Summary Statement of Philip S. Corwin
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On behalf of the
American Bankers Association
Before the
Advisory Committee on Bankruptcy Rules
Washington, DC
February 4, 2011

My name is Philip Corwin and I am appearing today on behalf of the members of the American Bankers Association (ABA).[1] The ABA appreciates the opportunity to present this oral statement and engage in dialogue with members of the Advisory Committee in regard to proposed amendments to Rule 3001 affecting claims based on open-end or revolving consumer credit agreements.

Proposed Amendments to Rule 3001

- We continue to be concerned that the proposed amendments are not supported by any comprehensive data indicating their need and, absent intervening legislation, are at odds with the Rules Enabling Act.

- Assuring accuracy of proofs of claim is very important, but the proposal would place an unreasonable burden upon consumer lenders and debt purchasers that in many cases will be impossible to satisfy. Overall, the proposed amendments fundamentally alter the balance between debtor and creditor in bankruptcy. By requiring additional information, the proposed rule imposes additional costs on creditors and will encourage debtors to dispute otherwise undisputed claims and encourage unnecessary litigation. It would likely result in a further diminution of consumer credit availability and greater losses for financial institutions as a result of its detrimental impact upon the purchased debt market. We do not know of any objective documentation of serious problems in regard to proofs of claim for unsecured consumer debt that justify this negative economic impact. Portions of the proposal raise credit market policy issues that should be first addressed by the legislative branch, rather than the judiciary.

- Our concerns regarding this proposal are heightened by the fact that unsecured lenders are already facing new burdens and potential sanctions under the amendments to Rule 3001 scheduled to take effect this December. Those amendments require an itemized statement of interest, fees, expenses or charges to be filed with each proof of claim where the claim includes any such items incurred before the petition was filed. As every claim for open-end or revolving consumer credit claims involves at least interest charges that requirement will impose a very substantial and wholly unnecessary administrative burden on creditors or debt purchasers to break a total claim into its constituent components. That pending amendment would also subject a claimant to potential court sanctions for the failure to provide any information required under subdivision (c), with the possibility that the claimant will be barred from submitting the omitted information in any form in any subsequent contested

[1] The American Bankers Association (ABA) represents banks of all sizes and charters and is the voice of the nation's $13 trillion banking industry and its two million employees.

matter or adversary proceeding, as well as be required to reimburse the debtor for reasonable expenses and attorney's fees.

- The proposed amendments are completely unnecessary for the vast majority of open-end or revolving consumer debts involved in a bankruptcy as almost all debts they would apply to have already been listed by the debtor as part of his filing. They are also irrelevant in the vast majority of Chapter 7 cases, as all but a miniscule percentage are "no asset" cases in which all such debts will be discharged. These considerations illustrate the unnecessary administrative burden that will be imposed by the proposed amendment, as creditors will have to undertake time-consuming and major reconfigurations of their computer systems to comply, adversely affecting financial institutions which have just undertaken such a complex and expensive process to assure compliance with the CARD Act.

- There is no guidance as to which of the information required under proposed subsection (c) (3) will be deemed "applicable", and this is likely to lead to inconsistent court interpretations as well as objections by debtor counsel. Other terms in the proposal are also confusing – for example, what is the "last transaction"?

- The lack of definition of "open-end or revolving consumer credit" raises the question of whether the proposed amendment is designed to include certain home equity lines (HEL) of credit. We do not believe that HELs should be addressed by a proposal meant to deal with credit card agreements and related debt purchases, as well as because loans secured by a principal residence are already addressed by pending Rule 3002.1. Home equity loans are generally not subject to debt purchases upon delinquency or bankruptcy filing. They are usually held in portfolio, although a small percentage may be sold into the secondary market, sold as whole loans, or transferred as part of a merger or acquisition. All these transfers are unrelated to the delinquency status of the account. Whole loans sales and secondary market transfers of these loans usually occur shortly after origination, not when the loan is delinquent, and therefore transferor information may not be available as the loan ages. Moreover, some of the required information may be difficult to obtain when there is a merger, bank or holding company failure, or if the delinquency occurred more than 12 months prior.

- The inclusion of many of the items called for by proposed subsection (c) (3) are likely to confuse the debtor. Such information could also be difficult to produce where a bank merger has occurred; and a debt purchaser will likely find it difficult or even impossible to obtain much of this information.

- The ability of debtor counsel to demand the original or duplicate of the writing on which the debt was based will be difficult to comply with where the claimant is the original creditor, and virtually impossible for debt purchasers. Complying with this demand is also complicated by the fact that many credit applications are now submitted and processed online.

- The proposed new documentation requirements would contravene the implied presumption of validity accorded to a creditor's claim under Rule 3001f – yet there is no waiver of Rule 3001f proposed as part of the amendment. We do not advocate the addition of such a waiver

– in fact, we strongly oppose it – but absent such waiver the proposed amendment is contradictory.

- Overall, we believe that both these proposed amendments as well as the amendments already proposed to be made to Rule 3001 effective as of December 2011 have been promulgated on a very questionable factual basis. For example, the report accompanying these proposed changes to Rule 3001 states that under the current Rule "many invalid claims purchased in bulk are simply not challenged". We know of no documented evidence developed at hearings held by the Advisory Committee on Bankruptcy Rules that provides a substantive basis for the assertion that many invalid claims are being submitted to the bankruptcy courts, nor is any reliable third party research cited as the foundation for this assertion. The Advisory Committee should not promulgate Rules amendments where there has been no intervening statutory change and the sole basis for them are the alleged "concerns" of certain participants in the bankruptcy system, rather than clear, convincing and impartially developed documentation of actual problems. The overall thrust of the pending and proposed Rules amendments is not to assure better documentation of consumer loan claims but to pose such burdensome administrative requirements as to make it difficult or impossible to assert valid claims, as well as to make such claims more vulnerable to disallowance under Section 502(b) of the Code and to new sanctions.