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February 15, 2011

Mr. Peter G. McCabe
Secretary of the Committee on Rules of Practice and Procedure
Judicial Conference of the United States
Washington, D.C. 20544

RE: Proposed changes to Rule 3001 of the Rules of Bankruptcy Procedure

Dear Mr. McCabe and Members of the Committee:

Bass & Associates, P.C. thanks the Committee for the opportunity to comment further on this important proposal. Because of our vast experience in the filing of claims nationwide on behalf of a number of clients, we are uniquely situated to understand the impact of this proposed rule on the bankruptcy process and on our clients. We appreciate that our comment at an earlier stage of these proceedings seemed to be well taken, and are optimistic that we can contribute further through our thoughts below.

Initially, we thank the committee for removing the earlier automatic requirement that an account statement be filed with every proof of claim for an open end account. The various comments on that provision clearly explained why that provision was particularly troublesome, and they were obviously well received. However, the replacement provision imposes the same requirement upon request of a party in interest and thus merely adds a step in the process. It is likely, if not certain, that debtor's attorneys will add that request to their normal processes and procedures. Since subsection (B) refers to the "documentation" specified in paragraph (1), it would seem to be acceptable where a statement is unavailable for a creditor to provide a statement of the circumstances of its loss or destruction in response to that request, but it is unclear the potential effect that providing that statement to the requestor would have on the claim. Presumably, if the information required by paragraph (3) is filed with a claim, that claim should be presumed *prima facie* valid under 3001(f) without the actual writing on which it is based, but that result is not clear and will likely have to be settled through litigation. A better solution would be to eliminate the writing requirement completely, as long as the paragraph (3) information is filed with the claim. That way it would be clear that the proof of claim has *prima facie* effect, and the necessity of a writing to validate the claim can be determined through the objection process.

The provision of the information required in paragraph 3 is definitely a more workable solution than the statement requirement would have been, and we appreciate the work of the committee in devising it. Nevertheless, there are ambiguities in the wording of that paragraph that need some clarification, either in the language of the rule itself or in some drafting notes. The first such question concerns the requirement that the name of the entity from whom the creditor purchased the account be provided. Large bank creditors who operate under well known trade names have multiple credit granting entities within them. For example, ABC Bank (which we will assume for this example is a well known brand) may actually be a bank holding company that owns and grants credit through a number of smaller banks, such as ABC Bank U.S.A., ABC Bank of Washington, ABC Bank of Florida, and so on. Moreover, during a securitization transaction, the ownership of the revenue stream for a given consumer account may become separated from and owned by a different entity than the account itself, adding further confusion to a literal disclosure. Additionally, if an account is transferred between individual banks within a bank holding

company, it could be inaccurate and possibly perjury for the bank that owns the account at the time of bankruptcy to state with a proof of claim that the account was not purchased from another entity. For the purposes of this rule, it would seem that identifying such an entity as "ABC Bank" should be sufficient and less confusing to the debtor than the actual legal entity or entities that the account actually was purchased from, but without clarification, litigation will no doubt result from the present wording. Additionally, we would suggest that line 3(a)(i) of the rule be restated to limit the disclosure requirement to purchases from non-affiliated entities.

Even with respect to regular sales of accounts between unaffiliated banks, the requirement that a creditor state the name of the entity from which it purchased the account may not be relevant and may actually be confusing to debtors. Banks sell credit card programs between each other and purchase the assets of other banks both in standalone and merger transactions. In today's economy where banks are failing, such transactions occur with some regularity. If a bank purchases a portfolio of accounts from another bank, it will be required to state the name of the selling bank, even if it is years later and the debtor has been accustomed to transacting with the acquiring bank. Moreover, in many cases where the acquiring bank has integrated the account into its portfolio, there may not be an easy way to identify the account as being purchased. Since it appears that the committee's concern is with debt that is purchased as delinquent by an unknown third party as delinquent for the sole purpose of collection, it also would make sense to limit this disclosure requirement to just that situation.

A second point of needed clarification is the definition of what constitutes a "transaction" on an account for purposes of this rule. The common usage in the industry of the word "transaction" denotes any monetary activity, including payments, borrowings (or purchases), interest accrual, fee accrual, and even the charge off of the account to profit and loss. By using common rules of statutory construction on the proposed rule, it is clear that a payment or charge-off cannot be a transaction, but it is not clear that interest or fee accrual would not be included. Even the requirement that the transaction be "by the account holder" is not completely defining, since the imposition of a late charge or a NSF fee can be seen as being as a result of the action or inaction of the account holder. Rather than "transaction" it would be clearer to use the word "purchase" or "borrowing" if that is indeed what is meant.

One final point of comment – where a debtor has scheduled the claim in question, and thereby has admitted its validity, it seems superfluous to require some or all of the elements required in paragraph 3. Adding an exception to that paragraph for proofs of claim filed that match the claim as listed on the debtor's schedules would enhance judicial economy, and relieve creditors of at least some of the additional paperwork burden otherwise created by the amendments.

Overall, we appreciate the committee's efforts on the clarification of this proposed rule, and hope that our comments add some additional insight.

Respectfully submitted,

David Melcer, Esq.
Bass & Associates, P.C.