A Closer Look At SDNY Bankruptcy Rule Amendments

By **Robert Drain, Jon Cohen and Moshe Jacob** (December 6, 2024)

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The U.S. Bankruptcy Court for the Southern District of New York has issued a general order amending its Local Bankruptcy Rules.

The amendments introduce a broad set of changes that will affect all types of bankruptcy cases and proceedings in the Southern District of New York, including so-called megacases, where a debtor's assets or liabilities exceed $100 million.

Notably, the amendments aim to streamline key Chapter 11 processes, from debtor-in-possession financing to Chapter 11 plan confirmation. Practitioners should review the Sept. 30 amendments closely to ensure compliance.

Key Amendments

Rule 3020-2: Short-Form Plan Confirmation Orders

This new rule is meant to shorten what is often included in Chapter 11 plan confirmation orders. It requires that a confirmed plan be attached as an exhibit to the confirmation order.

If any changes are made to the form of the plan confirmed by the court, a plan proponent must attach and submit an additional exhibit showing the modifications.

The rule further states that a proposed confirmation order should not reiterate any provision included in the plan unless it has been modified or there is cause to do so. Confirmation orders also should not separately grant authority for parties to enter into transactions provided for in the plan or the plan supplement.

In addition, the confirmation order should not include any findings of fact or conclusions of law as to the satisfaction of individual provisions of the Bankruptcy Code, including Section 1129(a)'s mandatory provisions, with respect to confirmation requirements that are not subject to dispute.

Instead, plan proponents can rely on a reference to their declarations, memoranda, evidence and arguments presented at the confirmation hearing to satisfy these confirmation requirements.

Recitals regarding the procedural history of the Chapter 11 case, and any relief that was previously granted pursuant to a court order, also should be excluded, because this information can be found elsewhere in the record.

If a Chapter 11 plan will not become effective immediately upon confirmation, the new local rule requires the proposed order to include language directing the debtor to send notice of the effective date's occurrence to all parties in interest promptly after the effective date.

The amended rules aim not only to shorten confirmation orders — which, in megacases, often exceed 50 pages[1] — but also to reduce the risk of potentially conflicting passages.

Rule 4001-2: Model Form for Interim Debtor-in-Possession Financing and Cash Collateral Orders

The amended local rules also introduce a model form for interim debtor-in-possession, or DIP, financing and cash collateral orders.

The new model form, which is hyperlinked in the local rules, is — although nonbinding — meant to expedite the court's and other parties' review process by encouraging the uniform application of common provisions and defined terms.

While the court recognizes that DIP financing and cash collateral terms may vary depending on the facts, parties are nonetheless encouraged not only to use the form, but also to submit a markup showing any changes from it.

The new rule also emphasizes that the proposed order should be concise and should not include facts specified elsewhere in the record.

Furthermore, Rule 4001-2(a) lists additional material provisions debtors should highlight in a DIP financing and cash collateral motion, including any commitment to roll DIP financing into exit financing and any provisions in the motion waiving rights under Sections 506(c), 522(b) or 363(k) of the Bankruptcy Code.

Debtors also should specify whether the nonconsensual priming of liens is contemplated, and are directed to note prominently any material financial covenants, make-whole premiums, or terms providing that the use of cash collateral or the availability of credit will cease upon the termination of a transaction support agreement.

Rule 9011-1: Using Generative Artificial Intelligence

With the increasing use of artificial intelligence, this new rule warns litigants to exercise caution when using AI technology, noting that they ultimately are responsible under Bankruptcy Rule 9011 for AI-generated content produced for the court.

Additional Changes

The new local rules also include other changes meant to standardize important practices and resolve confusion stemming from prior versions of the rules.

Rules 9013-2 and 9013-3: Notice of Presentment and Certificates of No Objection

The court replaced Rule 9074-1, noting in the amendments that the rule caused "widespread confusion" as to the use of notices of presentment in cases where a hearing was not required, or where notice was required but a motion was not mandatory.

New Rule 9013-3 explains that, except if noted elsewhere in the rule, parties should, instead of using a notice of presentment, file a certificate of no objection when a hearing can be canceled if not required, there is no objection, and the court has no questions or issues to raise with the parties.

Rule 2002-5: Master Service Lists in Mega Chapter 11 Cases

Under the amended local rules, the debtor or claims agent in Chapter 11 megacases is responsible for compiling and filing a master service list within seven business days after commencement of the case, which must be updated at least every 14 days.

The list must include:

- The U.S. trustee;
- Attorneys for the debtors and each official committee;
- Any person who files a notice of appearance requesting service pursuant to Bankruptcy Rule 2002;
- Applicable government agencies, as required by Bankruptcy Rule 2002(j); and
- Other parties in interest added by the court.

In addition, Local Rule 9013-1(b) provides that, unless ordered otherwise, whenever the Bankruptcy Rules or Local Rules require notice but do not specify whom to serve, every party listed on the master service list should be served.

Rule 3018-2: Prepackaged Chapter 11 Cases

Local Rule 3018-2 now has a hyperlink to the Southern District of New York's February procedural guidelines for prepackaged Chapter 11 cases.

The guidelines address matters relating to prepackaged Chapter 11 plans that either are not clearly explained in the Bankruptcy Code or Bankruptcy Rules, or are only addressed in a piecemeal fashion.[2]

Rule 2090-1(b): Pro Hac Vice Applications

Amended Local Rule 2090-1(b) adds a hyperlink to forms and instructions pertaining to pro hac vice admission applications.

Rule 9018-1: Motions To Seal

This amended local rule directs that, upon filing a motion to seal, an unredacted copy of the document be provided in a flash drive to the Southern District of New York's Clerk's Office.

The comments also refer parties to the assigned judge's chambers rules with respect to sealing motions.

Rule 2007.2-1: Patient Care Ombudsman

This new rule establishes procedures to comply with the deadlines imposed by Section 333 of the Bankruptcy Code and Bankruptcy Rule 2007.2, both of which govern the appointment of a patient care ombudsman when the debtor is a healthcare business.

For applicable Chapter 7, 9 or 11 cases, counsel for the debtor must schedule a conference

within 14 days of the petition date to discuss compliance with Section 333 of the Bankruptcy Code, and request the court to schedule a hearing if the debtor intends to seek a finding that a patient ombudsman is unnecessary.

Rule 6005-1: Buyer's Premium in Auctions

Any buyer's premium sought in an auction now must be disclosed to the court before the auction and approval of the auctioneer's compensation. Upon the court's approval, the premium can be used either to compensate the auctioneer or be treated as part of the sale price payable to the estate.

The new rule makes clear that the auctioneer is not entitled to both a buyer's premium and separate compensation unless expressly authorized by the court.

Takeaways

A Streamlined Bankruptcy Process

Several of the amendments to the local rules aim to streamline key bankruptcy processes, such as DIP financing and plan confirmation, and thus potentially save judges, debtors and other parties time; limit confusion; and lead to more predictable decisions.

The changes are expected to ultimately decrease the cost of Chapter 11 cases in the Southern District of New York.

Enhanced Clarity and Specificity

Certain of the amended rules, such as Rule 9013-3, attempt to resolve misunderstandings about the applicability and interpretation of previous iterations of the rules, including at times by adding hyperlinks to model forms and other resources.

Caution on the Use of AI

Recognizing the increased use of AI to perform legal research and draft papers, notwithstanding AI's present proclivity to produce inaccurate content, the amended local rules echo the sentiment of courts across the country that, consistent with Bankruptcy Rule 9011, litigants must review and verify AI-generated content that they submit to the court.

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[1] See, e.g., In re: Cenveo Inc., Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. 2018), ECF

No. 685 (60 pages); In re: Saint Vincents Catholic Medical Centers of New York, Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. 2010), ECF No. 3060 (56 pages).

[2] See our January 22, 2024, client alert "SDNY Amends Guidelines for Prepackaged Chapter 11 Cases."