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OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

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**TO:** Honorable Lee H. Rosenthal, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Honorable Laura Taylor Swain, Chair  
Advisory Committee on Bankruptcy Rules

**DATE:** May 14, 2008

**RE:** Report of the Advisory Committee on Bankruptcy Rules

**I. Introduction**

The Advisory Committee on Bankruptcy Rules met on March 27-28, 2008, at St. Michaels, Maryland.

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The Advisory Committee also studied a number of proposals to amend the Bankruptcy Rules. After careful consideration, the Advisory Committee resolved to recommend that the Standing Committee approve for publication a preliminary draft of proposed amendments to Bankruptcy Rules 1014, 1015, 1018, 5009, and 9001, and proposed new Bankruptcy Rules 1004.2 and 5012. The Style Consultants to the Standing Committee offered a number of suggestions that were considered by the Advisory Committee's Style Subcommittee, and the proposals set out below in the Action Items section of the report reflect those joint efforts.

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- F. Proposed Amendments to Bankruptcy Rules 1014, 1015, 1018, 5009, and 9001, and Proposed New Bankruptcy Rules 1004.2 and 5012.

**The Advisory Committee recommends that the Standing Committee approve the following preliminary draft of proposed amendments to the Bankruptcy Rules and Official Forms for publication for comment.**

1. *Synopsis of Proposed Amendments to Bankruptcy Rules 1014, 1015, 1018, 5009, and 9001, and Proposed New Bankruptcy Rules 1004.2 and 5012.*
  - (a) **Rule 1004.2** is new. It requires that the entity filing a chapter 15 petition state on the petition the country of the debtor's main interests. It also requires that the filer list each country in which a case involving the debtor is pending. The rule sets a deadline for challenging the statement asserting the country of the debtor's main interests.
  - (b) **Rule 1014** is amended to include chapter 15 cases among those subject to the rule that authorizes the court to determine where cases should go forward when multiple petitions involving the same debtor are pending.
  - (c) **Rule 1015** is amended to include chapter 15 cases among those subject to the rule that authorize the court to order the consolidation or joint administration of cases.
  - (d) **Rule 1018** is amended to reflect the enactment of chapter 15 of the Code in 2005. The rule also is amended to clarify that it applies to contests over involuntary petitions but does not apply to matters that are merely related to a contested involuntary petition.
  - (e) **Rule 5009** is amended to redesignate the former rule as new subdivision (a), and to add new subdivisions (b) and (c) to the rule. Subdivision (b) requires the clerk to provide notice to individual debtors in chapter 7 and 13 cases that their case may be closed without the entry of a discharge if they fail to file a timely statement that they have completed a personal financial management course. Subdivision (c) requires a foreign representative in a chapter 15 case to file and give notice of the filing of a final report in the case.
  - (f) **Rule 5012** is new. It establishes the procedure in chapter 15 cases for obtaining the approval of an agreement regarding communications and the coordination of the proceedings with cases involving the debtor pending in other countries.

- (g) **Rule 9001** is amended to add § 1502 to the list of definitional provisions in the Code that are applicable to the Bankruptcy Rules.

- 2. *Text of Proposed Amendments to Bankruptcy Rules 1014, 1015, 1018, 5009, and 9001, and Proposed New Bankruptcy Rules 1004.2 and 5012 (on next page).*

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**Rule 1004.2. Petition in Chapter 15 Cases<sup>1</sup>**

1           (a) DESIGNATING CENTER OF MAIN  
2           INTERESTS. A petition seeking recognition of a foreign  
3           proceeding under chapter 15 of the Code shall state the  
4           country where the debtor has the center of its main interests.  
5           The petition shall also identify each country in which a  
6           foreign proceeding by, regarding, or against the debtor is  
7           pending.

8           (b) CHALLENGING DESIGNATION. The United  
9           States trustee or a party in interest may file a motion for a  
10          determination that the debtor's center of main interests is  
11          other than as stated in the petition for recognition  
12          commencing the chapter 15 case. The motion shall be filed  
13          no later than 60 days after notice of the petition has been

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<sup>1</sup>In addition to the adoption of Rule 1004.2, Official Form 1 would be amended to include a line on the form where the foreign representative indicates the country of the debtor's center of main interests. The Official Form would also be amended to include a line or lines on which the filer would set out the countries in which cases are pending.

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14 given to the movant under Rule 2002(q)(1). The motion shall  
15 be transmitted to the United States trustee and served on the  
16 debtor, all persons or bodies authorized to administer foreign  
17 proceedings of the debtor, all entities against whom  
18 provisional relief is being sought under § 1519 of the Code,  
19 all parties to litigation pending in the United States in which  
20 the debtor was a party at the time of the filing of the petition,  
21 and such other entities as the court may direct.

**COMMITTEE NOTE**

This rule is new. Subdivision (a) directs any entity that files a petition for recognition of a foreign proceeding under chapter 15 of the Code to state in the petition the center of the debtor's main interests. The petition must also list each country in which a foreign proceeding involving the debtor is pending. This information will assist the court and parties in interest in determining whether the foreign proceeding is a foreign main or nonmain proceeding.

Subdivision (b) sets a 60-day deadline for filing a motion to challenge the statement in the petition as to the country in which the debtor's center of main interests is located.

**Rule 1014. Dismissal and Change of Venue**

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(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If petitions commencing cases under the Code or seeking recognition under chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the district in which the petition filed first is pending and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the court may determine, in the interest of justice or for the convenience of the parties, the district or districts in which the case or cases should proceed. Except as otherwise ordered by the court in the district in which the petition filed first is pending, the proceedings on

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17 the other petitions shall be stayed by the courts in which they  
18 have been filed until the determination is made.

**COMMITTEE NOTE**

**Subdivision (b).** Subdivision (b) of the rule is amended to provide that petitions for recognition of a foreign proceeding are included among those that are governed by the procedure for determining where cases should go forward when multiple petitions involving the same debtor are filed. The amendment adds a specific reference to chapter 15 petitions and also provides that the rule governs proceedings regarding a debtor as well as those that are filed by or against a debtor.

Other changes are stylistic.

**Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court**

1 (a) CASES INVOLVING SAME DEBTOR. If two or  
2 more petitions by, regarding, or against the same debtor are  
3 pending in the same court ~~by or against the same debtor~~, the  
4 court may order consolidation of the cases.

5 \* \* \* \* \*

**COMMITTEE NOTE**

**Subdivision (a).** By amending subdivision (a) to include cases regarding the same debtor, the rule explicitly recognizes that the court's authority to consolidate cases when more than one petition is filed includes the authority to consolidate cases when one or more of the petitions is filed under chapter 15. This amendment is made in conjunction with the amendment to Rule 1014(b), which also governs petitions filed under chapter 15 regarding the same debtor as well as those filed by or against the debtor.

**Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Ancillary Chapter 15 Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings**

1            Unless the court otherwise directs and except as  
2            otherwise prescribed in Part I of these rules, the The  
3            following rules in Part VII apply to all proceedings ~~relating to~~  
4            ~~a contested~~ contesting an involuntary petition, ~~to proceedings~~  
5            ~~relating to a contested~~ petition or a chapter 15 petition for  
6            recognition commencing a case ancillary to a foreign  
7            ~~proceeding,~~ and to all proceedings to vacate an order for  
8            relief: Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-

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9 7037, 7052, 7054, 7056, and 7062, ~~except as otherwise~~  
10 ~~provided in Part I of these rules and unless the court otherwise~~  
11 ~~directs.~~ The court may direct that other rules in Part VII shall  
12 also apply. For the purposes of this rule a reference in the Part  
13 VII rules to adversary proceedings shall be read as a reference  
14 to proceedings ~~relating to a contested~~ contesting an  
15 ~~involuntary petition, or contested ancillary petition or a~~  
16 chapter 15 petition for recognition, or proceedings to vacate  
17 an order for relief. Reference in the Federal Rules of Civil  
18 Procedure to the complaint shall be read as a reference to the  
19 petition.

**COMMITTEE NOTE**

The rule is amended to reflect the enactment of chapter 15 of the Code in 2005. As to chapter 15 cases, the rule applies to contests over the petition for recognition and not to all matters that arise in the case. Thus, proceedings governed by § 1519(e) and § 1521(e) of the Code must comply with Rules 7001(7) and 7065, which provide that actions for injunctive relief are adversary proceedings governed by Part VII of the rules. The rule is also amended to clarify that it applies to contests over an involuntary petition, and not to matters

merely “relating to” a contested involuntary petition. Matters that may arise in a chapter 15 case or an involuntary case, other than contests over the petition itself, are governed by the otherwise applicable rules.

Other changes are stylistic.

**Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer’s Debt Adjustment, and Chapter 13 Individual’s Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases**

1           (a) CASES UNDER CHAPTERS 7, 12, AND 13. If  
2           in a chapter 7, chapter 12, or chapter 13 case the trustee has  
3           filed a final report and final account and has certified that the  
4           estate has been fully administered, and if within 30 days no  
5           objection has been filed by the United States trustee or a party  
6           in interest, there shall be a presumption that the estate has  
7           been fully administered.

8           (b) NOTICE OF FAILURE TO FILE RULE  
9           1007(b)(7) STATEMENT. If an individual debtor in a  
10          chapter 7 or 13 case has not filed the statement required by

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11 Rule 1007(b)(7) within 45 days after the first date set for the  
12 meeting of creditors under § 341(a) of the Code, the clerk  
13 shall promptly notify the debtor that the case will be closed  
14 without entry of a discharge unless the statement is filed  
15 within the applicable time limit under Rule 1007(c).

16 (c) CASES UNDER CHAPTER 15. A foreign  
17 representative in a proceeding recognized under § 1517 of the  
18 Code shall file a final report when the purpose of the  
19 representative's appearance in the court is completed. The  
20 report shall describe the nature and results of the  
21 representative's activities in the court. The foreign  
22 representative shall transmit the report to the United States  
23 trustee, and give notice of its filing to the debtor, all persons  
24 or bodies authorized to administer foreign proceedings of the  
25 debtor, all parties to litigation pending in the United States in  
26 which the debtor was a party at the time of the filing of the  
27 petition, and such other entities as the court may direct. The

28 foreign representative shall file a certificate with the court that  
29 notice has been given. If no objection has been filed by the  
30 United States trustee or a party in interest within 30 days after  
31 the certificate is filed, there shall be a presumption that the  
32 case has been fully administered.

#### COMMITTEE NOTE

**Subdivisions (a) and (b).** The rule is amended to redesignate the former rule as subdivision (a) and to add new subdivisions (b) and (c) to the rule. Subdivision (b) requires the clerk to provide notice to an individual debtor in a chapter 7 or 13 case that the case may be closed without the entry of a discharge due to the failure of the debtor to file a timely statement of completion of a personal financial management course. The purpose of the notice is to provide the debtor with an opportunity to complete the course and file the appropriate document prior to the filing deadline. Timely filing of the document avoids the need for a motion to extend the time retroactively. It also avoids the potential for closing the case without discharge, and the possible need to pay an additional fee in connection with reopening. Timely filing also benefits the clerk's office by reducing the number of instances in which cases must be reopened.

**Subdivision (c).** Subdivision (c) requires a foreign representative in a chapter 15 case to file a final report setting out the foreign representative's actions and results obtained in the United States court. It also requires the foreign representative to give notice

of the filing of the report, and provides interested parties with 30 days to object to the report after the foreign representative has certified that notice has been given. In the absence of a timely objection, a presumption arises that the case is fully administered, and the case may be closed.

**Rule 5012. Agreements Concerning Coordination of Proceedings in Chapter 15 Cases**

1        Approval of an agreement under § 1527(4) of the Code  
2        shall be sought by motion. The movant shall attach to the  
3        motion a copy of the proposed agreement or protocol and,  
4        unless the court directs otherwise, give at least 30 days' notice  
5        of any hearing on the motion by transmitting the motion to the  
6        United States trustee, and serving it on the debtor, all persons  
7        or bodies authorized to administer foreign proceedings of the  
8        debtor, all entities against whom provisional relief is being  
9        sought under § 1519, all parties to litigation pending in the  
10       United States in which the debtor was a party at the time of  
11       the filing of the petition, and such other entities as the court  
12       may direct.



**COMMITTEE NOTE**

The rule is amended to add § 1502 of the Code to the list of definitional provisions that are applicable to the Rules. That section was added to the Code by the 2005 amendments.