

# NATIONAL BANKRUPTCY CONFERENCE

A Voluntary Organization Composed of Persons Interested in the  
Improvement of the Bankruptcy Code and Its Administration

September 22, 2008

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Advisory Committee on Bankruptcy Rules

c/o Peter G. McCabe, Secretary

Committee on Rules of Practice and Procedure

Administrative Office of the United States Courts

Washington, DC 20544

Re: Comments on Federal Rule of Bankruptcy Procedure 2019

To the Members of the Advisory Committee:

I write on behalf of the National Bankruptcy Conference (the "Conference"). We understand that the Loan Syndications and Trading Association (LSTA) and the Securities Industry and Financial Markets Association (SIFMA) have requested that Bankruptcy Rule 2019 be repealed. The Conference opposes repeal and urges the Committee to carefully consider the ramifications of repealing the Rule before acting on the LSTA/SIFMA's request.

During the past year, the NBC has been reviewing the overall plan negotiation and approval process in light of today's highly complex capital structures. One of the issues we have identified as potentially affecting plan outcomes is cross-voting. Cross-voting occurs when one holder (or a related party) holds debt or securities in different parts of the capital structure and votes against the remaining holders' interests in one class to further its interest in another class. The Conference has been considering recommendations to modify section 1126(e) of the Bankruptcy Code to deal with this and other potential conflicts of interest. It is also considering recommendations to modify Rule 2019 to require adequate disclosure, possibly broadening it in certain respects, while limiting or eliminating some disclosures. For example, the Conference is currently considering whether the Rule should be amended to require members of official committees appointed under sections 1102 and 1114 of the Code to disclose their holdings or whether all creditors should be required to disclose their holdings when they file pleadings or vote on a plan. The Conference is also considering what disclosures should be made under the Rule, including whether it might make sense to abridge or eliminate certain disclosures required under the current Rule. We will be discussing all of these issues at our meeting in Washington, DC on October 23rd and 24th and intend to update the Advisory Committee with our conclusions shortly thereafter.

We strongly urge the Committee to allow for further study of Rule 2019. Its substance has been part of the bankruptcy law since 1938 and should not be repealed without considerable thought given to the reasons and consequences.

The Conference appreciates your consideration of our views.

Very truly yours,

/s/ Richard Levin

Richard Levin

Vice-Chair

# NATIONAL BANKRUPTCY CONFERENCE

*A non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws.*

**History.** The National Bankruptcy Conference (NBC) was formed from a nucleus of the nation's leading bankruptcy scholars and practitioners, who gathered informally in the 1930's at the request of Congress to assist in the drafting of major Depression-era bankruptcy law amendments, ultimately resulting in the Chandler Act of 1938. The NBC was formalized in the 1940's and has been a resource to Congress on every significant piece of bankruptcy legislation since that time. Members of the NBC formed the core of the Commission on the Bankruptcy Laws of the United States, which in 1973 proposed the overhaul of our bankruptcy laws that led to enactment of the Bankruptcy Code in 1978, and were heavily involved in the work of the National Bankruptcy Review Commission (NBRC), whose 1997 report initiated the process that led to significant amendments to the Bankruptcy Code in 2005.

**Current Members.** Membership in the NBC is by invitation only. Among the NBC's 60 active members are leading bankruptcy scholars at major law schools, as well as current and former judges from eleven different judicial districts and practitioners from leading law firms throughout the country who have been involved in most of the major corporate reorganization cases of the last three decades. The NBC includes leading consumer bankruptcy experts and experts on commercial, employment, pension, mass tort and tax related bankruptcy issues. It also includes former members of the congressional staff who participated in drafting the Bankruptcy Code as originally passed in 1978 and former members and staff of the NBRC. The current members of the NBC and their affiliations are set forth on the second page of this fact sheet.

**Policy Positions.** The Conference regularly takes substantive positions on issues implicating bankruptcy law and policy. It does not, however, take positions on behalf of any organization or interest group. Instead, the NBC seeks to reach a consensus of its members - who represent a broad spectrum of political and economic perspectives - based on their knowledge and experience as practitioners, judges and scholars. The Conference's positions are considered in light of the stated goals of our bankruptcy system: debtor rehabilitation, equal treatment of similarly situated creditors, preservation of jobs, prevention of fraud and abuse, and economical insolvency administration. Conferees are always mindful of their mutual pledge to "leave their clients at the door" when they participate in the deliberations of the Conference.

**Technical and Advisory Services to Congress.** To facilitate the work of Congress, the NBC offers members of Congress, Congressional Committees and their staffs the services of its Conferees as non-partisan technical advisors. These services are offered without regard to any substantive positions the NBC may take on matters of bankruptcy law and policy.

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