

**INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 12  
ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT**

**I. INTRODUCTION**

Official Form 12 is used in chapter 9 municipality cases and chapter 11 reorganization cases to provide certain parties in interest with an order and notice of a hearing to consider the approval of the disclosure statement. The disclosure statement is a document that contains information concerning the assets, liabilities, and business affairs of the debtor sufficient to enable a creditor holding a claim or interest to make an informed judgment about the plan of reorganization. 11 U.S.C. § 1125.

Only the debtor may file a disclosure statement and plan of reorganization within the first 120 days after the order for relief. 11 U.S.C. § 1121(b). (Commencement of a voluntary case by the filing a petition constitutes an order for relief under 11 U.S.C. § 301). Any party in interest, including the debtor, may file a disclosure statement and plan, if (1) a trustee has been appointed in the case; (2) the debtor has not filed a plan within the first 120 days after the order for relief; or (3) the debtor has filed a plan that has not been accepted within 180 days after the order for relief. 11 U.S.C. § 1121(c). The court may, after notice and a hearing, for cause, reduce or enlarge the debtor's exclusive period for filing and obtaining acceptance of a plan. 11 U.S.C. § 1121(d). A party in interest that files a disclosure statement and plan is referred to as the "proponent of the plan" or the "plan proponent."

This form, while legally sufficient, is often simply the starting point for drafting a longer notice containing additional provisions applicable to a particular case. Although issued in the name of the court, the Order and Notice for Hearing on Disclosure Statement normally will be drafted by the attorney for the debtor or other plan proponent. It must be approved by the court before to being mailed to creditors and other parties in interest.

**II. APPLICABLE LAW AND RULES**

Section 1125(a) and (b) of the Bankruptcy Code, applicable in both chapter 9 and chapter 11 cases, provides that a plan proponent must provide a disclosure statement containing "adequate information," as defined below.

"Adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan . . .

11 U.S.C. § 1125(a)(1).

The filing of a written disclosure statement is preliminary to the voting on a plan of reorganization. Both a written disclosure statement and a plan of reorganization must be filed with the court. 11 U.S.C. § 1121; Federal Rule of Bankruptcy Procedure 3016(c), (referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”). After the disclosure statement is filed, the court must hold a hearing to consider any objections or proposed modifications. The court then determines whether the disclosure statement should be approved. Bankruptcy Rules 3017(a) and 2002 require that the court hold a hearing on not less than 25 days notice. Acceptance or rejection of a plan cannot be solicited without prior court approval of the written disclosure statement. 11 U.S.C. § 1125(b).

Bankruptcy Rule 3017(a) specifies the persons that must receive copies of the disclosure statement and plan of reorganization before the hearing. These documents will not be sent to all parties in interest because at this stage of the case it could be unnecessarily expensive and confusing. But, any party in interest may request copies. The disclosure statement and plan are sent with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party in interest who requests in writing a copy of the statement or plan. Anyone desiring a copy should send a written request to the person mailing the disclosure statement and plan, which generally is the proponent of the plan.

Creditors have an opportunity to file written objections to the disclosure statement on or before the date fixed in the Order and Notice for Hearing on Disclosure Statement. The procedures set forth in Bankruptcy Rule 3017 must be followed. Rule 3017(a) specifies that objections may be filed at any time before approval of the disclosure statement, or the court may fix an earlier date for filing objections. Any objections to the disclosure statement must be filed and served on the debtor, the trustee, any committee appointed in the case, the United States trustee, and such other entity as the court may designate. Fed. R. Bankr. P. 3017(a).

At or after the hearing, the court will determine whether to approve the disclosure statement. Fed. R. Bankr. P. 3017(b). The "adequate information" standard, which the disclosure statement must meet and which is set forth in 11 U.S.C. § 1125(a)(1), is governed by judicial discretion and the circumstances of the case. After the disclosure statement has been approved, the proponent of the plan can begin to solicit acceptances of the plan, and creditors may solicit rejections of the plan.

In addition to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, each district may have local bankruptcy court rules that may contain further requirements. Local rules may be obtained at the bankruptcy clerk's office.

**NOTE:** If the debtor qualifies and has elected to be considered a “small business” under 11 U.S.C. § 1121(e), the case is put on a "fast track" and treated differently from a regular chapter 11 case under the Code. For example, time periods are shortened for filing a plan and a separate hearing to approve the disclosure statement is not mandatory. The court may conditionally approve a disclosure statement, subject to final approval after notice and a hearing held later. Solicitation of votes for acceptance or rejection of the plan may proceed based on the conditional approval of the disclosure statement. Thereafter, the disclosure statement hearing may be combined with the confirmation hearing. 11 U.S.C. § 1125(f). Director's Procedural Forms B 13S and B 15S may be used in small business cases. These forms are in Part II of this Manual.

### III. DIRECTIONS

1. The Official Form should be used with alterations as may be appropriate in the particular case. Fed. R. Bankr. P. 9009. The form also may be adapted for use if more than one disclosure statement is to be considered by the court.
2. The caption should be placed at the top of the page and should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.
3. The person who filed the disclosure statement and plan of reorganization is the plan proponent. That person's name should be placed on the first line after the words "filed by." The date that the statement and plan were filed should follow the name after the word "on."
4. In paragraph number 1, the plan proponent should state the place where the hearing is going to be held, (such as "United States Bankruptcy Court") and the street address in the first blank space. The date of the hearing should appear in the second blank space. The time of the hearing should appear in the third blank space and morning (a.m.) or afternoon (p.m.) should be placed in the fourth blank space.
5. In paragraph number 2, the date that the court fixes as the last day for filing and serving objections should appear in the only blank space.
6. In paragraph number 3, the plan proponent should state the number of days within which the proponent will mail the documents.

Official Form 12  
continued

7. In paragraph number 4, the plan proponent should state the proponent's role in the case, (such as debtor in possession, trustee, debtor, etc.), or state the proponent's name on the first line. On the second line, the proponent should state the address at which requests for copies of the disclosure statement and plan should be made. This often will be a law firm or, in a very large case, a private contractor. A useful form of address is

\_\_\_\_\_ (Name of Debtor)

c/o \_\_\_\_\_ (Name of Law Firm or Contractor)

\_\_\_\_\_ (Street Address)

\_\_\_\_\_

8. The date that the judge signs the order and notice should be placed after the word "Dated." The bankruptcy judge's signature should appear on the signature line.

9. The Order and Notice For Hearing on Disclosure Statement must be filed and copies mailed to those parties in interest specified in Bankruptcy Rule 3017(a), discussed above.

**NOTE:** Paragraph 4 contains alternate language printed in [ ] brackets. When preparing the form for use in a case, select the appropriate word or phrase and omit all alternates.