CHADBOURNE & PARKE LLP

Client Alert

May 6, 2011

Supreme Court Approves Amendments to Bankruptcy Rule 2019

On April 26, 2011, the Supreme Court approved a number of amendments to the Federal Rules of Bankruptcy Procedure. In particular, the Supreme Court amended Bankruptcy Rule 2019 to clarify the disclosure required of certain parties in interest in a chapter 9 or 11 bankruptcy case.[1] These amendments were drafted by a panel of bankruptcy judges and restructuring experts and are intended to resolve a split in decisions concerning the proper application of the current Bankruptcy Rule 2019.

Under amended Bankruptcy Rule 2019, informal and ad hoc committees or groups that actively participate in a chapter 9 or 11 case -- by either taking a position on a matter before the court or soliciting votes on the confirmation of a plan -- will be required to file verified statements disclosing a range of information concerning their "disclosable economic interests" in the case. Entities that are only passively involved in a case will be exempt from the disclosure requirements of the amended rule. Indenture trustees, administrative agents under credit agreements, class action representatives and certain governmental units will also be exempted from the disclosure requirements.

The definition of "disclosable economic interests" includes a stakeholder's claims for debt against and equity interests in the debtor(s). It also includes any pledge, lien, option, participation, derivative instrument or any other right or derivative right granting the stakeholder an economic interest that is affected by the value, acquisition or disposition of a claim or interest. As a result, entities subject to Bankruptcy Rule 2019 will also be required to disclose short positions, credit default swaps and total return swaps. Importantly, and largely due to the concerted efforts of hedge funds, institutional investors and other distressed debt investors to protect their trading strategies, amended Bankruptcy Rule 2019 will not require specific acquisition prices or dates of the acquisition of their position to be disclosed. Instead, an entity subject to Bankruptcy Rule 2019 must disclose, among other things, (i) the name and address of the creditor or equity security holder, (ii) the nature and amount of the disclosable economic interest and (iii) the quarter and year such claim or interest was acquired (unless acquired more than one year before the petition date). Parties making such disclosures will be required to file supplemental statements when material changes to any facts disclosed in their most recently filed statement occur.

The amendments to Rule 2019 must still undergo Congressional review before becoming effective. However, unless Congress enacts legislation to reject, modify, or defer the amendment (and that is not expected), these amendments to Rule 2019 will become effective on December 1, 2011. Until then, current Rule 2019 remains in full force and effect.

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[1] A copy of the Supreme Court's Order and the amendments is available at http://www.supremecourt.gov/orders/courtorders/frbk11.pdf.

For Additional Information

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