, the standards for confirmation in the event the plan has impaired classes have been corrected. See 11 U.S.C. § 1129(a)(8)(A), (10) and (b).

The title to Part IV.B.2, *Treatment of non-accepting classes of secured claims, general unsecured claims, and interests*, is revised for clarity to exclude priority claimants. See 11 U.S.C. § 1129(b). Also, the requirement that the proponent must request confirmation pursuant to section 1129(b) of the Bankruptcy Code is added.

Official Form 425B (Committee Note)

In Part IV.D.2, *Ability to make future plan payments and operate without further reorganization*, the requirement that the plan proponent show that the business will have sufficient cash flow to operate the business, in addition to making the required plan payments, is new. *See* 11 U.S.C. § 1129(a)(11).

In Part V.A., *Discharge of Debtor*, the third option is revised to delete the reference to Rule 4007(c) and to clarify that corporations will not be discharged of debts to the extent specified in section 1141(d)(6) of the Bankruptcy Code.

In the title to Exhibit G, *Projections of Cash Flow for Post-Confirmation Period*, the reference to “and Earnings” is deleted to ensure consistency given the disparate ways in which “earnings” can be interpreted.

The caption block for the disclosure statement is formatted for a non-individual debtor. An individual chapter 11 debtor should use the caption block formatted for individual debtors, including a joint case involving more than one individual debtor, such as the caption found in Official Form B309I.

## **HISTORICAL COMMITTEE NOTES**

### **2008 COMMITTEE NOTE**

This form is new. It implements § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which provides for an official form for a disclosure statement that may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor under § 101(51D) of the Code. The form provides a format for disseminating information to parties in interest about the plan of reorganization in a small business debtor’s chapter 11 case, so that a party can make a reasonably informed judgment whether to accept, reject, or object to a proposed plan of reorganization or liquidation.

The form is intended to be used in conjunction with the form small business chapter 11 plan (Official Form 25A). As required by § 433 of the 2005 Act, the form seeks to strike a

## Official Form 425B (Committee Note)

practical balance between the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information, on the one hand, and economy and simplicity for debtors, on the other. The form includes instructions and examples of the types of information needed to complete it.

Because the relevant legal requirements for, and effect of, a plan's confirmation may vary depending on the nature of the debtor and the details of the proposed plan, this form is intended to provide an illustrative format for disclosure, rather than a specific prescription for the language or content of a particular disclosure statement. The form highlights the factual and legal disclosures required for adequate disclosure under § 1125 of the Code. The form is not intended to restrict a plan proponent from providing additional information where that would be useful. Plan proponents are encouraged to present material information in as clear a manner as possible, including, where feasible, by providing an accompanying executive summary, approved by the court, that highlights particular creditors' or interest holders' voting status and treatment under the plan.

Rule 3016 specifies the manner in which the disclosure statement is to be filed. Rule 3017 specifies the manner in which the court will consider it. Rule 3017.1 specifies special procedures for the court's conditional approval of a disclosure statement in a small business case.