

Summary of Changes

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, Effective February 1, 2021

LOCAL RULE	APPLICABLE SUBSECTION	CHANGE
2014-1 <i>Employment of Professional Persons</i>	2014-1(d) <i>Assertions of Confidentiality</i>	New subsection requiring that professionals seeking to redact or omit information required to be disclosed under Bankruptcy Rule 2014 follow the procedures set forth in Local Rule 9018-1 regarding documents under seal.
3007-1 <i>Omnibus Objection to Claim</i>	3007-1(e)(vi) <i>Counsel Certification Regarding Untimely Claims</i>	New subsection providing: If (a) the basis for a claim objection is that the claim was untimely filed, and (b) the claim objected to was one that amended or superseded a previously filed claim, the claim objection shall include a certification from counsel to the objector that either (y) the previously filed claim was also untimely, or (z) the previously filed claim was timely but the amending or superseding claim asserts new claims not asserted in the previously filed claims that do not relate back to the claims asserted in the previously filed claim.
3016-1 <i>Plan and Disclosure Statement Documents and Required Forms in Subchapter V Cases</i>	3016-1(b) <i>Required Forms in Subchapter V Cases</i>	Revised to require a Subchapter V debtor to file Local Form 136 (Subchapter V Status Report) and Local Form 137 (Subchapter V Small Business Plan).
3017-2 <i>Combined Hearings on Approval of Disclosure Statements and Confirmation of Plans in Liquidating Chapter 11 Cases</i>	3017-2(c)(i) <i>Notice</i>	Local Rule 3017-2(c) provides that a motion under Local Rule 3017-2 for interim approval of disclosure statement and approval of solicitation procedures may be granted without notice and a hearing if certain requirements are met, including providing 14 days' notice to the U.S. Trustee, creditors' committee, and parties requesting notice pursuant to Bankruptcy Rule 2002. This subsection was modified to clarify that the required 14 days' notice is 14 days' notice of the objection deadline not the hearing date.
4001-2 <i>Cash Collateral and Financing Orders</i>	4001-2(a)(i) <i>Form of Financing Motion</i>	<ul style="list-style-type: none"> • Added requirement that, in addition to the motion providing a summary of the essential terms of the proposed financing or use of cash collateral, the motion must identify the location of such essential terms in the proposed order, stipulation, or loan agreement. • Added provisions required to be identified in the motion (along with their location in the proposed order, stipulation, or loan agreement), but only requiring justification in the

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		<p>motion for the inclusion of any provision set forth in subsections N through X (see below).</p> <ul style="list-style-type: none"> • Simplified the standard challenge period from 75 days from entry of the interim order and 60 days from appointment of a creditors’ committee to simply 75 days from entry of the interim order. • Eliminated specific requirement to highlight disparate treatment of committee professionals with respect to professional fee carve-out and inserted requirement to identify the material terms of carve-out. • The provisions required to be identified are set forth below with blue text reflecting additions and red text reflecting deletions (excluding changes to subsection numbering): <ul style="list-style-type: none"> (A) The amount of cash collateral the debtor seeks permission to use or the amount of credit the debtor seeks to obtain under the proposed loan agreement, including the committed amount of the proposed loan agreement and the amount of new funding that will actually be available for borrowing by the debtor; (B) Pricing and economic terms, including letter of credit fees, commitment fees, and any other fees, provided that when any such terms are sought to be filed under seal, they shall not be disclosed in the Financing Motion itself, but shall be set forth in a separate document filed pursuant to the procedures set forth in Local Rule 9018-1(d), the filing of which shall be disclosed in the Financing Motion; (C) Any provision that specifically limits the Court’s power or discretion to enter future orders in the case; (D) Any provision that provides for the funding of non-debtor affiliates with cash collateral or proceeds of the loan, as applicable, and the approximate amount of such funding; (E) Material conditions to closing and borrowing, including budget provisions; (F) Any carve-outs from liens or superpriority claims, including the material terms of any professional fee carve-out;

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		<p>(G) Any provision that provides for postpetition liens on unencumbered assets, including the identification of such assets;</p> <p>(H) Any provision that establishes sale or plan milestones;</p> <p>(I) Any prepayment penalty or other provision that affects the debtor’s right or ability to repay the financing in full during the course of the chapter 11 case;</p> <p>(J) In jointly administered cases, any provision that governs joint liability of the debtors, including any provision that would cause one jointly administered debtor to become liable for the prepetition debt of another jointly administered debtor for which it was not previously subject to;</p> <p>(K) Any provision that requires the debtor to pay an agent’s or lender’s expenses and attorneys’ fees in connection with the proposed financing or use of cash collateral, without any notice or review by the Office of the United States Trustee, the committee appointed under section 1102 of the Bankruptcy Code (if formed) or, upon objection by either of the foregoing parties, the Court;</p> <p>(L) Any provision that prohibits the use of estate funds to investigate the liens and claims of the prepetition lender;</p> <p>(M) Any termination or default provisions concerning the use of cash collateral or the availability of credit;</p> <p>(N) Provisions that grant Any provision that grants cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure or elevates prepetition debt by <u>to administrative expense (or higher) status or that secures prepetition debt with liens on</u> postpetition assets in <u>(which</u> <u>liens</u> <u>the</u> secured creditor would not otherwise have a security interest by virtue of its <u>the</u> prepetition security agreement or applicable law;</p> <p>(O) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor’s prepetition debt, other than as provided in 11 U.S.C. § 552(b) <u>Any provision that applies the proceeds of postpetition financing to pay, in whole or in part, prepetition</u></p>

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		<p><u>debt or which otherwise has the effect of converting (or “rolling up”) prepetition debt to postpetition debt;</u></p> <p>(P) Provisions that prime any secured lien without the consent of that lienor <u>Provisions that immediately prime valid, perfected and non-avoidable liens existing immediately prior to the petition date or that are perfected subsequent to the petition date as permitted by section 546(b) of the Bankruptcy Code, in each case that are senior to the lender’s prepetition liens under applicable law, without the consent of the affected secured creditors, and the proposed notice to be provided to such affected secured creditors;</u></p> <p>(Q) Provisions or findings of fact that (i) bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest, <u>including, but not limited to, any official committee appointed in these cases,</u> at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation <u>initial interim order</u> to investigate such matters <u>or (ii) limit the Court's ability to grant relief in the event of a successful challenge;</u></p> <p>(R) Provisions that immediately approve all terms and conditions of the underlying loan agreement (provided that provisions in the order that provide that the debtor is authorized to enter into and be bound by the terms and conditions of such loan agreement do not need to be summarized);</p> <p>(S) Provisions that modify or terminate the automatic stay or permit the lender to enforce remedies following an event of default that do not require at least five (5) days' written notice to the trustee or debtor in possession, the Office of the United States Trustee and each committee appointed under sections 1102 and 1114 of the Bankruptcy Code (the “Remedies Notice Period”), prior to such modification or termination of the automatic stay or the enforcement of the lender’s remedies;</p> <p>(T) Provisions that seek to limit what parties in interest (other than the debtor) may raise at any emergency hearing scheduled during the Remedies Notice Period;</p>

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		<p>(U) Provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ sections 544, 545, 547, and 548 and 549 of the Bankruptcy Code or, in each case, the proceeds thereof;</p> <p>(V) Provisions that immediately seek to waive the debtor's, without notice, whatever rights under the estate may have under 11 U.S.C. § section 506(c) of the Bankruptcy Code;</p> <p>(W) Provisions that immediately seek to affect the Court's power to consider the equities of the case doctrine under 11 U.S.C. § section 552(b)(1): of the Bankruptcy Code; and</p> <p>(X) Provisions that immediately shield the lender from the equitable doctrine of “marshalling” or any similar doctrine.</p>
	<p>4001-2(a)(ii) <i>Financing Terms</i></p>	<p>New subsection added to assist the Court in locating defined terms:</p> <p>Defined terms in Financing Motions must either be defined in the Financing Motion, or the Financing Motion shall include a specific reference to where such terms are defined in the applicable loan agreements. The Financing Motion shall attach the postpetition loan agreements or other documents that set forth the terms of the financing. If the postpetition financing incorporates terms from any prepetition financing documents, those terms must either be set forth in their entirety in the Financing Motion, or the Financing Motion must include a specific reference to where such terms can be found in the applicable prepetition financing document, in which instance such document must be attached to the Financing Motion.</p>
	<p>4001-2(a)(iii) <i>Budget</i></p>	<p>New subsection requiring budget to be attached as an exhibit to the motion and requiring motion to contain statement from the debtor regarding adequacy of such budget:</p> <p>If the debtor will be subject to a budget pursuant to the Financing Motion, (i) the applicable budget shall be attached as an exhibit to the Financing Motion, (ii) the Financing Motion shall include a statement by the debtor as to whether it has reason to believe that the budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the</p>

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	4001-2(b) <i>Interim Relief Availability and Limitations</i>	<p>budget and (iii) the budget shall show in reasonably sufficient detail the sources and uses of cash necessary for ongoing operations on a weekly basis during the budget period.</p> <p>Revised to change subsection cross-references due to the revisions to Local Rule 4001-2(a)(i) and now provides that absent “extraordinary circumstances, the Court shall not approve interim financing orders that include any of the provisions previously identified in Local Rule 4001-2(a)(i)(P) through 4001-2(a)(i)(X).”</p>
5010-1 <i>Reopening Cases</i>		<p>New Local Rule establishing procedures for parties seeking to reopen a chapter 7 or 12 case:</p> <p>A party seeking to reopen a chapter 7 or 12 case shall file a motion with the Court and shall serve the same on 21 days’ notice to all parties in interest, including the debtors, the United States Trustee, the previously appointed trustee, and any party being added, if any, as a creditor or party in interest in the case. If the moving party seeks to have a trustee appointed to the reopened case, the motion shall indicate why a trustee is necessary under the standards set forth in Bankruptcy Rule 5010, and the proposed form of order submitted with the motion shall include proposed findings of fact supporting the appointment of a trustee, and directing the U.S. Trustee to make such appointment.</p>
9010-1 <i>Bar Admission</i>	9001-1(e)(i) <i>Government Attorneys</i>	<p>Original rule permitted counsel for the United States or any state or local government to appear without associating with Delaware counsel. Revised rule adds a provision affirming the Court’s discretion to order otherwise in certain circumstances.</p>
9011-4 <i>Signatures</i>	9011-4(c)	<p>Revised to clarify that the filing of a proof of claim electronically filed with the duly appointed claims agent (as opposed to just the Clerk) also constitutes the claimant’s approved signature and the filed proof of claim is deemed signed upon the electronic submission.</p>