

ther 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.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

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-