

**INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 13
ORDER APPROVING DISCLOSURE STATEMENT AND FIXING TIME
FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN,
COMBINED WITH NOTICE THEREOF**

I. INTRODUCTION

Official Form 13 is used in chapter 11 reorganization cases to provide certain parties in interest with notice of the court's approval of the disclosure statement, their opportunity to file acceptances or rejections of the plan, and an order and notice of a hearing to consider the approval of the plan of reorganization. Appropriate documents are also provided to parties in interest with the notice or within the time stated in the notice. These may include either the plan or a summary of the plan, a court approved summary of the court's opinion approving the disclosure statement, the approved disclosure statement, a ballot for accepting or rejecting the plan, and other information or documents as the court may direct.

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

II. APPLICABLE LAW AND RULES

There is no specific statutory time limit set for filing a plan. But, 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 of a petition constitutes an order for relief under 11 U.S.C. § 301.) The debtor's exclusive period to file a statement and plan may be extended or reduced by the court. 11 U.S.C. § 1121(d). Moreover, 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 any extension granted by the court; or (3) the debtor has filed a plan that has not been accepted within 180 days after the order for relief or any extension granted by the court. 11 U.S.C. § 1121(c) and (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."

A plan proponent is subject to the requirements of section 1125 of the Code with respect to disclosure and solicitation of acceptance of the plan. Acceptance or rejection of a plan cannot be solicited without the court first approving the written disclosure statement. 11 U.S.C. § 1125(b). On or before the approval of the disclosure statement, the court must set a time within which holders of claims or interests may vote to accept or reject the plan, and it must set a date for a hearing on confirmation of the plan. Rule 3017(c) of the Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”)

On approval of the disclosure statement, plan proponents may solicit holders of claims or interests for acceptance of a plan. 11 U.S.C. § 1125(b). Unless the court orders otherwise regarding any unimpaired classes of creditors or equity security holders, the debtor in possession, trustee, proponent of the plan, or clerk, as ordered by the court, must mail to all creditors and equity security holders, and to the U.S. trustee, (1) the plan or court approved summary of the plan, (2) the approved disclosure statement, (3) notice of the time within which to file acceptance and rejection of the plan, and (4) other information as the court may direct, including any opinion of the court approving the disclosure statement or court approved summary of the opinion. Fed. R. Bankr. P. 3017(d). In addition, notice of the time fixed for filing objections to confirmation of the plan and notice of the hearing on confirmation must be mailed to all creditors and equity security holders, and a ballot must be mailed to those entitled to vote on the plan. Fed. R. Bankr. P. 2002(b), 3017(d).

Plan proponents should refer to the Bankruptcy Code requirements regarding the classification of claims or interests and the contents of the plan. 11 U.S.C. §§ 1122, 1123. Section 1123(a) lists the mandatory provisions of the plan, and section 1123(b) lists the discretionary provisions. Section 1123(a)(1) provides that a chapter 11 plan must designate classes of claims and interests for treatment under the reorganization.

Under section 1126(c) of the Code, an entire class of claims is considered to have accepted a plan if the plan has been accepted by creditors that hold: (a) at least two-thirds in amount, and (b) more than one-half in number of allowed claims of the class held by creditors that have accepted or rejected the plan, i.e., creditors that have voted on the plan. A class of equity security interests is considered to have accepted a plan if the plan has been accepted by the holders of two-thirds in amount of such allowed interests that have voted on the plan. 11 U.S.C. § 1126(d). Under section 1129(a)(10), if there are impaired classes of claims, the court cannot confirm a plan unless it has been accepted by at least one class of non-insiders who hold impaired claims (i.e., claims that are not going to be paid completely or in which some legal, equitable, contractual right is altered). Moreover, under section 1126(f), holders of unimpaired claims are considered to have accepted the plan.

Section 1127(a) of the Code provides that the plan proponent may modify the plan at any time before confirmation, and the modified plan will become the plan. But the plan as modified must meet all the requirements of chapter 11. Bankruptcy Rule 3019 provides that, when there is a proposed modification after balloting has been conducted and the court finds after a hearing that the proposed modification does not adversely affect the treatment of any creditor who has not accepted the modification in writing, the modification shall be considered to have been accepted by all creditors who previously accepted the plan. If it is determined that the proposed modification does have an adverse effect on the claims of the nonconsenting creditors, then another balloting must take place.

Because more than one plan may be submitted to the creditors for approval, Bankruptcy Rule 3016(b) requires that every proposed plan and modification be dated and identified with the name of the entity or entities submitting such plan or modification. When competing plans are presented and meet the requirements for confirmation, the court must consider the preferences of the creditors and equity security holders in determining which plan to confirm.

Any party in interest may file an objection to confirmation of a plan within the time fixed by the court. The Code requires the court, after notice, to hold a hearing on the confirmation of a plan. 11 U.S.C. § 1128. Any objection to confirmation must be filed and served on the debtor, the trustee, the proponent of the plan, any appointed committee, and any other entity designated by the court. Fed. R. Bankr. P. 3020(b)(1). An objection to confirmation is treated as a contested matter under Bankruptcy Rule 9014. If no objection to confirmation has been timely filed, the Code allows the court to determine that the plan has been proposed in good faith and according to law. Fed. R. Bankr. P. 3020(b)(2).

At or after the confirmation hearing, the court may confirm the plan and thereby make it binding on all creditors and equity security holders. Before confirmation can be granted, the court must be satisfied that there has been compliance with the requirements of confirmation set forth in section 1129 of the Code, even in the absence of any objections. In order to confirm the plan, the court must find that the requisite acceptances have been obtained, that the plan is feasible, is proposed in good faith, and that the plan and the proponent of the plan are in compliance with the Code. In addition, the court must find that confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization, unless it is proposed in the plan. 11 U.S.C. § 1129(a)(11). For a complete list of requirements for confirmation of a plan, parties in interest may refer to section 1129 of the Code.

In the event the required acceptances are not obtained, the court may nevertheless confirm the plan if it finds that the plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Code. This procedure is sometimes referred to as a “cramdown.”

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. Fed. R. Bankr. P. 9009. The form also may be adapted for use if more than one plan 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. A person who files a disclosure statement and plan of reorganization is referred to below as a "plan proponent" or "proponent of a plan."
4. The first plan proponent's name should be placed in the first blank space after the words "having been filed by." The date that the first plan proponent filed the disclosure statement should follow the plan proponent's name after the word "on."
5. In the event that a second person filed a disclosure statement and plan, the second plan proponent's name should be placed in the blank space after the words "and by." The date that the second plan proponent filed the disclosure statement should follow the plan proponent's name after the word "on."
6. The name of the first plan proponent that filed a plan should appear in the blank space after the words "chapter 11 of the Code filed by." The date that the first plan proponent filed the plan should follow the plan proponent's name after the word "on."

7. If applicable, the name of the second plan proponent that filed a plan should appear in the blank space after the words "and by." The date that the second plan proponent filed the plan should follow the plan proponent's name after the word "on."

8. If appropriate, the date that any modification to a plan was filed should appear in the blank space after the words "modification filed on."

The Order and Notice:

A. In paragraph A, the name of the first plan proponent should appear in the first blank space after the words "filed by." The date of the disclosure statement should appear in the blank space following the word "dated."

If appropriate, the name of the second plan proponent should appear in the blank space after the words "and by." The date of the disclosure statement should appear in the blank space following the word "dated."

B. In paragraph B, the date that the court fixed as the last day for filing written acceptances or rejections of the plan(s) should appear in the blank space.

C. In paragraph C, the plan proponent should state the number of days, after entry of the order, within which the proponent will mail the appropriate documents. If the documents are included with the notice in a single mailing, the language of the paragraph should be altered to reflect that fact. If the court directs that a copy of its opinion approving the disclosure statement should be transmitted in addition to the other documents, the appropriate change should be made in paragraph C of the order. The date of the court's opinion approving the disclosure statement(s) should be included in the second blank space after the word "dated."

D. Paragraph D provides that if a party files an acceptance for more than one plan, the party may indicate which plan the party prefers.

E. If a date for the confirmation hearing is fixed, the day, time of day (including a.m. or p.m.), and address of such confirmation hearing should be placed in the blank space in paragraph E.

F. If appropriate, the date of the last day for filing and serving written objections to the confirmation of the plan(s) should be placed in the blank space in paragraph F.

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.

The Order Approving Disclosure Statement and Fixing Time For Filing Acceptances or Rejections of Plan, Combined with Notice Thereof must be filed and copies mailed to those parties in interest specified in Bankruptcy Rule 3017(d), discussed above.

NOTE: Many paragraphs of this form contain alternate language printed in [] brackets. When preparing the form for use in a case, select the appropriate word or phrase and omit all alternates. In the event that paragraph E or F, or both, are not appropriate in a particular case (because the relevant dates have not been fixed by the court), the preparer may omit the paragraph(s). A further notice will be required after the dates have been fixed, however. A better practice would be to alter paragraph(s) E or F, or both, to inform creditors and parties in interest that the date(s) have not been fixed and that an additional notice will be sent.