NY Combined Hearing Guidelines Can Shorten Ch. 11 Timeline

By **Robert Drain and Moshe Jacob** (June 11, 2024)

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On May 31, the chief judge of the U.S. Bankruptcy Court for the Southern District of New York entered General Order M-634, adopting guidelines for combining the processes for Chapter 11 plan confirmation under Section 1129 of the U.S. Bankruptcy Code and disclosure statement approval under Section 1125 of the Bankruptcy Code.

Though advisory, the guidelines provide bankruptcy practitioners with important guidance on when bankruptcy courts in the SDNY will allow combined disclosure statements and Chapter 11 plans, conditional approval of disclosure statements, and joint hearings for final disclosure statement approval and plan confirmation.[1]

These measures can shorten the Chapter 11 timeline for companies and reduce associated costs.

Background

Traditional Timeline

Traditionally, a plan proponent — usually the debtor — files a disclosure statement and proposed plan, allowing parties in interest at least 28 days to file objections to the disclosure statement.

The debtor typically reserves a few days to respond to any objections before the disclosure statement approval hearing. If the court approves the disclosure statement, the debtor then solicits votes on the plan, allowing at least another 28 days to file objections to the plan.

After the voting and objection period, the debtor usually submits a reply brief before the confirmation hearing.

Thus, the entire process for approval of a disclosure statement and confirmation of a Chapter 11 plan usually takes a minimum of approximately 70 days.

Section 105(d)(2)(B)(vi) of the Bankruptcy Code

Although disclosure statement hearings thus often occur well more than a month before plan confirmation hearings, Congress contemplated combined hearings for both.

Section 105(d)(2)(B)(vi) of the Bankruptcy Code allows a bankruptcy court to order that "the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan."[2]

Combined hearings are routine in prepackaged bankruptcy cases in the SDNY, as reflected in current SDNY prepackaged bankruptcy guidelines appearing at General Order M-621, but remain relatively rare in traditional Chapter 11 cases.

Until the recent filing of General Order M-634, not all practitioners may have been familiar

with the circumstances under which judges in the SDNY were willing to consider combined hearings.

Conditional Disclosure Statement Approval

As noted, debtors have at times sought "conditional" approval of their disclosure statements, often on shortened notice, followed by final approval in tandem with plan confirmation in circumstances where there already appeared to be wide acceptance of the plan or where other appropriate grounds existed to merit conditional approval.

This approach has been successfully used for several years in the SDNY, for example, in the In re: Endo International plc case before U.S. Bankrutpcy Judge James L. Garrity in March.[3] It also has been employed in various cases in the U.S. Bankruptcy Court for the Southern District of Texas[4] and in the U.S. Bankruptcy Court for the District of Delaware.[5]

Summary of the Guidelines

The guidelines, summarized below, formally introduce procedures integrating the plan confirmation and disclosure statement approval processes.

Most notably, the new guidelines authorize combined Chapter 11 plans and disclosure statements, the conditional approval of a disclosure statement, and combined hearings for final approval of a disclosure statement and confirmation of a Chapter 11 plan.

Application

The guidelines apply only to traditional Chapter 11 cases, not Subchapter V cases[6] or prepackaged Chapter 11 cases, which, as noted, are covered by separate SDNY guidelines.[7]

Combined Plan and Disclosure Statement

A disclosure statement and Chapter 11 plan can be merged into a single document, provided it contains adequate information, as defined in Section 1125(a)(1) of the Bankruptcy Code.

Motion for Conditional Approval of Disclosure Statement and Combined Hearing

A plan proponent may file a motion requesting conditional approval of a disclosure statement, whether combined with the proposed Chapter 11 plan or not; the scheduling of a joint hearing to consider final approval of the disclosure statement and confirmation of the proposed Chapter 11 plan; and approval of solicitation procedures and forms of ballots and notices.

Before filing this motion, the proponent must file a request on the docket for a bankruptcy court conference, including the reason for seeking relief and indicating whether the plan will:

- Seek to cram down any classes of claims or interests if necessary;
- Seek to obtain any third-party releases or injunctions, either consensual — including deemed consent — or nonconsensual;

- Provide differing treatment within any classes based on whether a party votes in favor of the plan;
- Settle estate claims against insiders;
- Settle claims against other third parties without such parties' actual consent;
- Seek shortened voting or notice periods; and
- Seek conditional approval of the disclosure statement before it is served and used for solicitation.

If the bankruptcy court is satisfied with the information in the request, the court may waive the need for the prefiling conference and the debtor can instead proceed with the filing of the motion, provided that such motion explicitly highlights the inclusion of any provisions set forth in the bulleted list above.

The guidelines also specify rules for service, on 14-days' notice, and objections. Failure to object to a conditional approval request does not waive objections to the final approval of the disclosure statement or plan confirmation.

In unusual circumstances, such as when there is broad stakeholder consensus or emergency time constraints imposed by a pending transaction, the bankruptcy court also may shorten or extend the specified time periods.

Conditional Approval

The guidelines set forth a process for the court to analyze and comment on the disclosure statement at the conference regardless of whether there are objections to the motion, specifying that the proposed disclosure statement be provided to the court in editable form.

If no objections to the motion are filed and the plan proponent addresses the bankruptcy court's comments, if any, on the draft disclosure statement, the court may conditionally approve the disclosure statement, solicitation procedures and the form of notice for the combined hearing on final approval and plan confirmation.

The order conditionally approving a disclosure statement, along with any related notice and the disclosure statement itself, must clearly state:

- The bankruptcy court has only conditionally approved the disclosure statement, pending notice and a hearing for final approval, allowing any party in interest to object to the final approval or plan confirmation;
- The bankruptcy court's denial of final approval may invalidate any prior ballot solicitation; and
- Conditional approval does not imply final approval of the disclosure statement or plan confirmation.

Takeaways

The guidelines provide a clear framework for all practitioners to combine the plan and disclosure statement approval processes, streamlining the path to plan confirmation on a shortened timeline. Parties can save time and costs under the guidelines.

By authorizing plan proponents to integrate Chapter 11 plans and disclosure statements and merge the related notice periods, as well as acknowledging the court's ability to shorten notice in appropriate circumstances, the guidelines can potentially reduce case timelines by several weeks, facilitating quicker exits from Chapter 11 and saving substantial amounts in professional fees and other costs.

Companies can anticipate enhanced predictability in the SDNY. The guidelines specify what steps practitioners should take to obtain the benefits contemplated by the guidelines and offer more certainty on the shortened time frame, enhancing predictability for companies considering a Chapter 11 bankruptcy filing in the SDNY.

The guidelines also provide ways — e.g., a conference, the motion to shorten, recognition of the court's ability to comment on the disclosure statement before conditional approval — for parties and the court to further tailor their operation to facts specific to the case.

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Disclosure: Jacob worked on Endo's Chapter 11 case.

[1] The guidelines state, "Nothing in these Guidelines prevents a judge of this Court from modifying these Guidelines based on the facts before the judge."

[2] Although Bankruptcy Rule 9006 permits a court for cause to shorten notice of the time for the hearing on a disclosure statement, the combined hearing can be on full notice under Bankruptcy Rule 2002(b) for purposes of both final approval of the disclosure statement and confirmation of the plan.

[3] See In re Endo International plc, No. 22-22549 (JLG) (Bankr. S.D.N.Y. Jan. 12, 2024), ECF No. 3549.

[4] See, e.g., In re Core Scientific., Inc., No 22-90341 (CML) (Bankr. S.D. Tex. Nov. 17, 2023), ECF No. 1447; In re Party City Holdco Inc., No. 23-90005 (DRJ) (Bankr. S.D. Tex. July 31, 2023), ECF No. 1491; In re Cineworld Grp. PLC, No. 22-90168 (MI) (Bankr. S.D. Tex. April 25, 2023), ECF No. 1596. Like the new SDNY guidelines, local bankruptcy rules and procedures in the SDTX contemplate combined Chapter 11 plans and disclosure statements, conditional approval of disclosure statements, and joint hearings for plan confirmation and disclosure statement approval. See Section P of the Procedures for

Complex Cases in the Southern District of Texas and rule 3016-2 of the Local Bankruptcy Rules for the Southern District of Texas. However, the SDTX rules and procedures are less comprehensive than the new guidelines adopted by the SDNY.

[5] See, e.g., In re Mist Holdings, Inc., Case No. 24-10245 (JTD) (Bankr. D. Del. May 8, 2024), ECF No. 380; In re Am. Physician Partners, LLC, Case No. 23-11469 (BLS) (Bankr. D. Del. Nov. 1, 2023), ECF No. 390; In re Reverse Mortg. Inv. Trust Inc., Case No. 22-11225 (MFW) (Bankr. D. Del. March 22, 2023), ECF No. 575.

[6] "Unless the court for cause orders otherwise … [S]ection 1125 [of the Bankruptcy Code] do[es] not apply in a case under [Subchapter V]." 11 U.S.C. § 1181.

[7] Disclosure Statements in "small business cases," defined in Section 101(51C) of the Bankruptcy Code also are separately addressed in Section 1125(f) of the Bankruptcy Code, but the new guidelines permit those procedures to be modified in appropriate cases.