

PROPOSED
RULES OF BANKRUPTCY PROCEDURE

Title V

CHAPTER XI RULES

COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE
of the
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CHAPTER XI RULES

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TITLE V
CHAPTER XI RULES

**Rule 11-1. Scope of Chapter XI Rules and Forms;
Short Title**

1 The rules and forms in this Title V gov-
2 ern the procedure in courts of bankruptcy
3 in cases under Chapter XI of the Bank-
4 ruptcy Act. These rules may be known and
5 cited as the Chapter XI Rules. These forms
6 may be known and cited as the Official
7 Chapter XI Forms.

ADVISORY COMMITTEE'S NOTE

A "Chapter XI case," as defined in Rule 11-3, is one wherein a petition has been filed by a person seeking relief under Chapter XI of the Bankruptcy Act. The case includes all of the proceedings and matters which arise in connection with the case and of which the court of bankruptcy is given jurisdiction under Chapter XI and incorporated provisions of Chapters I-VII of the Act. See § 302. These rules and forms thus do not apply to a case initiated under Chapters I-VII of the Act unless a Chapter XI petition is filed in a pending bankruptcy case pursuant to Rule 11-7, nor to a case initiated under other debtor-relief chapters (VIII, IX, XII, XIII) or Chapter X unless an order is entered therein directing that the case proceed under Chapter XI. Nor do these rules prescribe except incidentally the practice for actions or "plenary proceedings" brought in state courts or federal district courts to determine controversies that arise in connection with a Chapter XI case.

"Courts of bankruptcy" are defined in § 1(10) of the Bankruptcy Act, 11 U.S.C. § 1(10), to "include the

United States district courts and the district courts of the Territories and possessions to which this Act is or may hereafter be applicable." (References to the Bankruptcy Act hereinafter will be to the Act and will omit citations to Title 11 of the United States Code.) The courts of bankruptcy clearly include the district courts of Guam and the Virgin Islands. 1 Collier, *Bankruptcy* ¶ 1.10 at 71-72 n. 22 (14th ed. rev. 1968), citing relevant statutory provisions. (Hereinafter citations to the Collier treatise will omit the title and references to the edition but will include the date of the revision of the cited material.) It is problematical whether the District Court for the District of the Canal Zone is a bankruptcy court, but it appears that the court has not undertaken to act as a court of bankruptcy. 1 Collier, *supra* at 72.

Rule 11- 2. Meanings of Words in the Bankruptcy Rules When Applicable in a Chapter XI Case

- 1 The following words and phrases used in
- 2 the Bankruptcy Rules made applicable in
- 3 Chapter XI cases by these rules have the
- 4 meanings herein indicated, unless they are
- 5 inconsistent with the context:
- 6 (1) "Bankrupt" means "debtor."
- 7 (2) "Bankruptcy" or "bankruptcy case"
- 8 means "Chapter XI case."
- 9 (3) "Receiver," "trustee," "receiver in
- 10 bankruptcy," or "trustee in bankruptcy"
- 11 means the "receiver," "trustee," or "debtor
- 12 continued in possession" in the Chapter XI
- 13 case.

ADVISORY COMMITTEE'S NOTE

These rules make many of the Bankruptcy Rules applicable in Chapter XI cases or in proceedings therein, and this rule indicates the substitution or translation of certain terms that is necessary for this purpose.

Rule 11-3. Commencement of Chapter XI Case

the
of

1 A Chapter XI case is commenced by
2 filing a petition with the court seeking relief
3 under Chapter XI of the Act.

(a) Method of Commencement.

by a person

(b) When Case May Be Commenced. The petition under Chapter XI may be an original petition or it may be filed in a bankruptcy, Chapter XII, or Chapter XIII case.

ADVISORY COMMITTEE'S NOTE

or a case
pending
under
Chapter
XII or XIII.

This rule prescribes the mode for beginning a Chapter XI case, whether by filing an original petition or a petition in a pending bankruptcy case. Original petitions are governed by Rule 11-6 and petitions in pending bankruptcy cases by Rule 11-7 which are derived from §§ 321 and 322 of the Act. A case may also proceed under Chapter XI pursuant to an order entered in a pending Chapter X case. A proceeding initiated by a petition or pursuant to an order in a Chapter X case is designated a "Chapter XI case" for the purposes of these rules. The term embraces all the controversies determinable by the court of bankruptcy and all the matters of administration arising during the pendency of the case. The word "proceeding" as used in these rules generally refers to a litigated matter arising within a case during the course of administration. See particularly Bankruptcy Rule 703, made applicable under Chapter XI by Rule 11-61. The rule assumes the continuing applicability of the definition of petition in § 306(5) of the Act but, as used in these rules, the word refers to the document commencing a Chapter XI case. The place of filing a petition is more fully particularized in Bankruptcy Rule 509.

While § 321 refers only to the filing of a Chapter XI petition in a pending bankruptcy case, subdivision (b) of this rule makes explicit that the pending case may also be a Chapter XII or Chapter XIII case. If a Chapter X case were pending, Rule 10-117 of the Chapter X rules would apply to the conversion of the case to Chapter XI.

Rule 11-4. Chapter XI Cases Originally Commenced Under Another Chapter of the Act

1 When a case commenced under another
2 chapter of the Act proceeds under Chapter
3 XI, the Chapter XI case shall be deemed to
4 have been originally commenced as of the

5 date of the filing of the first petition initiat-
6 ing a case under the Act.

ADVISORY COMMITTEE'S NOTE

The purpose of this rule is to protect those rights that develop upon the filing of a petition commencing any case for relief under the Bankruptcy Act. The first case may have been a bankruptcy case which was then transferred to Chapter XI by petition, or a Chapter X case which was transferred to Chapter XI. This rule is not intended to invalidate any action taken in the superseded proceeding before it was converted to a Chapter XI case.

case

, Chapter XII or Chapter XIII

by order. See Rules 11-3 and 11-7.

Rule 11-5. Reference of Cases; Withdrawal of Reference and Assignment

1 Bankruptcy Rule 102 applies in Chapter
2 XI cases.

ADVISORY COMMITTEE'S NOTE

Bankruptcy Rule 102 contains a reference to Bankruptcy Rule 115(b) which, because it deals with involuntary petitions, is inapplicable in Chapter XI cases. That cross reference would, therefore, also be inapplicable.

Rule 11-6. Original Petition

1 An original petition under Chapter XI of
2 the Act shall conform substantially to Offi-
3 cial Form No. 11-F1. An original and 4
4 copies of the petition shall be filed, unless a
5 different number of copies is required by
6 local rule. The clerk shall transmit one copy
7 to the District Director of Internal Revenue
8 for the district in which the case is brought,
9 and one copy to the Secretary of the Treas-
10 ury.

filed

and, if the debtor is a corporation, one copy to the Securities and Exchange Commission at Washington, District of Columbia

ADVISORY COMMITTEE'S NOTE

Official Form No. 11-F1 (Original Petition under Chapter XI) has been simplified and shortened but retains the essential features of the official form for a debtor's petition promulgated under former § 30 of the Act. Although no copy of this petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that three copies be filed for court purposes although the petition need not be filed in triplicate original. The rule incorporates the requirements of § 394 and General Order 48(3) with respect to transmittal of copies of the petition to the Secretary of the Treasury and the District Director of Internal Revenue. Additionally, note should be taken of local rules to determine whether or not any additional copies must be filed.

As provided in Rule 11-44, the filing of the petition acts as a stay of other proceedings against the debtor, except a pending Chapter X case.

Only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c). The petition must be filed with the clerk as provided in Bankruptcy Rule 509(a).

If the debtor is a corporation a copy of the petition must also be sent to the Securities and Exchange Commission. Attached to Official Forms Nos. 11-F1 and 11-F2 is Exhibit "A" which contains information needed by the SEC at the beginning stages of a Chapter XI case of a corporate debtor.

Rule 11-7. Petition in Pending Bankruptcy Case

1 If a bankruptcy case is pending by or
 2 against the debtor, any petition under Chap-
 3 ter XI shall be filed therein and may be filed
 4 before or after adjudication. Such petition
 5 shall conform substantially to Official Form
 6 No. 11-F2. The number and distribution of
 7 copies shall be as specified in Rule 11-6. The
 8 filing of the petition shall act as a stay of
 9 adjudication ~~or~~ of administration of the
 10 estate in bankruptcy. The court may, for
 11 cause shown, terminate, annul, modify, or
 12 condition the stay.

or a case under Chapter XII or XIII

an

and

ADVISORY COMMITTEE'S NOTE

Official Form No. 11-F2 (Chapter XI Petition in Pending ~~Bankruptcy~~ Case) is new. It is designed for use where a bankruptcy case is pending on a petition by or against the debtor and must be filed with the court in which the ~~bankruptcy~~ case is pending. See Rule 11-13(a). Although no copy of the petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that the court have 3 copies of the petition. See Rule 11-6.

or a case under
Chapter XII or XIII

other

Although Bankruptcy Rule 509 specifies that the petition is to be filed with the clerk, the petition under this rule in a pending ~~bankruptcy~~ case should be filed with the referee because it is being filed after reference. The court should transmit the copies of the petition as provided in Rule 11-6.

The rule changes the thrust of § 325 of the Act by staying automatically the adjudication or administration of the estate in a bankruptcy case rather than rendering it discretionary with the court to order a stay. As provided in Rule 11-44 the filing of the petition also acts as a stay of most other proceedings against the petitioner. For cause shown, however, the automatic stay may be terminated, modified, etc. as may be necessary in a particular case, and some actions in the pending case may be permitted, such as a sale of property where it would be improvident to halt the sale by the mere filing of the Chapter XI petition.

This stay does not operate to impede the administration of a pending Chapter XII or XIII case. A specific order to that effect could, however, be entered. The stay of administration referred to in this rule is the administration of a straight bankruptcy case under Chapters I-VII of the Act.

Only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c).

Rule 11-8. Partnership Petition

- 1 A petition may be filed pursuant to Rule
- 2 11-6 or 11-7 by all the general partners on
- 3 behalf of the partnership.

ADVISORY COMMITTEE'S NOTE

A partnership as such is a debtor capable of being bankrupt under § 4 of the Act and thus is entitled to the benefit of Chapter XI pursuant to § 306(3). There is some question within the Act whether or not a partnership petition may properly be filed by less than all of the general partners. Under § 5 of the Act and Bankruptcy Rule 105 a petition commencing a bankruptcy case may be filed by less than all of the general partners. This procedure, however, is more akin to an involuntary petition, requiring service of the petition on nonassenting partners and a hearing on adjudication, which is inconsistent with the voluntary nature of a Chapter XI case for arrangement. This rule requires a petition on behalf of a partnership to be filed by all of the general partners. This does not mean, necessarily, that all of the general partners physically execute the petition. While all must consent to the petition, less than all may execute the petition which would be on behalf of all. See 8 Collier, ¶ 4.02[4.3] (1963).

Rule 11-9. Caption of Petition

- 1 Bankruptcy Rule 106 applies in Chapter
- 2 XI cases.

ADVISORY COMMITTEE'S NOTE

The last sentence of Bankruptcy Rule 106 has reference to involuntary petitions and would therefore not be applicable in a Chapter XI case.

Rule 11-10. Filing Fees

- 1 Every petition filed pursuant to Rule 11-6
- 2 shall be accompanied by the prescribed filing
- 3 fees.

ADVISORY COMMITTEE'S NOTE

Filing fees for Chapter XI cases are prescribed by § 324(2) which incorporates §§ 40c(1), 48c and 52a

of the Act. Additional fees and charges may be prescribed in accordance with schedules and regulations approved by the Judicial Conference of the United States pursuant to §§ 40c(2) and (3) of the Act and 28 U.S.C. § 1914(b). ←

If the original petition commenced a Chapter XIII case, an additional filing fee would be required to be paid with the Chapter XI petition.

Rule 11-11. Schedules, Statement of Affairs, and Statement of Executory Contracts

1 (a) *Schedules and Statements Required.*
 2 The debtor shall file with the court schedules
 3 of all his debts and all his property, a state-
 4 ment of his affairs, and a statement of his
 5 executory contracts, prepared by him in the
 6 manner prescribed by Official Forms No.
 7 11-F5 and either No. 11-F6 or No. 11-F7,
 8 whichever is appropriate. The number of
 9 copies of the schedules and statements shall
 10 correspond to the number of copies of the
 11 petition required by these rules.

12 (b) *Time Limits.* Except as otherwise
 13 provided herein, the schedules and state-
 14 ments, if not previously filed in a pending
 15 bankruptcy case, shall be filed with the peti-
 16 tion. A petition shall nevertheless be ac-
 17 cepted by the clerk if accompanied by a list
 18 of all the debtor's creditors and their ad-
 19 dresses, and the schedules and statements
 20 may be filed within 15 days thereafter in
 21 such case. On application, the court may
 22 grant up to 30 additional days for the filing
 23 of schedules and the statements; any further
 24 extension may be granted only for cause
 25 shown and on such notice as the court may
 26 direct.

27 (c) *Partnership.* If the debtor is a part-

or Chapter
XII

28 nership, the general partners shall prepare
 29 and file the schedules of the debts and prop-
 30 erty, statement of affairs, and statement of
 31 executory contracts of the partnership.

32 (d) *Interests Acquired or Arising After*
 33 *Petition.* Bankruptcy Rule 108(e) applies in
 34 Chapter XI cases except that the supple-
 35 mental schedule need not be filed with re-
 36 spect to property or interests acquired after
 37 confirmation of a plan.

ADVISORY COMMITTEE'S NOTE

Subdivision (a): This rule is an elaboration of § 7a(8) and (9) and § 324(1) of the Act. This list of creditors has been referred to in Schedule A of Official Form 11-F5 as the schedule of debts, and the latter designation is employed in the rules and official form as revised. Section 324 has required the schedules of property, list of creditors and statements to be filed in triplicate, and § 59c of the Act has required petitions to be filed in the same number. Rules 11-6 and 11-7 require petitions to be filed in an original and 4 copies. Each required copy of a petition must be accompanied by a copy of schedules, statement of affairs and statement of executory contracts except as provided in subdivision (b). Only the original need be signed and verified, but the copies should be conformed to the original. See Bankruptcy Rule 911(c).

Subdivision (b) retains the requirement of § 324(1) that the schedules, statement of affairs and statement of executory contracts accompany a petition filed under Rule 11-6 unless a list of creditors and their addresses accompanies the petition. If the Chapter XI petition is filed under Rule 11-7 and schedules, and statement of affairs have already been filed in the pending bankruptcy case on Official Forms No. 6 and 7 or 8, they need not be refiled on Official Forms No. 11-F5 and 11-F6 or 11-F7; however, the statement of executory contracts must ~~in all cases~~ be filed but no Official Form is provided.

a

or on Official Forms No. 12-F5 and 12-F6 or 12-F7 in a pending Chapter XII case,

, unless previously filed in a Chapter XII case,

Whereas the option to file with the petition a list of creditors with their addresses is available to the debtor under § 324(1) only if he also files a summary of assets and liabilities and if the court for cause shown gives him further time for filing the schedules and statements, the rule allows the debtor 15 more days for filing the schedules and statement without the necessity of applying for and obtaining an extension of time from the court. A debtor frequently has an urgent need for relief available under Chapter XI of the Act, and allowing him up to 15 days in which to provide the information required on the schedules and in the statements will be less productive of administrative inconvenience and delay than the present requirement of an application for extension of time. Extensions of time beyond the 15 day period allowed by the second sentence of subdivision (b) are governed by the last sentence of the subdivision and by Bankruptcy Rule 906(b). An extension for up to 30 days may be granted on application to the court, but any further extension may be made only for cause shown and after notice as the court may direct.

Subdivision (c), prescribing who shall prepare and file schedules and the statements whenever a debtor is a partnership is new. While the duty to prepare the schedules and the statements of a partnership attaches to all the general partners, one partner may sign these papers on behalf of the partnership. See, *e.g.*, the form of the oath on behalf of a partnership at the foot of Official Form No. 6.

Subdivision (d), which is new, provides a procedure for getting information as to post-petition acquisitions of the debtor prior to confirmation of a plan. This subdivision contemplates that the original schedules and statements will be complete and accurate as of the time of the filing of a petition in bankruptcy, where a petition is filed under Rule 11-7. If that is not the case, they should be corrected by amendment pursuant to Rule 11-12 rather than by the filing of supplemental schedules and statement of affairs pursuant to this rule.

The reference to "bankruptcy" or "date of bankruptcy"

or under Chapter XII

in Bankruptcy Rule 108(e) means the date of the initial petition instituting a case under the Act. The plan or order of confirmation may require the filing of a supplemental schedule if property or interests are acquired before a later date fixed for the re-vesting of title in the debtor or vesting of title in some other person.

case

If the ~~proceeding~~ is converted to bankruptcy, the requirements of subdivision (d) will no longer apply, but the requirements of subdivision (e) of Bankruptcy Rule 11-108 as to reporting post-petition property acquisitions will become applicable.

Rule 11-12. Verification and Amendment of Petition and Accompanying Papers

- 1 Bankruptcy Rules 109 and 110 apply in
- 2 Chapter XI cases to petitions, schedules,
- 3 statements of affairs, statements of execu-
- 4 tory contracts, and amendments thereto.

ADVISORY COMMITTEE'S NOTE

Bankruptcy Rules 109 and 110 do not include statements of executory contracts because only schedules and statements of affairs are filed in bankruptcy cases under Bankruptcy Rule 108. In Chapter XI cases however, a statement of executory contracts is required by Rule 11-11 and thus the rules on verification and amendment apply equally to such a statement.

See also Bankruptcy Rule 911(c) requiring that the original be executed and verified and the copies conformed to the original.

Rule 11-13. Venue and Transfer

- 1 (a) *Proper Venue.*
- 2 (1) *General Venue Requirement.* Bank-
- 3 ruptcy Rule 116(a)(1) and (2) apply to a
- 4 petition filed pursuant to Rule 11-6. A

5 petition filed pursuant to Rule 11-7 shall be
6 filed with the court in which the bankruptcy
7 case is pending.

← , Chapter XII, or
Chapter XIII

8 (2) *Partner with Partnership or Co-*
9 *partner.* Notwithstanding the foregoing:

10 (A) a petition commencing a Chapter XI
11 case may be filed by a general partner in a
12 district where a petition under Chapter XI

← the Act

13 ~~or in bankruptcy~~ by or against a partner-
14 ship is pending; ~~or~~ (B) a petition commencing

15 a Chapter XI case may be filed by a
16 partnership or by any other general partner

17 or any combination of the partnership and
18 the general partners in a district where a

19 petition under Chapter XI ~~or in bankruptcy~~
20 by or against a general partner is pending.

← the Act

21 (3) *Affiliate.* Notwithstanding the fore-
22 going, a petition commencing a Chapter XI

23 case may be filed by an affiliate of a debtor
24 or bankrupt in a district where a petition

the Act

25 under Chapter XI ~~or in bankruptcy~~ by or
26 against the debtor or bankrupt is pending.

27 (b) *Transfer of Cases; Dismissal or Re-*
28 *tention When Venue Improper; Reference*

29 *of Transferred Cases.* Bankruptcy Rule 116
30 (b) and (d) apply in Chapter XI cases.

31 (c) *Procedure When Petitions Involving*
32 *the Same Debtor or Related Debtors Are*

33 *Filed in Different Courts.* Bankruptcy Rule
34 116(c) applies in Chapter XI cases.

ADVISORY COMMITTEE'S NOTE

Paragraph (2) of subdivision (a) incorporates and extends the principle embodied in § 5d of the Act. Like § 2a(1), § 5d has served primarily as a venue provision

though couched in jurisdictional terms. See 1 Collier, ¶ 2.17 [1] (1968). Paragraph (3) goes beyond § 5d by permitting a petition to be filed by a partner or partnership in a district because of the pendency there of a case which may not have been filed in accordance with the provisions of paragraph (1) or (2) of the subdivision that prescribe proper venue for such a case. The procedure for effecting a transfer of both cases, if in the interest of justice and for the convenience of the parties, is provided in subdivision (b). Rule 11-14 authorizes joint administration of partnership and partners' estates under appropriate circumstances.

Paragraph (3) of subdivision (a) is derived from but goes considerably beyond § 129 of the Act, which authorizes a petition by or against a subsidiary to be filed in a court which has approved a Chapter X petition by or against its parent corporation. An affiliate is defined in Bankruptcy Rule 901(3) to include a subsidiary as defined in Chapter X of the Act (§ 106(13)), a parent corporation, and a variety of persons having connections different from those contemplated by §§ 106(13) and 129 of the Act. Joint administration of the estates of affiliates may be authorized under Rule 11-14.

Rule 11-14. Joint Administration of Cases Pending in Same Court

- 1 Bankruptcy Rule 117 (b) and (c) apply
- 2 in Chapter XI cases.

ADVISORY COMMITTEE'S NOTE

This rule recognizes the appropriateness of joint administration in cases where petitions concerning related debtors are pending. Subdivision (a) of Bankruptcy Rule 117 dealing with consolidation of cases involving the same bankrupt is inapplicable in Chapter XI cases. The Chapter XI petition being voluntary, there would not be 2 Chapter XI cases involving the same debtor.

The authority of the court to order a joint administra-

tion under this rule extends to the situation where cases are pending in the same court by virtue of an order from another court pursuant to Rule 11-13.

Rule 11-15. Conversion to Chapter X

1 (a) ~~Application~~ by Debtor. A debtor
 2 eligible for relief under Chapter X of the
 3 Act may, at any time, file an application, to
 4 have the case proceed under such Chapter.

5 (b) ~~Application~~ by Party in Interest
 6 Other Than Debtor. At any time until 90
 7 days after the first date set for the first
 8 meeting of creditors in the Chapter XI case,
 9 an application may be filed by the Securities
 10 and Exchange Commission or other party in
 11 interest to have the case proceed under
 12 Chapter X of the Act. ~~The court may, for~~
 13 ~~cause shown, extend the time for filing such~~
 14 ~~application.~~

15 (c) ~~Form of Application; Answer. An~~
 16 ~~application filed~~ under this rule shall state
 17 why relief under Chapter XI of the Act
 18 would not be adequate, ~~and that the require-~~
 19 ~~ments for approval of a petition under~~
 20 ~~Chapter X have been met. Upon the filing of~~
 21 ~~such application~~ the court shall fix a date
 22 ~~upon~~ at least 20 days' notice to the parties
 23 specified in subdivision (d) of this rule for
 24 the filing of answers controverting the alle-
 25 gations of the ~~application~~, which date shall
 26 be not less than 10 days before the date set
 27 for the hearing under subdivision (d) of
 28 this rule.

29 (d) *Hearing and Order.* After hearing,
 30 on notice to the debtor, the Securities and

Motion

Motion

a motion

motion made

motion

120

made

Motion

make a motion

The court may, for cause shown, extend the time for making such motion.

and shall also conform substantially to Official Form No. 10-1. On the making of such motion,

31 Exchange Commission, indenture trustee,
 32 creditors, and stockholders, and such other
 33 persons as the court may direct the court
 34 shall, if it finds that the case may properly
 35 proceed under Chapter X of the Act, ~~approve~~ grant
 36 ~~the application~~ and order that the case pro-
 37 ceed under that Chapter. The ~~approval of~~ granting
 38 ~~the application~~ shall be deemed to constitute
 39 approval of a petition under Chapter X.

ADVISORY COMMITTEE'S NOTE

This rule is derived from § 328 of the Act with several changes. Under § 328 ~~the application~~ an is filed with the district judge but this rule contemplates that the matter will be heard and decided by the bankruptcy judge. The rule provides, in subdivision (b), a time limit within which ~~an application~~ made to transfer may be ~~filed~~ a motion by any party in interest although the court may extend the time for cause. ~~An application filed~~ A motion made by the debtor may be ~~filed~~ made at any time. The rule, as distinguished from § 328, requires a transfer to Chapter X if the court finds after hearing upon notice that the case should have been brought under Chapter X. Section 328 would permit a dismissal if a voluntary or involuntary petition under Chapter X were not filed. Thus, it would be possible, under § 328, that after such a finding the corporate debtor would not be subject to any supervisory control where its financial problems have probably increased substantially.

A Chapter X petition is subject to approval by the court and one of the grounds for denying such approval is that adequate relief can be obtained under Chapter XI. The rule thus requires that any ~~application filed~~ motion made thereunder must allege that such relief is not obtainable under Chapter XI. Additionally, the ~~application~~ motion must allege that the requirements for approval of a Chapter X petition have been met in order for the court to be able to make the finding that the case should have been voluntary

brought under Chapter X. An answer to the application may deny the existence of one or more of such requirements. ~~A creditor's application should show the commission of an act of bankruptcy if necessary under Chapter X of the Act.~~

motion

The motion should conform substantially to Official Form No. 10-1 of the Chapter X Forms. This is the form that incorporates the provisions of § 130 of the Act which specify the allegations necessary for a voluntary Chapter X petition.

The effect of the court's order under this rule, if it finds that the case should have been brought under Chapter X, is to have the case proceed thereunder. There would not be the necessity of another hearing on an amended petition or the like. Accordingly, ~~the application~~ is treated similar to an amended petition which § 328 contemplated and parties must be afforded an opportunity to contest the ~~application~~ and a hearing on notice must be provided. With the opportunity to file answers, and to have a hearing on notice, the bankruptcy judge can at one time decide the material issues and obviate the necessity for two separate hearings on the same matters. Answers may not be filed thereafter by any party. ~~Approval of the application~~ is deemed to be the same as approval of a Chapter X petition so that relevant consequences and time periods related to approval will be the same.

motion

motion

motion

When a case proceeds under Chapter X pursuant to an order entered under this rule, the continuation of relevant time periods dating from the filing of the first petition is provided for in the Chapter X rules.

Rule 11-16. Death or Insanity of Debtor

- 1 In the event of death or insanity of the
- 2 debtor, a Chapter XI case may be dismissed,
- 3 or if further administration is feasible and
- 4 in the best interest of the parties, the estate
- 5 may be administered and the case concluded
- 6 in the same manner, so far as possible, as
- 7 though the death or insanity had not oc-
- 8 curred.

ADVISORY COMMITTEE'S NOTE

This rule is an adaptation of § 8 of the Act. If administration continues, it may thereafter be dismissed or converted to bankruptcy for any of the causes any other Chapter XI case may be dismissed or converted to bankruptcy.

Rule 11-17. Debtor Involved in Foreign Proceeding

- 1 Bankruptcy Rule 119 applies in Chapter XI
- 2 cases.

Rule 11-18. Appointment of Receiver; Continuance of Trustee or Debtor in Possession; Removal

- 1 (a) *Trustee.* When a petition is filed un-
- 2 der Rule 11-7 after the qualification of a
- 3 trustee in bankruptcy in the pending bank-
- 4 ruptcy case, the court shall continue the
- 5 trustee in possession.
- 6 (b) *Retention of Debtor in Possession;*
- 7 *Appointment of Receiver.* ~~Upon~~ the filing On
- 8 of a petition under Rule 11-6 or 11-7, if no
- 9 trustee in bankruptcy has previously quali-
- 10 fied, the debtor shall continue in possession.
- 11 On application of any party in interest, the
- 12 court may, for cause shown, appoint a re-
- 13 ceiver to take charge of the property and
- 14 operate the business of the debtor.
- 15 (c) *Notice to Receiver of His Ap-*
- 16 *pointment; Qualification.* The court shall
- 17 immediately notify the receiver of his ap-
- 18 pointment, inform him as to how he may
- 19 qualify, and require him forthwith to

20 notify the court of his acceptance or rejection of the office. A receiver shall qualify as provided in Rule 11-20.

23 (d) Eligibility. Only a person who is eligible to be a trustee under Bankruptcy Rule 209(d) may be appointed a receiver.

27 (e) Removal and Substitution of Receiver. The court may at any time remove the receiver and either appoint a substitute receiver or restore the debtor to possession.

31 (f) Removal of Trustee for Cause. On application of any party in interest or on the court's own initiative and after hearing on notice, the court may remove a trustee for cause and either appoint a receiver or restore the debtor to possession.

37 (g) Substitution of Successor. When a trustee or receiver dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a Chapter XI case, his successor is automatically substituted as a party in any pending action, proceeding, or matter without abatement.

motion

designate

successor

as debtor in

ADVISORY COMMITTEE'S NOTE

Subdivisions (a) and (b) of this rule are derived from § 332 of the Act. That section requires retention of a trustee in bankruptcy if one was previously elected or appointed in a pending bankruptcy case but subdivision (a) renders his "qualification" the operative element. The qualification of a trustee in bankruptcy is governed by Bankruptcy Rule 209. A trustee is never appointed or elected in a Chapter XI case except where one is already in office because of the pendency of the bankruptcy case. In a Chapter XI case, the creditors may elect a standby

trustee, pursuant to Rule 11-27 but he only takes office if the Chapter XI case is subsequently converted to a bankruptcy case. In the absence of a bankruptcy trustee the proper chapter officer is either the debtor in possession or, when necessary, a receiver. When there is no bankruptcy trustee, the court should continue the debtor in possession unless there is some reason for the appointment of a receiver. A receiver must qualify as provided in subdivision (c) of this rule and Rule 11-20 which is comparable to Bankruptcy Rule 212.

Rule 11-21 continues the policy of the Act of June 7, 1934, 48 Stat. 923, against undue concentration of appointments of trustees and receivers, and Bankruptcy Rule 505 contains safeguards against nepotism and undue influence in such appointments. Bankruptcy Rule 503 incorporates the disqualification by § 39b(2) of the Act, of a referee to act as receiver in any case.

Rule 11-19. Receivers for Estates When Joint Administration Ordered

1 (a) *Appointment of Receivers for Es-*
2 *tates Being Jointly Administered.* If the
3 court orders a joint administration of 2 or
4 more estates pursuant to Rule 11-14, it may
5 appoint one or more common receivers or
6 separate receivers for the estates being
7 jointly administered. Common receivers
8 shall not be appointed unless the court is
9 satisfied that parties in interest in the differ-
10 ent estates will not be prejudiced by conflicts
11 of interest of such receivers.

12 (b) *Separate Accounts.* The receiver or
13 receivers of estates being jointly admin-
14 istered shall nevertheless keep separate ac-
15 counts of the property of each estate.

ADVISORY COMMITTEE'S NOTE

This rule recognizes that economical and expeditious administration of 2 or more estates may be facilitated by the selection of a single receiver whenever estates are being jointly administered pursuant to Rule 11-14. If, after the appointment of a common receiver a conflict of interest materializes, the court must take special and appropriate action to deal with such conflict.

Subdivision (b) is derived from § 5e of the Act and extends the duty of keeping a separate account for each estate to receivers in all cases of joint administration.

Rule 11-20. Qualification by Receiver and Disbursing Agent; Indemnity; Bonds; Evidence

- 1 (a) *Qualifying Bond or Security.* Except
 2 as provided hereinafter, every receiver, and
 3 every person specially appointed as disbursing
 4 agent, shall, before entering upon the
 5 performance of his official duties and within
 6 ~~5 days after his appointment~~, qualify by
 7 filing a bond in favor of the United States
 8 conditioned on the faithful performance of
 9 his official duties or by giving such other
 10 security as may be approved by the court.
 11 (b) *Blanket Bond.* The court may au-
 12 thorize a blanket bond in favor of the United
 13 States conditioned on the faithful perform-
 14 ance of official duties by a receiver in more
 15 than one case or by more than one receiver.
 16 (c) *Qualification by Filing Acceptance.*
 17 A receiver for whom a blanket bond has
 18 been filed pursuant to subdivision (b) of
 19 this rule shall qualify by filing his accept-
 20 ance of his appointment in lieu of the bond.
 21 (d) *Indemnification.* The court may after

within 5 days after his appointment

within the time fixed by the court

22 hearing upon notice to the debtor and such
23 other persons as the court may direct, order
24 the debtor to indemnify or otherwise protect
25 the estate against subsequent loss thereto
26 or diminution thereof until the entry, if
27 any, of an order of adjudication.

28 (e) Amount of Bond and Sufficiency of
29 Surety; Filing of Bond; Proceeding on
30 Bond. Bankruptcy Rule 212 (e) and (f)
31 apply to the bonds of trustees, receivers, and
32 persons specially appointed as disbursing
33 agents in Chapter XI cases.

34 (f) Evidence of Qualification; Debtor
35 ~~Retained~~, in Possession. A certified copy of
36 the order approving the bond or other se-
37 curity given by a receiver under subdivision
38 (a) or of his acceptance filed under sub-
39 division (c) of this rule shall constitute
40 conclusive evidence of his appointment and
41 qualification. Whenever evidence [↑]that a
42 debtor [↑]has been retained in possession, ~~is~~
43 ~~required~~, the court may so certify and the
44 certificate shall constitute conclusive evi-
45 dence of ~~his retention in possession~~.

Continued

is required

is a debtor

,

that fact.

ADVISORY COMMITTEE'S NOTE

Subdivision (a) of this rule is based on §§ 50b and 337 of the Act but recognizes that security other than a bond may be given by a receiver as a mode of qualifying under the rule.

Subdivision (b), which is new, gives explicit authority for approval by the court of a single bond to cover (1) a person who qualifies as receiver in a number of cases, and (2) a number of receivers each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and

approved at one time. When a blanket bond is filed the receiver qualifies under subdivision (c) of the rule by filing an acceptance of the office.

Subdivision (d) is derived from § 326 of the Act and refers to indemnification rather than faithful performance as under subdivision (a). Loss to the estate may be protected against in ways other than filing an indemnifying bond as, for example, the officer or officers foregoing compensation for a period of time and subdivision (d) recognizes such possibilities.

Subdivision (f) is a revision of § 21e of the Act to prescribe the evidentiary effect of a certified copy of an order approving any security given by a trustee or receiver under this rule or, a certificate that the debtor has been retained in possession. ~~This rule supplements the Federal Rules of Evidence, which apply in cases under the Bankruptcy Act. See Bankruptcy Rule 017.~~ The order of approval should conform to Official Form No. 11-F11. A certificate that the debtor has been retained in possession should conform to Official Form No. 11-F12. Copies of such certificates are not within § 21g of the Act; in such a case a certified copy of the petition may be recorded pursuant to § 21g.

This subdivision is broader in scope than § 326 in that indemnification can be required in all cases. Under § 326, indemnification is limited to cases commenced by the filing of an original petition pursuant to § 322.

substantially
substantially

Rule 11-21. Limitation on Appointment of Receivers

- 1 Bankruptcy Rule 213 applies in Chapter
- 2 XI cases.

Rule 11-22. Employment of Attorneys and Accountants

- 1 Bankruptcy Rule 215 applies in Chapter XI
- 2 cases.

to the employment of attorneys and accountants for a trustee, receiver, debtor in possession, or creditors' committee selected pursuant to Rule 11-27

See Attachment

Rule 11-23. Authorization of Trustee, Receiver, or Debtor in Possession to Conduct Business of Debtor

- 1 The court may authorize the trustee, re-

Attachment for p. 22.

ADVISORY COMMITTEE'S NOTE

Under Bankruptcy Rule 215 a court order on application is necessary for the appointment of an attorney or accountant for a trustee or receiver. The same is true in a Chapter XI case. Additionally, an official creditors' committee should apply to the court for the employment by it of an attorney or accountant. Such attorney or accountant will be compensated from the estate; accordingly there should be some supervision by the court over the original employment.

2 ceiver, or debtor in possession to conduct the
 3 business and manage the property of the
 4 debtor for such time and on such condition
 5 as may be in the best interest of the estate.

ADVISORY COMMITTEE'S NOTE

This rule is derived from § 343 of the Act. Continuation of the business represents the norm in Chapter XI cases as distinguished from a liquidation of an estate as is usually contemplated in bankruptcy cases. The trustee referred to in the rule is a trustee who had been a trustee in bankruptcy if the Chapter XI case was filed in a pending bankruptcy case.

The conditions which may be imposed by the court include the posting of an indemnification bond pursuant to Rule 11-20.

Rule 11-21. Notice to ~~Creditors~~ and the
 United States

Parties in Interest

the trustee
 or receiver
 the debtor,
 and

1 (a) *Ten-Day Notices to ~~All Creditors~~*. Ex-
 2 cept as provided hereinafter, the court shall
 3 give all creditors, including secured credi-
 4 tors, at least 10 days' notice by mail of (1)
 5 a meeting of creditors; (2) any proposed
 6 sale of property, other than in the ordinary
 7 course of business, including the time and
 8 place of any public sale, unless the court
 9 ~~upon~~ cause shown shortens the time or
 10 orders a sale without notice; (3) the hear-
 11 ing on the approval of a compromise or settle-
 12 ment of a controversy, unless the court ~~upon~~
 13 cause shown directs that notice not be sent;
 14 (4) the time for filing objections to con-
 15 firmation; (5) the hearing to consider con-
 16 firmation of a plan; (6) the time fixed to
 17 reject a proposed modification of a plan

Parties in Interest

18 when notice is required by Rule 11-39; and
 19 (7) the hearing on an application for allow-
 20 ances for compensation or reimbursement of
 21 expenses. The notice of a proposed sale of
 22 property, including real estate, is sufficient
 23 if it generally describes the property to be
 24 sold. The notice of a hearing on an applica-
 25 tion for compensation or reimbursement of
 26 expenses shall specify the applicant and the
 27 amount requested.

28 (b) *Other Notices to ~~All Creditors and~~*
 29 *Parties in Interest.* The court shall give
 30 notice by mail to the debtor and all creditors,
 31 including secured creditors, of (1) dismissal
 32 of the case pursuant to Rule 11-42; (2) the
 33 time allowed for filing a complaint to de-
 34 termine the dischargeability of a debt pur-
 35 suant to § 17c(2) of the Act as provided in
 36 Rule 11-~~47~~; and (3) entry of an order con-
 37 firming a plan pursuant to Rule 11-38.

38 (c) *Addresses of Notices.* Bankruptcy
 39 Rule 203(e) applies in Chapter XI cases.

40 (d) *Notices to Creditors' Committee.*
 41 Copies of all notices required to be mailed
 42 to creditors under these rules shall be mailed
 43 to the creditors' committee elected pursuant
 44 to Rule 11-29, if any. Notwithstanding the
 45 foregoing subdivisions, if a creditors' com-
 46 mittee has been elected, the court may order
 47 that notices required by clauses (2), (3),
 48 and (7) of subdivision (a) be mailed only
 49 to the committee or to its authorized agent
 50 and to the creditors who file with the court
 51 a request that all notices under these clauses
 52 be mailed to them.

,
 the trustee or receiver,

48

53 (e) *Notices to the United States.* Copies
 54 of all notices required to be mailed to credi-
 55 tors under these rules shall be mailed to the
 56 United States in the manner provided in
 57 Bankruptcy Rule 203(g).

58 (f) *Notice by Publication.* Bankruptcy
 59 Rule 203(h) applies in Chapter XI cases.

60 (g) *Caption.* The caption of every notice
 61 given under this rule shall comply with Rule
 62 11-9.

ADVISORY COMMITTEE'S NOTE

This rule collects the provisions for notices specifically applicable to ~~creditors~~ in Chapter XI cases, but reference must be made to other rules for the time and manner in which the notices required by subdivision (b) shall be given. The grant of general authority to the court to regulate notices in Bankruptcy Rule 907 supplements but is subject to the specific provisions of Rule 11-24 and any other rule prescribing the terms of notice.

parties in interest

Subdivision (a) requires that ~~all creditors~~ get 10-day notices by mail of the significant events in a Chapter XI case, including creditors' meetings. Since notice by mail is complete on mailing, the requirement of this subdivision is satisfied if the notices it prescribes are deposited in the mail at least 10 days before the event of which notice is to be given, regardless of when the notice is received. See Bankruptcy Rule 906(e); 3 Collier 494 (1971).

parties in interest

The time limits prescribed by subdivision (a) cannot be reduced except to the extent and under the conditions stated in this rule. *Cf.* Bankruptcy Rule 906(c). The exceptions referred to by the introductory phrase of subdivision (a) include the modifications in the notice procedure permitted by subdivision (d) as to creditors

who have elected a committee to represent them, and by subdivision (f) when compliance with subdivision (a) is impracticable.

Subdivision (c) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate how notices to the creditor he represents should be addressed. Such an agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him. It should be noted that Official Form No. 11-F16 does not include an authorization of the holder of a power of attorney to receive notices for the creditor, but neither the form nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor and his duly authorized agent may not be filed.

Subdivision (d) requires that all notices sent to creditors should also be sent to the official creditor's committee, that is, the committee elected under Rule 11-29, if any such committee has been elected. The second sentence of this subdivision regulates those situations where certain notices can be sent only to the elected committee in place of sending them to all creditors.

Subdivision (e) is a revision of § 394 of the Act. The premise of the requirement that the district director of internal revenue receive all notices that creditors receive under subdivisions (a) and (b), is that every debtor is at least potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is undergoing arrangement. Where other indebtedness to the Federal government is indicated in the schedule, the United States Attorney or appropriate agency, etc., is to receive the various notices. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices creditors are entitled to receive under subdivisions (a) and (b).

Subdivision (f) specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when

notice by mail alone is less than adequate. Supplementation of notice by mail is indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Bankruptcy Rule 908 applies when the court directs notice by publication under this rule.

As noted in connection with Rule 11-9, the disclosure requirement in subdivision (g) of this rule follows the practice established in some districts by local rule. Inclusion in notices to creditors of information as to other names used by the debtor will assist them in the preparation of their proofs of claim.

The provisions of § 58c of the Act, requiring notices to be given by the referee unless otherwise ordered by the judge and authorizing written waiver of any notice required by the Act, have been omitted from the Rule as unnecessary. This duty may be delegated to an assistant or an employee in the clerks office as provided in Bankruptcy Rule 506. Bankruptcy Rule 907 authorizes the court to prescribe the manner in which any other notice is to be given under the rules. These rules pose no obstacle to the court's giving notice by mail deposited at the location of a national or regional computer center on the basis of information supplied the center by the court. Waiver of notice may be by conduct as well as in writing, and its effect may be appropriately left to case law. See, e.g., *Connelly v. Hancock, Dorr, Ryan & Shove*, 195 F. 2d 864, 868-69 (2d Cir. 1962); *In re Purrier*, 73 F. Supp. 418, 420 (W.D. Wash. 1947).

~~Pursuant to the definition of "creditor" in Rule 11-62(1), notices under this and all other rules should also be mailed to secured creditors.~~

Pursuant to express inclusion, secured creditors are entitled to the notices sent to creditors under this rule. Thus, secured creditors will receive notice of the pendency of the case and of the stay against lien enforcement provided for by Rule 11-44.

Rule 11-25. Meetings of Creditors

1 (a) *First Meeting.*

2 (1) *Date and Place.* The first meeting of
 3 creditors shall be held not less than 20 nor
 4 more than 40 days after the filing of a peti-
 5 tion commencing a Chapter XI case but if
 6 there is an application or motion to dismiss
 7 or to convert to bankruptcy pursuant to Rule
 8 11-42 or an appeal from or a motion to
 9 vacate an order entered under that rule, the
 10 court may delay fixing a date for such meet-
 11 ing. The meeting may be held at a regular
 12 place for holding court or at any other place
 13 within the district more convenient for the
 14 parties in interest.

15 (2) *Agenda.* The bankruptcy judge shall
 16 preside over the transaction of all business
 17 at the first meeting of creditors, including
 18 the examination of the debtor. He shall,
 19 when necessary, determine which claims are
 20 unsecured and which are secured and to
 21 what extent, which claims are entitled to
 22 vote at the meeting, which claims have voted
 23 for acceptance of a plan, shall conduct the
 24 ~~nomination~~, if one is held, of a standby
 25 trustee and ~~the election~~, if one is held, of a
 26 creditors' committee, and may fix a time for
 27 filing a plan if one has not been filed.

election

28 (b) *Special Meetings.* The court may call
 29 a special meeting of creditors on application
 30 or on its own initiative.

ADVISORY COMMITTEE'S NOTE

Subdivision (a) is derived from § 334 of the Act and

the time for holding the first meeting of creditors runs from the filing of the petition. Paragraph (2) of this subdivision incorporates the provisions of §§ 336 and 337(3) of the Act. This paragraph adds to the agenda the determination of which claims are secured and unsecured. Although a plan may not deal with secured claims it may be necessary to determine whether a purportedly secured claim is partially unsecured as contemplated by Rules 11-33, 11-36, and 11-37.

The first meeting of creditors by definition includes any adjourned meetings. The standby trustee referred to is one who may take office only if the Chapter XI case is subsequently converted to a bankruptcy case. There is no election of a trustee to administer the Chapter XI case or estate. The proper chapter officer is either the debtor in possession or, when necessary, a receiver. The only time there could be a trustee is if the Chapter XI case was filed in a pending bankruptcy case after a trustee in bankruptcy had qualified. That trustee would then continue as trustee in the Chapter XI case.

Subdivision (b) is derived from § 55d of the Act and Bankruptcy Rule 204(b) vesting general authority in the referee to call a special meeting when necessary.

No provision is made for a final meeting of creditors.

Rule 11-26. Examination

1 Bankruptcy Rule 205 applies in Chapter
2 XI cases, except that the scope of examina-
3 tion referred to in subdivision (d) thereof
4 may also relate to the liabilities and finan-
5 cial condition of the debtor, the operation of
6 his business and the desirability of the con-
7 tinuance thereof, the source of any money or
8 property acquired or to be acquired by the
9 debtor for purposes of consummating a plan
10 and the consideration ~~made~~ or offered there-
11 for, and any other matter relevant to the
12 case or to the formulation of a plan.

given

ADVISORY COMMITTEE'S NOTE

This rule adds, as within the scope of the examination, inquiries concerning the means with which the debtor proposes to carry out the provisions of his proposed plan and any promises or transfers used to obtain such means from third parties. In determining whether to accept or reject a plan, creditors should have all relevant information placed before them; similarly, the court requires the pertinent data to determine whether a proposed plan is in the best interest of creditors and is feasible.

Rule 11-27. Voting at Creditors' Meetings

- 1 Bankruptcy Rule 207 applies in Chapter
- 2 XI cases to the voting at creditors' meetings
- 3 for a standby trustee and a creditors' com-
- 4 mittee.

Selection of Creditors' Committee and Standby Trustee

(b) Voting at Creditors' Meetings.

ADVISORY COMMITTEE'S NOTE

Only two items are voted on by creditors at the first meeting: the nomination of a standby trustee and the election of a creditors' committee. The nominated standby trustee, if any, does not function during the pendency of the Chapter XI case. As the title indicates, his is a provisional nomination or election. It is only when the Chapter XI case is converted to bankruptcy that he proceeds to qualify, take office, and administer the ensuing bankruptcy estate. In Chapter XI, the only proper officers are a previously elected and qualified trustee in a pending bankruptcy case or, if none, a receiver appointed by the court or the debtor in possession.

election

(see Bankruptcy Rule 122)

See attachment

Rule 11-28. Solicitation and Voting of Proxies

- 1 Bankruptcy Rule 208 applies in Chapter
- 2 XI cases, except that the rule does not apply
- 3 to the solicitation of the acceptance of a
- 4 plan signed by the owner of a claim, or to

or Appointment

Election

(a) Election of Creditors' Committee and Nomination of Standby Trustee. At the first meeting of creditors, creditors may elect a committee of not less than 3 nor more than 11 creditors if none has previously been elected under Bankruptcy Rule 214 and, if a trustee has not previously been elected or appointed, may nominate a standby trustee.

If creditors fail to elect a committee and if it is in the best interest of the estate, the court may appoint a representative committee from among creditors willing to serve.

elect

ATTACHMENT FOR P. 30

Since these rules contemplate retention of the debtor in possession, the existence of a creditors' committee may be important. When necessary and in the best interest of the estate, the court may appoint one if creditors fail to elect. This provision is new.

5 the related proof of claim that does not con-
6 tain a proxy, and except that for the purpose
7 of this rule "\$500" in Bankruptcy Rule
8 208(b)(1)(C) is changed to "\$1,000."

ADVISORY COMMITTEE'S NOTE

The first exception in this rule is to recognize and continue the practice in Chapter XI cases permitting solicitation of acceptances and related proofs of claim, usually by the debtor and quite often before the filing of the petition.

The second exception is to make less restrictive an authorized solicitation by a creditors' committee in Chapter XI cases, recognizing that in these cases there will be, ordinarily, more claims of a higher dollar value.

Rule 11-29. Creditors' Committee

1 ~~(a) Selection; Functions. The creditors~~
2 ~~entitled to vote pursuant to Rule 11-27,~~
3 ~~may, at the first meeting of creditors or at~~
4 ~~any special meeting called for that purpose,~~
5 ~~elect a committee of not less than 3 nor more~~
6 ~~than 11 creditors if none has previously~~
7 ~~been elected under Bankruptcy Rule 214.~~
8 The committee may consult with the trustee,
9 receiver, or debtor in possession in connec-
10 tion with the administration of the estate,
11 examine into the conduct of the debtor's
12 affairs and the causes of his involvency or
13 inability to pay his debts as they mature,
14 consider whether the proposed plan is for
15 the best interests of creditors and is feasible,
16 negotiate with the debtor concerning the
17 terms of the proposed plan, advise the credi-
18 tors of its recommendations with respect to

selected pursuant to Rule 11-27

19 the proposed plan, report to the creditors
20 concerning the progress of the case, collect
21 and file with the court acceptances of the
22 proposed plan, and perform such other
23 services as may be in the interest of credi-
24 tors.

25 (b) *Employment of Attorneys, Account-*
26 *ants, and Agents.* A committee elected under
27 ~~this rule~~ may employ such attorneys, ac-
28 countants, and other agents as may be neces-
29 sary to assist in the performance of its
30 functions.

pursuant to Rule 11-27
s

31 (c) *Reimbursement of Expenses; Com-*
32 *ensation.* Expenses of the committee,
33 including compensation for attorneys, ac-
34 countants, and other agents employed under
35 subdivision (b)^o of this rule, whether in-
36 curred before or after the filing of the
37 petition, shall be allowed in the event of
38 confirmation as an expense of administra-
39 tion to the extent deemed reasonable and
40 necessary by the court, and may be allowed
41 when there is no confirmation. Such expense
42 incurred by the committee shall not be dis-
43 allowed because of a change in the commit-
44 tee's composition, provided a majority of
45 the committee when it incurred the expense
46 continues as members of the elected com-
47 mittee. An application by an attorney, ac-
48 countant, or other agent for compensation
49 or reimbursement of expenses or an applica-
50 tion by a committee for reimbursement of
51 expenses paid as compensation, shall be
52 governed by Bankruptcy Rule 219. Expenses
53 deemed reasonable and necessary by the

before its selection
pursuant to Rule 11-27

s

54 court incurred by the committee other than
 55 for compensation of an attorney, account-
 56 ant, or other agent or incurred by any
 57 elected member of the committee in connec-
 58 tion with services performed as a member
 59 after the filing of the petition, may also be
 60 allowed as an expense of administration
 61 after hearing upon such notice to such per-
 62 sons as the court may direct, whether or not
 63 a plan is confirmed. No member of the com-
 64 mittee may be compensated for services
 65 rendered by him in the case.

ADVISORY COMMITTEE'S NOTE

This rule is derived from §§ 338, 339, and 44b of the Act, and Bankruptcy Rule 214. Subdivision (c) provides for compensation of those employed by ~~an elected~~ committee if a plan is confirmed and permits the court, in the exercise of its discretion, to award such compensation as an expense of administration if confirmation is denied. This provision is new. Also new is the provision permitting elected members of the committee to be reimbursed for their expenses incurred while serving on the committee, after election and the filing of the petition, if those expenses are found by the court to have been both reasonable and necessary. Such reimbursement is similarly discretionary with the court.

The last sentence of the rule would not permit an elected member of the committee to be compensated for services including compensation for acting as the attorney for the committee while remaining as a member of the committee.

a selected

Rule 11-30. Duty of Trustee, Receiver, or Debtor in Possession to Keep Records, Make Reports, and Furnish Information

1 Bankruptcy Rule 218, ~~other than clause~~

(1)

2 ~~(5) thereof~~, applies in Chapter XI cases,
 3 except that, the written report of the finan-
 4 cial condition of the estate shall be made
 5 within a month after ~~qualification~~ and every
 6 month thereafter, and shall include a state-
 7 ment of the operation of the business for the
 8 preceding month and, if payments are made
 9 to employees, the amounts of deductions for
 10 withholding and social security taxes and
 11 the place where such amounts are deposited

by the trustee, receiver, or debtor in possession

the filing of a petition commencing a Chapter XI case

and, (2) the court may excuse the filing of a final report and account by the trustee or receiver, and a debtor in possession need not file a final report and account unless ordered to do so by the court.

ADVISORY COMMITTEE'S NOTE

Clause (5) of Bankruptcy Rule 218 refers to final reports and accounts which are unnecessary in Chapter XI cases.

Rule 11-31. Compensation for Services Rendered and Reimbursement of Expenses Incurred in a Chapter XI or Superseded Case

1 Bankruptcy Rule 219 applies in Chapter
2 XI cases.

The final report and account required by clause (5) of Bankruptcy Rule 218 may incorporate earlier-filed interim detailed statements of receipts and disbursements if it contains such a detailed statement for the period following the last interim statement incorporated by reference.

Rule 11-32. Examination of Debtor's Transactions with His Attorney

1 Bankruptcy Rule 220 applies in Chapter
2 XI cases.

Rule 11-33. Claims

1 (a) *Form and Content of Proof of Claim;*
2 *Evidentiary Effect.* Bankruptcy Rule 301
3 applies in Chapter XI cases.

4 (b) *Filing Proof of Claim.*

5 (1) *Manner and Place of Filing.* Bank-
6 ruptcy Rule 302 (a), (b), (c), and (d)

Reasonable compensation for services beneficial to the estate and reimbursement of necessary expenses may be allowed to the attorney for the debtor and debtor in possession whether or not a plan is confirmed.

ADVISORY COMMITTEE'S NOTE

Under this rule, the provisions of Bankruptcy Rule 219 would apply to compensation sought for services in the Chapter XI case and any case superseded thereby.

The second sentence is to clarify the practice of permitting compensation, where a Chapter XI case is converted to bankruptcy, to the attorney for the debtor for services which had benefitted the estate. See In re Knickerbocker Leather & Novelty Co., 158 F. Supp. 236 (S.D.N.Y. 1958), aff'd sub nom. Haar v. Oseland, 265 F.2d 218

Continued from bottom of p. 34

(2d Cir. 1959); Matter of Styles Express, Inc., No. 62B 922 (S.D.N.Y. 1971) (permitting compensation); Robinson, Wolas, & Hagen v. Gardner, 433 F. 2d 1104 (9th Cir. 1970) (disallowing compensation).

7 apply in Chapter XI cases. When the peti-
8 tion is filed pursuant to Rule 11-7, all claims
9 filed in the pending bankruptcy case shall
10 be deemed filed in the Chapter XI case.

11 (2) *Time for Filing.* A claim, including
12 an amendment thereof, must be filed before
13 confirmation of the plan except as follows:

14 (A) if scheduled by the debtor as un-
15 disputed, not contingent, and liquidated as
16 to amount, a claim or an amendment to a
17 claim may be filed within 30 days after the
18 date of mailing notice of confirmation to
19 creditors but in such event shall not be
20 allowed for an amount in excess of that set
21 forth in the schedule; and

22 (B) a claim arising from the rejection
23 of an executory contract of the debtor, and a
24 post-petition claim allowed to be filed under
25 paragraph (3) of this subdivision, may be
26 filed within such time as the court may direct.

27 (C) Bankruptcy Rule 302(e)(3) ap-
28 plies in Chapter XI cases.

29 (3) *Post-Petition Tax Claims.* Notwith-
30 standing paragraph (2) of this subdivision,
31 the court may, at any time while a case is
32 pending, permit the filing of a proof of claim
33 for the following:

34 (A) Claims for taxes owing to the
35 United States, a state, or any subdivision
36 thereof, at the time of the filing of the petition
37 under Rule 11-6 or 11-7 which had not been
38 assessed prior to the date of confirmation of
39 the plan, but which are assessed within one
40 year after the date of the filing of the petition.

41 (B) Claims for taxes owing to the

42 United States, a state, or any subdivision
43 thereof, after the filing of the petition under
44 Rule 11-6 or 11-7 and which are assessed
45 while the case is pending.

46 (c) *Filing of Tax and Wage Claims by*
47 *Debtor.* Bankruptcy Rule 303 applies in
48 Chapter XI cases.

49 (d) *Claim by Codebtor.* A person who
50 is or may be liable with the debtor, or
51 who has secured a creditor of the debtor,
52 may, if the creditor fails to file his proof of
53 claim on or before the first date set for the
54 first meeting of creditors, execute and file
55 a proof of claim pursuant to this rule, in-
56 cluding an acceptance of the plan or any
57 modification thereof, in the name of the
58 creditor, if known, or if unknown, in his
59 own name. No distribution shall be made
60 ~~upon~~ the claim except ~~upon~~ satisfactory
61 proof that the original debt will be di-
62 minished by the amount of ~~the~~ distribution.
63 The creditor may nonetheless file a proof of
64 claim pursuant to subdivisions (a) and (b)
65 of this rule and, at any time before the
66 court determines that the plan or any modi-
67 fication thereof has been accepted by the
68 number and amount of creditors required
69 for confirmation, an acceptance or revoca-
70 tion of the acceptance by such person, if any,
71 of the plan, or any modification thereof.
72 Such proof of claim and such revocation of
73 acceptance shall supersede the proof of
74 claim and the acceptance filed pursuant to
75 the first sentence of this subdivision. In the
76 event the creditor files a claim and does not

- 77 file a revocation of acceptance, the accept-
 78 ance filed by the codebtor shall be deemed
 79 made on the creditor's behalf.
 80 (e) *Objections to and Allowance of*
 81 *Claims; Valuation of Security.* Bankruptcy
 82 Rule 306 applies in Chapter XI cases.
 83 (f) *Reconsideration of Claims.* Bank-
 84 ruptcy Rule 307 applies in Chapter XI cases.

ADVISORY COMMITTEE'S NOTE

Subdivision (b)(2) of this rule is derived from § 355 of the Act. It also clears up an ambiguity not answered by the statute respecting the status of amendments to proofs of claim. Under this rule an amendment must be filed within the same time as the original proof of claim and it is not possible to obtain an extension of time based upon the amending process. ←

Subdivision (b)(3) is based upon § 397 of the Act. Express inclusion in these subparagraphs of taxes owing to a subdivision of a state incorporates the interpretation placed on § 271 which like § 397 refers to taxes owing to the United States "or any state." *Berryhill v. Gerstel*, 196 F. 2d 304 (5th Cir. 1952); *Senfour Investment Co. v. King County*, 66 Wash. 2d 644, 404 P. 2d 760 (1965), *appeal dismissed and cert. denied*, 385 U.S. 1 (1966).

Under § 357(6) of the Act, the plan may contain provisions for payment of debts incurred after the filing of the petition with priority over pre-petition claims; these types of debts would be entitled to priority in any event as expenses of administration.

Subdivision (d) is derived from § 57i of the Act and General Order 21(4). Section 57i is applicable to Chapter XI cases. See 9 Collier 20, n. 12a (1963). The subdivision of the Act and the general order, however, authorizes a filing procedure only by a person who has secured a creditor of the debtor by his "individual undertaking." The rule goes further by authorizing the same procedure to be followed when the person has secured a creditor of the debtor by pledging collateral or otherwise creating

A scheduled claim filed late may be allowed if it is scheduled in a liquidated amount. It would meet the test for such allowability under subdivision (b)(2)(A) unless the debtor indicates on the schedules that the claim is disputed or contingent.

a security interest in his own property, without assuming any personal obligation to the creditor. The rule assures a fair opportunity for a codebtor to exercise the right of filing in the name of the creditor (or in his own name if that of the creditor is unknown) by recognizing that he should not be required to wait until the last minute before the expiration of the period allowed for the filing of claims. In addition to filing the claim, the surety may also file an acceptance of the plan. The creditor, however, may within the time limits specified by these rules, file his own proof of claim and acceptance or revocation of the surety's acceptance if he so desires. If he fails to revoke the surety's acceptance, he will be deemed to have ratified it. If the claim is filed by both the creditor and codebtor only one distribution on it may be made. As required expressly by this rule, such distribution must diminish the claim.

Subdivision (a)(2)(C) incorporates the provision of the Bankruptcy Rule prescribing a time for the filing of a claim by a creditor who disgorges a voidable transfer after confirmation.

Rule 11-34. Withdrawal of Acceptance or Claim

1 A creditor may withdraw a claim as of
2 right by filing a notice of withdrawal, except
3 as provided in this rule. If, after a creditor
4 has filed a claim, an objection is filed thereto
5 or a complaint is filed against him in an
6 adversary proceeding, or the creditor has
7 accepted the plan or otherwise has par-
8 ticipated significantly in the case, he may
9 not withdraw the claim save upon applica-
10 tion or motion with notice to the trustee,
11 receiver, or debtor in possession, and upon
12 order of the court containing such terms and
13 conditions as the court deems proper. Unless
14 the court directs otherwise, withdrawal of

ADVISORY COMMITTEE'S NOTE

15 a claim shall constitute withdrawal of any
16 related acceptance.

Since 1938 it has generally been held that Rule 41 of the Federal Rules of Civil Procedure governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F. Supp. 974, 976 (S.D.N.Y.) aff'd sub nom. *Kleid v. Ruthbell Coal Co.*, 131 F. 2d 372, 373 (2d Cir. 1942); *Kelso v. Maclaren*, 122 F. 2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F. Supp. 532, 533 (W.D. Wash. 1940). Accordingly, it was ruled in the cited cases that a proof of claim may be withdrawn only subject to approval by the court after an objection has been filed. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier ¶ 57.12 (1961); Note, 20 Bost. U.L. Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding under these rules, but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) of the Federal Rules of Civil Procedure to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) of the Federal Rules of Civil Procedure provides for a bar to dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F. 2d 603, 608 (2d Cir. 1953), *Kleid v. Ruthbell Coal Co.*, *supra*, *Kelso v. Maclaren*, *supra*, and *In re Hills*, *supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee, receiver, or debtor in possession has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw his proof of claim on the ground that he had estopped himself or made an election of remedies. 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); cf. 3 Collier 201 (1961). Voting his claim in an election of a trustee in a bankruptcy case was an important factor in the denial of a request to withdraw in *Standard Varnish Works v. Haydock*, 143 Fed. 318, 319-20 (6th Cir. 1906), and *In re Cann*, 47 F. 2d 661, 662 (W.D. Pa. 1931), and voting on the plan in a Chapter XI case would appear to be of similar significance. It has frequently been recognized also that a creditor should not be allowed to withdraw his claim once he has accepted a dividend. *In re Friedman*, 1 Am. B.R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); cf. *In re O'Gara Coal Co.*, 12 F. 2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F. 2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, he was entitled under Rule 41(a)(1) of the Federal Rules of Civil Procedure to withdraw his claim as of right when he filed a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the implication drawn in the *Hazen* case that Rule 41(a) of the Federal Rules of Civil Procedure supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive him of a right to withdraw his claim, a creditor who has accepted a dividend or who voted on the plan or otherwise participated actively in a case should be permitted to withdraw only with the approval of the court on terms deemed appropriate by it after notice to the debtor and the trustee, or receiver. 3 Collier 205-06 (1964).

**Rule 11-35. Distributions; Undistributed
Consideration; Unclaimed Funds**

- 1 (a) ~~Cash~~ Distributions. Except as other-
2 wise provided in the plan, Bankruptcy Rule
3 308 applies in Chapter XI cases to cash dis-
4 tributions made under a plan. ←
- 5 (b) Undistributed Consideration. Except
6 as provided in subdivision (c) of this rule,
7 or as otherwise ordered by the court, the
8 disbursing agent shall return to the debtor
9 or to such other person as may be designated
10 by the court any money or other deposited
11 consideration in his possession not distri-
12 buted under the plan.
- 13 (c) Unclaimed Funds. Sixty days after
14 any distribution, the disbursing agent shall
15 stop payment on all checks then unpaid.
16 Bankruptcy Rule 310 shall otherwise apply
17 in Chapter XI cases.

Except as otherwise pro-
vided in the plan or
ordered by the court, con-
sideration other than cash
distributed under the plan
shall be issued in the
name of the creditor enti-
tled thereto and, if a
power of attorney autho-
rizing another person to
receive dividends has been
executed and filed in
accordance with Bankruptcy
Rule 910, such considera-
tion shall be transmitted
to such other person.

ADVISORY COMMITTEE'S NOTE

Subdivision (b) codifies existing practice, returning to the debtor any funds not needed to make payments under the plan. Pursuant to court order some or all of such funds may be returned to the debtor before distribution under the plan has been fully completed. If the debtor is not entitled to the surplus funds but some third party is, the rule permits return to that third party. ~~This subdivision deals only with surplus as distinguished from unclaimed funds. The latter is provided for in subdivision (c) of this rule.~~

Insofar as subdivision (c) deals with the unclaimed money to be distributed under the plan or the Act, it is derived from § 66 of the Act. The provision of the Act that the unclaimed money so deposited shall not be subject to escheat under the laws of any state is a rule of substantive law not appropriate for inclusion in the rule.

This subdivision applies to surplus funds and any other undistributed consideration.

Rule 11-36. Filing of Plan; Transmission to Creditors; Adjourned Meeting

1 (a) *Filing of Plan; Number of Copies.*
 2 The debtor may file a plan with his petition
 3 or thereafter, but not later than a time fixed
 4 by the court. The debtor, if required by the
 5 court, shall promptly furnish a sufficient
 6 number of copies of the plan to enable the
 7 court to transmit ~~copies to creditors.~~

as provided in subdivision
(b) of this rule.

8 (b) *Transmittal of Plan to Creditors;*
 9 *Adjourned Meetings.* If a plan is filed prior
 10 to mailing of notice of the first meeting of
 11 creditors, a copy of the plan shall accompany
 12 the notice. If the debtor has not filed a plan
 13 prior to the first date set for the first meet-
 14 ing of creditors, the court, at the first meet-
 15 ing or thereafter, shall fix a time for filing
 16 a plan. If a plan is not filed prior to the
 17 mailing of notice of the first meeting of
 18 creditors, the court, at the first meeting,
 19 shall adjourn the meeting to a date certain.
 20 When a plan is filed, a copy thereof and
 21 notice of a subsequent adjourned meeting
 22 date shall be mailed to ~~creditors~~ at least 10
 23 days prior to such date. The court may ad-
 24 journ a first meeting of creditors from time
 25 to time to dates certain.

the persons specified
in Rule 11-24(a)

ADVISORY COMMITTEE'S NOTE

The time for filing a plan follows § 323 of the Act. It may be filed with the Chapter XI petition or after the petition has been filed; however, if the court has fixed a time for filing the plan, it must be filed within that time. The court may fix such time at the first meeting, at any adjourned first meeting, or at any time.

Copies of the plan are to be transmitted to creditors either with the notice of the first meeting of creditors, or with notice of any adjourned date if the plan is not filed in sufficient time for it to be sent with the first notice. To enable the court to transmit the copies, the debtor should furnish the number necessary if so required by the court.

When a plan is not filed in time for it to accompany the notice of the first meeting that meeting must at some point be adjourned to enable creditors to receive copies of the plan. That original first meeting, however, may be held on the first date set to conduct such other business as may be appropriate.

Rule 11-37. Acceptance or Rejection of Plans

1 (a) *Time for Acceptance or Rejection.* At
 2 any time prior to the conclusion of the first
 3 meeting of creditors, each creditor filing a
 4 claim may file with the court his acceptance
 5 of the plan. A creditor who files a claim but
 6 who fails to file an acceptance within the
 7 time prescribed, shall be deemed to have
 8 rejected the plan. Acceptances may be ob-
 9 tained before or after the filing of the peti-
 10 tion and may be filed with the court on
 11 behalf of the accepting creditor.

12 (b) *Form of Acceptance.* An acceptance
 13 of a plan shall be in writing, shall identify the
 14 plan accepted, and shall be signed by the
 15 creditor.

← ADVISORY COMMITTEE'S NOTE

Section 362 of the Act requires a plan to be accepted in writing filed with the court by the requisite number of creditors before the conclusion of the first meeting. Since acceptances are required, there is no need to file a formal rejection; failure to file an acceptance by a credi-

<p>(c) <u>Temporary Allowance.</u> Notwithstanding objection to a claim the court may temporarily allow it to such extent as to the court seems proper for the purpose of accepting a plan.</p>

tor who filed a claim will be tantamount to a rejection. The debtor or creditors may obtain acceptances before the filing of the petition which may be filed with the court on behalf of the accepting creditor.

A creditor whose claim is partially secured is entitled to accept or reject a plan to the extent his claim is unsecured. Valuation of secured claims for this purpose is provided for in Rule 11-33.

For the filing of an acceptance by an agent, attorney in fact or proxy, see Rule 11-63(4) which incorporates Bankruptcy Rule 910(c).

**Rule 11-38. Deposit; Confirmation of Plan;
Evidence of Title**

1 (a) *Deposit.* At the first meeting of
2 creditors, after a plan has been accepted and
3 before confirmation, the court shall (A)
4 designate as disbursing agent the trustee
5 or receiver, if any, otherwise the debtor in
6 possession or a person specially appointed,
7 to distribute, subject to the control of the
8 court, the consideration, if any, to be de-
9 posited by the debtor; and (B) fix a time
10 before confirmation within which the debtor
11 shall deposit with the disbursing agent, or
12 in such place, ~~as shall be designated by and~~
13 ~~subject to the order of the court,~~ the money
14 necessary to pay all priority debts and costs
15 of administration unless such claimants
16 have waived such deposit or consented to
17 provisions in the plan otherwise dealing with
18 their claims, and the money or other con-
19 sideration which under the plan is to be
20 distributed to other creditors at the time of
21 confirmation.

22 (b) *Waiver.* Any person who has waived
23 his right to share in the distribution of the
24 deposit or in payments under the plan shall

1

2

and on such terms as
the court may approve,

25 file with the court, prior to confirmation of
26 the plan, a statement setting forth the
27 waiver and any agreement with respect
28 thereto made with the debtor, his attorney,
29 or any other person.

30 (c) *Objections to Confirmation.* Objec-
31 tions to confirmation of the plan shall be
32 filed and served upon the debtor, and the
33 creditors' committee, if any, at any time
34 prior to confirmation or by such earlier date
35 as the court may fix. An objection to con-
36 firmation on the ground that the debtor
37 committed any act or failed to perform any
38 duty which would be a bar to the discharge
39 of a bankrupt is governed by Part VII of
40 the Bankruptcy Rules. Any other objection
41 is governed by Bankruptcy Rule 914.

42 (d) *Hearing on Confirmation.* The court
43 shall rule on confirmation of the plan after
44 hearing ~~upon notice to the debtor and to all~~
45 ~~creditors in the manner~~ provided in Rule
46 11-24. The hearing may be held at any time
47 after the conclusion of the first meeting of
48 creditors. If no objection is timely filed un-
49 der subdivision (c) of this rule, the court
50 may find, without taking proof, that the
51 debtor has not committed any act or failed
52 to perform any duty which would be a bar
53 to the discharge of a bankrupt and that the
54 plan has been proposed and its acceptance
55 procured in good faith, and not by any
56 means, promises, or acts forbidden by law.

57 (e) *Order of Confirmation.* The order of
58 confirmation shall conform substantially to
59 Official Form No. 11-F18. Notice of entry

as

60 of the order of confirmation and a copy of
61 the provisions of the order dealing with the
62 discharge of the debtor shall be mailed to
63 the debtor and to all creditors within 30
64 days after entry of the order.

65 (f) *Evidence of Title.* A certified copy of
66 the plan and of the order confirming the
67 plan shall constitute conclusive evidence of
68 the revesting of title to all property in the
69 debtor or the vesting of title in such other
70 person as may be provided in the plan or in
71 the order confirming the plan.

ADVISORY COMMITTEE'S NOTE

Subdivision (a) of this rule is derived from § 337 of the Act and retains the possibility of appointing a person other than the debtor in possession as disbursing agent where there is no receiver or trustee. If there is a receiver or trustee he shall act as the disbursing agent. A person other than a receiver, trustee, or debtor in possession may receive no more compensation than that allowed by the Act to a custodial receiver.

Subdivision (d) departs from §§ 337(3) and 362 of the Act and former Official Forms Nos. 50 and 52 by eliminating the requirement for a formal application for confirmation where all affected creditors have not accepted the plan and by requiring a hearing prior to confirmation even though all affected creditors have accepted the plan. The issues at such hearing may include all issues relating to confirmation under §§ 361, 362, and 366 and also any issue as to whether a creditor is affected by the plan under § 308.

The hearing on confirmation may occur immediately upon the conclusion of the first creditors' meeting. Objections to confirmation may be filed by creditors but they must be in writing and filed within a time fixed by the court, if any. If the court does not fix such a time they may be filed at any time prior to confirmation. The

The language in clause (2) permitting a deposit in such place and on such terms as the court may approve is new and is intended to facilitate escrow arrangements and return of the deposit to the financier if, for example, consummation of confirmation is unduly delayed. The court can, of course, disapprove any such arrangement.

contested matter initiated by an objection to confirmation is governed by Bankruptcy Rule 914 unless it is of the type requiring an adversary proceeding under Part VII of the Bankruptcy Rules.

Official Form No. 11-F18 provides an appropriate form for confirmation which may be used either where all affected creditors have accepted the plan or where less than all have accepted the plan. Official Form No. 11-F19 may be used to comply with subdivision (d) to give creditors notice of the entry of the order of confirmation and of the discharge provisions contained in the order.

Subdivision (b) is adapted from General Order 41. It will provide the court and other creditors with any information regarding outside agreements underlying a waiver of the right to share in the distribution or to obtain priority payments. The remainder of General Order 41, referring to the debtor's obligation to file an affidavit, is not incorporated in this rule. The substance of that part, however, may be found in the rule on examination, 11-26 and the rules on compensation, Rules 11-31 and 11-32.

Subdivision (c) requires objections to be served on the debtor and any creditors' committee. The committee to which it refers is a creditors' committee elected pursuant to Rule 11-29. The court may require objections to be served on other parties if the circumstances warrant such service.

Subdivision (d) requires notice to all creditors of the hearing on confirmation but not of any hearing on objections if such hearing is separate. The notice of the hearing on confirmation is essentially a continuing notice, that is, once given, the date and hearing may be adjourned from time to time.

Rule 11-39. Modification of Plan Before Confirmation

- 1 At any time prior to the acceptance of a
- 2 plan by the requisite majority of creditors,

In making the findings specified under subdivision (d), however, the court may require the debtor to file an affidavit similar to General Order 41 or otherwise inquire into such matters. For such inquiry, it should also be noted that the debtor is required to attend the hearing on confirmation and testify if so directed. See Rule 11-45.

3 the debtor may file a modification thereof.
4 After a plan has been so accepted and before
5 its confirmation the debtor may file a modifi-
6 cation of the plan only with leave of court.
7 The debtor may also submit with the pro-
8 posed modification written acceptances
9 thereof by creditors. If the court finds that
10 the proposed modification does not ma-
11 terially and adversely affect the interest of
12 any creditor who has not in writing accepted
13 it, the modification shall be deemed accepted
14 by all creditors who have previously ac-
15 cepted the plan. Otherwise, the court shall
16 enter an order that the plan as modified
17 shall be deemed to have been accepted by any
18 creditor who accepted the plan and who fails
19 to file with the court within such reasonable
20 time as shall be fixed in the order a written
21 rejection of the modification. Notice of such
22 order, accompanied by a copy of the pro-
23 posed modification, shall be given to credi-
24 tors and other parties in interest at least
25 10 days before the time fixed in such order
26 for filing rejections of the modification. The
27 debtor shall, if required by the court, furnish
28 a sufficient number of copies of the proposed
29 modification to enable the court to transmit
30 a copy with each such notice.

ADVISORY COMMITTEE'S NOTE

This rule revises the procedure now covered by §§ 363 and 364 of the Act. The standard for determining whether a proposed modification affects the interest of a creditor who has not in writing accepted it is prescribed in § 308 of the Act. Official Form No. 11-F17 provides

a form of order fixing a time for rejecting the proposed modification, combined with a notice thereof.

Rule 11-37 authorizes the debtor to obtain acceptances of a proposed plan from his creditors before or after the filing of his petition. Rule 11-36 authorizes the debtor to file a plan with the petition but he is not required to do so. There is no set time limit for filing a plan unless the court fixes a date. That procedure allows the debtor to submit modified plans without employing the practice for modification prescribed in this rule. Before a plan has been accepted by the requisite number of creditors, the debtor may file a proposed modification as a matter of right. After it has been accepted but before confirmation leave of court is necessary to file a modification. It should also be noted that express rejections in Chapter XI cases are only necessary in respect to modification of plans. The plan itself is deemed rejected by any creditor who filed a claim and did not accept the plan in writing.

Under § 364 of the Act, a creditor may include, in his original acceptance of a plan, a rejection of any modification that may subsequently be proposed. This would be a routine, form rejection not directed to any specific modification that has already been proposed. This rule effects a change of that statutory provision. Pursuant to this rule, such routine rejection would not be effective. If and when a modification is proposed, that modification must be specifically rejected by any creditor who has previously accepted the plan and a failure to so reject will constitute an acceptance of the modification.

**Rule 11-40. Modification of Plan After
Confirmation Where Court Has Retained
Jurisdiction**

- 1 At any time during the period of a con-
- 2 firmed plan providing for extension and
- 3 before payment in full of deferred install-
- 4 ments or delivery of negotiable promissory

5 notes, if any, to the creditors, where the
6 court has retained jurisdiction pursuant to
7 the Act, the debtor may file an application
8 with leave of court to modify the terms of
9 the plan by changing the time of payment
10 or reducing the amount of payment, or both.
11 The application shall set forth the reason
12 for the proposed modification, and shall be
13 accompanied by a list of names and ad-
14 dresses of all creditors who have extended
15 credit to the debtor since the plan was con-
16 firmed. If the court permits the application
17 to be filed, it shall call a meeting of creditors
18 including those who extended credit after
19 confirmation of the plan, and other parties
20 in interest, and a copy of the proposed modi-
21 fication shall accompany the notice of such
22 meeting. The court, at such meeting, shall
23 confirm the plan as modified if it is accepted
24 in the manner required for confirmation of
25 the original plan by the creditors who are
26 provided for in the plan and are affected by
27 such modification.

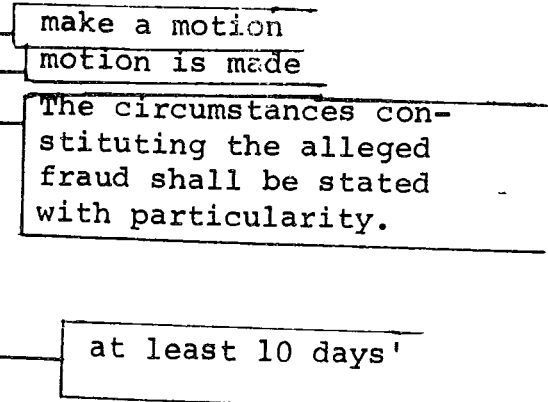
ADVISORY COMMITTEE'S NOTE

This rule incorporates the modification procedure now specified in § 387 of the Act. Creditors who extended credit after the filing of the petition and before confirmation are treated as administration expense claimants and their claims would have been fully paid or provided for in full in the plan.

Rule 11-41. Revocation of Confirmation

1 Any party in interest may, at any time
2 within six months after a plan has been

3 confirmed, ~~file a complaint~~ pursuant to the
 4 Act to revoke the confirmation as procured
 5 by fraud. ~~When such complaint is filed, the~~
 6 court shall reopen the case if necessary and
 7 conduct a hearing on notice to all parties in
 8 interest. ~~The procedure shall be governed by~~
 9 ~~Part VII of the Bankruptcy Rules.~~ If the
 10 confirmation is revoked—
 11 (1) The court may dispose of the case
 12 pursuant to Rule 11-42(b); or
 13 (2) The court may receive proposals to
 14 modify the plan. Thereafter, the procedure
 15 for modification and for confirmation of a
 16 plan as modified shall follow Rules 11-38
 17 and 11-39, except that acceptance of the
 18 plan shall not be required by any creditor
 19 who has participated in the fraud and such
 20 creditor shall not be counted in determining
 21 the number and amount of the claims of
 22 creditors whose acceptance is required. If a
 23 modified plan is not confirmed, the court
 24 shall dispose of the case pursuant to Rule
 25 11-42(b).



ADVISORY COMMITTEE'S NOTE

This rule is a revision of the procedure contained in § 386 of the Act. While paragraph (1) makes no significant change in § 386(1), paragraph (2) gives the same protection to the innocent debtor and innocent creditors where modification is made to correct fraud for which they are not responsible as they now have in instances of modification before confirmation under Rules 11-38 and 11-39.

Section 386 of the Act apparently permits the court to grant relief contained in paragraphs (1), (2), and (3) thereof where the debtor participated in or had knowl-

edge of the fraud. This rule reaches that result more definitely; even though there has been such participation or knowledge, it may well be in the interest of creditors to go forward with a plan as modified rather than having the case converted to bankruptcy.

←
**Rule 11-42. Dismissal or Conversion to
 Bankruptcy Prior to or After Confirmation of Plan**

1 (a) *Voluntary Dismissal or Conversion*
 2 to *Bankruptcy*. The debtor may file an ap-
 3 plication or motion to dismiss the case or to
 4 convert it to bankruptcy at any time prior
 5 to confirmation or, where the court has re-
 6 tained jurisdiction, after confirmation.

On

7 ↑ Upon the filing of such application or mo-
 8 tion, the court shall—

9 (1) if the petition was filed pursuant to
 10 Rule 11-7, enter an order directing that the
 11 bankruptcy case proceed; or

12 (2) if the petition was filed pursuant to
 13 Rule 11-6, enter an order adjudicating the
 14 debtor a bankrupt if he so requests, or, if
 15 he requests dismissal, enter an order after
 16 hearing on notice dismissing the case or
 17 adjudicating him a bankrupt whichever may
 18 be in the best interest of the estate.

19 (b) *Dismissal or Conversion to Bank-*
 20 *ruptcy for Want of Prosecution, Denial or*
 21 *Revocation of Confirmation, Default, or*
 22 *Termination of Plan*. The court shall enter
 23 an order, after hearing on such notice as
 24 it may direct dismissing the case, or ad-
 25 judicating the debtor a bankrupt if he has
 26 not been previously so adjudged, or directing
 27 that the bankruptcy case proceed, which-

The notice of the hearing
 on the motion to revoke
 confirmation is to be
 given by the court.

28 ever may be in the best interest of the
29 estate—

30 (1) for want of prosecution; or

31 (2) for failure to comply with an order
32 made under Rule 11-20(d) for indemnifica-
33 tion; or

34 (3) if confirmation of a plan is denied;
35 or

36 (4) if confirmation is revoked for fraud
37 and a modified plan is not confirmed pursu-
38 ant to Rule 11-41; or

39 (5) where the court has retained juris-
40 diction after confirmation of a plan:

if 41 (A) ~~If~~ the debtor defaults in any of
42 the terms of the plan; or

43 (B) if a plan terminates by reason of
44 the happening of a condition specified
45 therein.

46 The court may reopen the case, if neces-
47 sary, for the purpose of entering an order
48 under this subdivision.

49 *(c) Notice of Dismissal to ~~Creditors~~.*
50 Promptly after entry of an order of dismis-
51 sal under this rule, notice thereof shall be
52 given ~~by the court to creditors in the manner~~ ← as
53 provided in Rule 11-24.

54 *(d) Effect of Dismissal.* Unless the order
55 specifies to the contrary, dismissal of a case
56 under this rule on the ground of fraud is
57 with prejudice, and a dismissal on any
58 other ground is without prejudice. A certi-
59 fied copy of the order of dismissal under this
60 rule shall constitute conclusive evidence of
61 the revesting of the debtor's title to his
62 property.

63 (e) *Consent to Adjudication.* Notwith-
 64 standing the foregoing, no adjudication
 65 shall be entered under this rule against a
 66 wage earner or farmer without his written
 67 consent.

ADVISORY COMMITTEE'S NOTE

Subdivision (a) of this rule is derived in part from §§ 377 and 386 of the Act. A debtor who has filed his petition in a pending bankruptcy case may at any time before confirmation or, if the court has retained jurisdiction, after confirmation, voluntarily cause the bankruptcy case to proceed. The application may be *ex parte*. If the debtor seeks dismissal of the case, a hearing is required on notice to creditors, and the court may either adjudicate him a bankrupt if he had filed an original Chapter XI petition, or dismiss the case whichever is in the interest of the debtor and the creditors. The debtor may also convert the Chapter XI case to bankruptcy voluntarily under this subdivision if the Chapter XI petition was an original petition.

Under *subdivision (b)*, for all the causes listed whether occurring before or after confirmation (if the court retained jurisdiction) the court may dismiss the case, adjudicate the debtor a bankrupt if he has not been previously adjudged, or direct the bankruptcy case to proceed whichever is in the interest of the debtor and creditors. Thus the court may, if the petition was filed in a pending bankruptcy case, adjudge the debtor a bankrupt or permit adjudication to follow the normal route if there had been an involuntary petition but no adjudication prior to the filing of the Chapter XI petition. This rule was not intended to preclude the possibility of confirmation of a revised plan in the same case after confirmation of a plan earlier proposed has been denied.

The provision in *subdivision (c)* for notice of dismissal is for the purpose of notifying creditors that no discharge has been granted and to correct their assumption to the contrary so that they can take whatever steps to

Among the causes listed is "want of prosecution" which includes failure to file schedules and statements, failure to propose a plan, withdrawal or abandonment of a plan, or failure to make any deposit required by the plan, all of which are now specified in § 376 of the Act.

protect their claims as may be appropriate and necessary before the statutes of limitation have run.

Subdivision (d) is new. The first sentence gives discretion to the court to determine whether dismissal should bar future relief under the Act, but when it makes no specific reference one way or the other in the order, unless the dismissal was for fraud, a dismissal is without prejudice. ←

Subdivision (e) is derived from § 379 of the Act.

Note should be taken that secured creditors should receive the notices provided for in Rule 11-24, which includes notices under this rule.

Rule 11-43. Confirmation as Discharge

1 *(a) Statement of Discharge.* The order
2 confirming a plan shall contain provisions
3 substantially similar to Official Form No.
4 11-F18 stating the effect of confirmation on
5 the further enforcement of claims against
6 the debtor.

7 *(b) Registration in Other Districts.* An
8 order confirming a plan that has become
9 final may be registered in any other district
10 by filing in the office of the clerk of the dis-
11 trict court of that district a certified copy
12 of the order and when so registered shall
13 have the same effect as an order of the court
14 of the district where registered and may be
15 enforced in like manner.

ADVISORY COMMITTEE'S NOTE

Subdivision (a) is derived from § 371 of the Act and renders uniform the practice of providing expressly in the order confirming the plan for the discharge of the debtor. With this express statement, the order will then contain the essential features of § 14f of the Act, and

For discussion of this point see Advisory Committee's Note to subdivision (c) of Bankruptcy Rule 120. The second sentence prescribes the evidentiary effect of a certified copy of the order of dismissal.

this part of the order can be mailed to creditors pursuant to Rule 11-38 and § 14h of the Act.

Subdivision (b) is derived from § 14g of the Act and provides the same registration procedure for a Chapter XI debtor as for a bankrupt. Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore, Federal Practice ¶ 1.04 [2] (2d ed. 1967). Because of the extraterritorial service of process authorized by Bankruptcy Rule 704, however, registration of the order of discharge is not necessary under these rules to enable a discharged debtor to obtain relief against a creditor proceeding in any district in the United States in disregard of the injunctive provision contained in the order.

**Rule 11-44. Petition as Automatic Stay of Actions
Against Debtor and Lien Enforcement**

1 *(a) Stay of Actions and Lien Enforce-*
2 *ment.* A petition filed under Rule 11-6 or
3 11-7 shall operate as a stay of the com-
4 mencement or the continuation of any action
5 against the debtor, or the enforcement of
6 any judgment against him, or of any act
7 or the commencement or continuation of any
8 court proceeding to enforce any lien against
9 his property, or of any court proceeding,
10 except a case pending under Chapter X of
11 the Act, for the purpose of the rehabilita-
12 tion of the debtor or the liquidation of his
13 estate.

court or other proceeding

14 *(b) Duration of Stay.* Except as it may
15 be terminated, annulled, modified, or con-
16 ditioned by the bankruptcy court under sub-
17 division ~~(e)~~, (d), (e), or (f) of this rule,
18 the stay shall continue until the case is
19 closed, dismissed, or converted to bank-

deemed annulled under
subdivision (c) of
this rule or may be

20 ruptcy or the property subject to the lien is,
21 with the approval of the court, abandoned or
22 transferred.

23 (c) *Annulment of Stay.* At the expira-
24 tion of 30 days after the first date set for
25 the first meeting of creditors, a stay pro-
26 vided by this rule other than a stay against
27 lien enforcement shall be deemed annulled
28 as against any creditor whose claim has not
29 been listed in the schedules and who has not
30 filed his claim by that time.

31 (d) *Relief from Stay.* Upon the filing of
32 a complaint seeking relief from a stay pro-
33 vided by this rule, the bankruptcy court
34 shall, subject to the provisions of subdivision
35 (e) of this rule, set the trial for the
36 earliest possible date, and it shall take
37 precedence over all matters except older
38 matters of the same character. The court
39 may, for cause shown, terminate, annul,
40 modify or condition such stay. A party seek-
41 ing continuation of a stay against lien en-
42 forcement shall show that he is entitled
43 thereto.

44 (e) *Ex Parte Relief from Stay.* Upon the
45 filing of a complaint seeking relief from a
46 stay against any act or proceeding to en-
47 force a lien or any proceeding commenced
48 for the purpose of rehabilitation of the
49 debtor or the liquidation of his estate, relief
50 may be granted without written or oral
51 notice to the adverse party if (1) it clearly
52 appears from specific facts shown by affi-
53 davit or by a verified complaint that im-
54 mediate and irreparable injury, loss, or

55 damage will result to the plaintiff before
56 the adverse party or his attorney can be
57 heard in opposition, and (2) the plaintiff's
58 attorney certifies to the court in writing the
59 efforts, if any, which have been made to
60 give the notice and the reasons supporting
61 his claim that notice should not be required.
62 The party obtaining relief under this sub-
63 division shall give written or oral notice
64 thereof as soon as possible to the trustee,
65 receiver, or debtor in possession and to the
66 debtor and, in any event, shall forthwith
67 mail to such person or persons a copy of the
68 order granting relief. On 2 days' notice to
69 the party who obtained relief from a
70 stay provided by this rule without notice or
71 on such shorter notice to that party as the
72 court may prescribe, the adverse party may
73 appear and move its reinstatement, and in
74 that event the court shall proceed to hear
75 and determine such motion as expeditiously
76 as the ends of justice require.
77 (f) *Availability of Other Relief.* Nothing
78 in this rule precludes the issuance of, or
79 relief from, any stay, restraining order, or
80 injunction when otherwise authorized.

ADVISORY COMMITTEE'S NOTE

This rule supplements and reinforces the policy of §§ 11a, 311 and 314 of the Act. Section 11a provides in terms for a mandatory stay of all actions founded on dischargeable claims which are pending against the debtor when the petition is filed, and § 314 authorizes the stay of pending actions and of the commencement of actions whether or not founded on dischargeable claims. Section 314 also authorizes the stay of any act or proceeding to

enforce any lien on the property of the debtor. The term "lien" is used in this rule to indicate a consensual security interest in personal or real property, a lien obtained by judicial proceedings, a statutory lien, or any other variety of charge against property securing an obligation. The authority conferred by § 314 with respect to staying enforcement of liens is discretionary; nonetheless § 311 gives the court exclusive jurisdiction of the debtor and its property wherever located and this jurisdictional grant includes granting stays and injunctions. See 8 Collier ¶ 3.02 (1963). The relief from a stay obtainable under subdivision (c) or (d) of the rule could appropriately include permission to reclaim collateral.

Subdivision (a) provides that the petition shall operate as a stay of any action, or the enforcement of any judgment, or any act or proceeding to enforce a lien on property of the debtor or any proceeding commenced for the liquidation or rehabilitation of the debtor. This conforms Chapter XI cases with Chapter X cases by including those matters within §§ 113, 116, and 148, such as a pending bankruptcy proceeding, mortgage foreclosure, equity receivership, and the like. Thus, the procedure would be the same, representing a change from § 325 of the Act. ←

As provided in subdivision (b), the stay provided by this rule continues generally during the pendency of the case unless the case is converted to bankruptcy. In the latter event the stay provisions of Bankruptcy Rules 401 and 601 would become applicable.

A creditor who is subject to the stay of this rule may obtain relief therefrom in appropriate cases by filing a complaint in the court pursuant to subdivision (d). The adversary proceeding thereby commenced is governed by Part VII of the Bankruptcy Rules subject to the requirement of subdivision (d) that the trial date be set for the earliest possible time and given precedence over all other matters not of the same character.

Note should be taken of Rule 11-24 which includes secured creditors as those to whom notice of the first meeting of creditors is transmitted. That notice informs

The reference to a stay of other proceedings against the debtor is to signify the inclusion of a pending arbitration proceeding within the scope of the automatic stay.

all creditors of the stay against lien enforcement provided for in this rule.

Rule 11-45. Duties of Debtor

- 1 Bankruptcy Rule 402 applies in Chapter
- 2 XI cases and, in addition to the duties speci-
- 3 fied therein, the debtor shall attend at the
- 4 hearing on confirmation of a plan and, if
- 5 called as a witness, testify with respect to
- 6 issues raised.

ADVISORY COMMITTEE'S NOTE

In addition to the duties imposed on a debtor by Bankruptcy Rule 402, this rule requires the debtor to attend the hearing ~~on objections to~~ confirmation of a plan and, if called as a witness, to testify at such hearing.

For example he may be requested to testify with respect to the matters which were required by affidavit pursuant to General Order 41. See also Rule 11-38 and Accompanying Note.

Rule 11-46. Apprehension and Removal of Debtor to Compel Attendance for Examination

- 1 Bankruptcy Rule 206 applies in Chapter
- 2 XI cases to a debtor and, if the debtor is a
- 3 partnership, to the general partners and any
- 4 other person in control of the partnership
- 5 and, if the debtor is a corporation, to any or
- 6 all of its officers, members of its board of
- 7 directors or trustees or of a similar con-
- 8 trolling body, a controlling stockholder or
- 9 member, or any other person in control.

Rule 11-47. Exemptions

- 1 Bankruptcy Rule 403(a) applies in Chap-
- 2 ter XI cases.

ADVISORY COMMITTEE'S NOTE

In Chapter XI cases, ~~the matter of exemptions is rela-~~

~~tively unimportant and~~ an elaborate procedure for claiming and contesting exemptions is not necessary. Exempt property is not usually set apart to the debtor as it is to the bankrupt in a bankruptcy case. Accordingly, only subdivision (a) of Bankruptcy Rule 403 is made applicable in Chapter XI cases. Since no time limitations are imposed in this rule or in the bankruptcy rule, the debtor is not estopped from claiming exemptions under Bankruptcy Rule 403 if the Chapter XI case is later converted to bankruptcy, nor are creditors or the trustee prevented from objecting to the claim if there had been no litigation of the issue in the Chapter XI case.

Rule 11-48. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial

1 Bankruptcy Rule 409 applies in Chapter
2 XI cases except that the court may but need
3 not make an order fixing a time for filing a
4 complaint under § 17c(2) of the Act. If such
5 an order is made, at least 30 days' notice of
6 the time so fixed shall be given to all credi-
7 tors in the manner provided in Rule 11-24.
8 The court may for cause, upon its own
9 initiative or upon application of any party
10 in interest, extend the time so fixed under
11 this rule. If such an order is not made, a
12 complaint to determine the dischargeability
13 of a debt under clause (2), (4), or (8) of
14 § 17a of the Act may be filed at any time.

ADVISORY COMMITTEE'S NOTE

Due to the nature of a Chapter XI case, it is not always feasible to require the filing of complaints to determine the dischargeability of debts under § 17c(2) of the Act within 30 and 90 days after the first date set for the first

meeting of creditors. Normally it would be more desirable to wait until a plan is confirmed or at least until it appears that confirmation is likely. In any event, there is no need to require the court to fix an early time for the filing of the complaint. Such time may be fixed by the court as it deems in the best interest of the administration of the estate. Where the court does fix a time, the period for giving notice of that time is the same as in Bankruptcy Rule 409. ←

If the Chapter XI petition is filed in a pending bankruptcy case, and the time for filing complaints had been fixed in the bankruptcy case, the automatic stay of administration of the bankruptcy case pursuant to Rule 11-7 would render the date ineffective and a new one could be fixed by the court in the Chapter XI case.

Rule 11-49. Duty of Trustee, Receiver, or Debtor in Possession to Give Notice of Chapter XI Case

- 1 Bankruptcy Rule 602 applies in Chapter
- 2 XI cases.

Rule 11-50. Burden of Proof as to Validity of Post-Petition Transfer

- 1 Bankruptcy Rule 603 applies in Chapter
- 2 XI cases.

Rule 11-51. Accounting by Prior Custodian of Property of the Estate

- 1 Bankruptcy Rule 604 applies in Chapter
- 2 XI cases.

Rule 11-52. Money of the Estate; Deposit and Disbursement

- 1 Bankruptcy Rule 605 (b) and (c) apply
- 2 in Chapter XI cases.

Pursuant to Bankruptcy Rule 409 and § 17c(1) of the Act, the debtor can file a complaint to determine the dischargeability of a debt at any time even if the court does not fix a date. If no time is fixed by the court, a complaint by debtor or creditor can be filed even after confirmation and if necessary, pursuant to § 17c(4), a state court action commenced after confirmation can be stayed. This stay would be applicable if the debtor files his complaint in the bankruptcy court.

ADVISORY COMMITTEE'S NOTE

Subdivision (a) of Bankruptcy Rule 605 is inapplicable in Chapter XI cases because it concerns collecting the property of the estate and converting it to money; these parts of a trustee's functions are applicable only where the estate is being liquidated.

Rule 11-53. Rejection of Executory Contracts

1 When a motion is made for the rejection
2 of an executory contract, including an un-
3 expired lease, other than as part of the plan,
4 the court shall set a hearing on notice to the
5 parties to the contract and to such other
6 persons as the court may direct.

ADVISORY COMMITTEE'S NOTE

This rule is derived from § 513(1) of the Act. As provided in § 357(2) of the Act, the plan may also include provisions for the rejection of executory contracts of the debtor, and § 353 provides that if an executory contract is rejected by the plan or pursuant to permission given by the court any person injured by such rejection shall be deemed a creditor.

Chapters X, XII, and XIII of the Act contain substantially identical provisions for rejection of executory contracts with permission of the court (§§ 116(1), 413(1), and 613(1)) or by provisions in the plan (§§ 216(4), 461(4), and 646(6)) and for the claims of those injured by the rejection (§§ 202, 458 and 642). In view of these provisions in Chapter X it has long been recognized that so much of § 70b of the Act as fixes a time for the trustee to assume or reject executory contracts within 60 days after adjudication or within 30 days after his qualification, whichever is later, and provides that any contract not assumed or rejected within that time shall be deemed to be rejected, is inapplicable in Chapter X proceedings. *Tex. Importing Co. v. Banco Popular de Puerto Rico*, 360 F. 2d 582 (5th Cir. 1966);

Title Insurance & Guaranty Co. v. Hart, 160 F. 2d 961 (3d Cir.) cert. denied 332 U.S. 761 (1947); *In re M & S Amusement Enterprises Inc.*, 122 F. Supp. 364 (D. Del. 1954); *In re Childs Co.*, 64 F. Supp. 282 (S.D.N.Y. 1944). As was said in *Texas Importing Co. v. Banco Popular de Puerto Rico*, *supra*, at p. 584, these provisions in Chapter X "clearly indicate Congress intended that before an executory contract should be rejected, a judicial hearing and inquiry, at which interested parties might be heard, should be held, and that an executory contract could be rejected only with permission of the court. . . ." See also *B.J.M. Realty Corp. v. Ruggieri*, 326 F. 2d 281 (2d Cir. 1963) and *B.J.M. Realty Corp. v. Ruggieri*, 338 F. 2d 653 (2d Cir. 1964), holding that a lessor waived his option to terminate a lease by accepting rental payments for four months following the filing of a Chapter XI petition by the lessee, so that the lease could thereafter be affirmed, and *Floro Realty & Investment Co. v. Steem Electric Corp.*, 128 F. 2d 338 (8th Cir. 1942), holding that where the lessor exercises his option to cancel a lease four months after the lessee files a Chapter X petition all liability for future rent is terminated.

It has also been recognized that, under the pertinent provisions of Chapters X and XI, the other party to an executory contract has no provable claim until his contract is rejected so that, if there has been no rejection with permission of the court prior to confirmation of a plan, "he may insist that his contract be either rejected or assumed under the plan and may apply to the . . . court to protect his interest at the confirmation hearing or before." *In re Greenpoint Metallic Bed Corp. v. Wise Shoe Stores, Inc.*, 111 F. 2d 287, 290 (2d Cir.), cert. denied 311 U.S. 654 (1940). See also *Philadelphia Co. v. Dipple*, 312 U.S. 168, 174 (1941).

**Rule 11-54. Appraisal and Sale of Property;
Compensation and Eligibility of Appraisers and
Auctioneers**

1 (a) *Appraiser: Appointment and Duties.*

2 The court may appoint one or more compe-
 3 tent and disinterested appraisers who shall
 4 prepare and file with the court an appraisal
 5 of the property of the debtor. The court may
 6 prescribe how such appraisal shall be made.

7 (b) *Sale of Property.* The court may,
 8 on such notice as it may direct and for
 9 cause shown, authorize the trustee, receiver,
 10 or debtor in possession to lease or sell any
 11 real or personal property of the debtor, on
 12 such terms and conditions as the court may
 13 approve.

14 (c) *Compensation and Eligibility of Auc-*
 15 *tioneers and Appraisers.* Bankruptcy Rule
 16 606(c) applies in Chapter XI cases to any
 17 appraiser or auctioneer appointed by the
 18 court.

ADVISORY COMMITTEE'S NOTE

This rule is derived from §§ 333 and 313(2) of the Act, and incorporates Bankruptcy Rule 606(c) whenever the court appoints an appraiser or auctioneer.

Because the ~~norm~~ in Chapter XI cases is different from bankruptcy cases, the thrust of the Chapter XI rule is not to require an appraisal but merely to permit one on application. In bankruptcy, there would be an appraisal unless the court determines it to be unnecessary. See Bankruptcy Rule 606(a).

Subdivision (b) also recognizes a difference between the two types of cases. In bankruptcy the property will be sold; in a Chapter XI case a sale, other than in the ordinary course of business, would be exceptional. This subdivision follows § 313(2) of the Act permitting flexibility in the method and form of the sale but the court could, in prescribing such matters, refer to Bankruptcy Rule 606(b).

An application for the appointment of an appraiser

that
of

objective of

may be made by any party in interest or the appointment may be made by the court on its own initiative.

Rule 11-55. Abandonment of Property

- 1 After hearing on such notice as the court
- 2 may direct and on approval by the court the
- 3 trustee, receiver, or debtor in possession
- 4 may abandon any property.

Rule 11-56. Redemption of Property From Lien or Sale

- 1 Bankruptcy Rule 609 applies in Chapter
- 2 XI cases.

Rule 11-57. Prosecution and Defense of Proceedings by Trustee, Receiver, or Debtor in Possession

- 1 Bankruptcy Rule 610 applies in Chapter
- 2 XI cases.

Rule 11-58. Preservation of Voidable Transfer

- 1 Bankruptcy Rule 611 applies in Chapter
- 2 XI cases.

Rule 11-59. Proceeding to Avoid Indemnifying Lien or Transfer to Surety

- 1 Bankruptcy Rule 612 applies in Chapter
- 2 XI cases.

Rule 11-60. Courts of Bankruptcy; Officers and Personnel; Their Duties

- 1 Part V of the Bankruptcy Rules applies
- 2 in Chapter XI cases.

ADVISORY COMMITTEE'S NOTE

While confirmation of a plan has the effect of discharging the debtor from his liabilities under § 371 of the Act, a provision in the rules for an index of confirmation orders is not necessary, nor is it necessary to provide for the issuance of certificates of discharge. Accordingly, the provisions in Rule 507(c) with respect to an index and certificate of discharge are inapplicable to Chapter XI cases.

Rule 11-61. Adversary Proceedings

1 (a) *Adversary Proceedings.* Part VII of
2 the Bankruptcy Rules governs any proceed-
3 ing instituted by a party before a bank-
4 ruptcy judge in a Chapter XI case to (1)
5 recover money or property other than a
6 proceeding under Rule 11-32 or Rule 11-51,
7 (2) determine the validity, priority, or ex-
8 tent of a lien or other interest in property,
9 (3) sell property free of a lien or other
10 interest for which the holder can be com-
11 pelled to take a money satisfaction, (4) ob-
12 tain an injunction, (5) obtain relief from a
13 stay as provided in Rule 11-44, (6) object
14 to confirmation of a plan on the ground that
15 the debtor has committed any act or failed
16 to perform any duty which would be a bar
17 to the discharge of a bankrupt, ~~(7) revoke~~
18 ~~the confirmation of a plan,~~ or ~~(8) determine~~
19 the dischargeability of a debt. Such a pro-
20 ceeding shall be known as an adversary
21 proceeding.

22 (b) *Reference in Bankruptcy Rules.* As
23 applied in Chapter XI cases, the reference
24 in Rule 741 to "a complaint objecting to the

25 bankrupt's discharge" shall be read to in-
 26 clude also a reference to "a complaint ob-
 27 jecting to the confirmation of a plan on the
 28 ground that the debtor has committed any
 29 act or failed to perform any duty which
 30 would be a bar to the discharge of a bank-
 31 rupt."

ADVISORY COMMITTEE'S NOTE

Part VII of the Bankruptcy Rules (Rules 701 to 782 inclusive) are incorporated to govern the procedural aspects of most of the litigation within the jurisdiction of the court in Chapter XI cases. Subdivision (a) of this rule substitutes an expanded definition of adversary proceedings in Chapter XI cases for that contained in Bankruptcy Rule 701. Rule 11-2 indicates other substitutions and translations of terms necessary for this purpose.

Rule 11-62. Appeal to District Court

1 Part VIII of the Bankruptcy Rules ap-
 2 plies in Chapter XI cases, except that Rule
 3 ~~802(c) thereof shall read as follows:~~
 4 "*(c) Extension of Time for Appeal* The
 5 referee may extend the time for filing the
 6 notice of appeal by any party for a period
 7 not to exceed 20 days from the expiration
 8 of the time otherwise prescribed by this
 9 rule. A request to extend the time for filing
 10 a notice of appeal must be made before such
 11 time has expired, except that a request made
 12 after the expiration of such time may be
 13 granted upon a showing of excusable neglect
 14 if the judgment or order does not authorize
 15 the sale of any property, or is not a judgment

:
 (1) Rule 802(c)
 thereof shall read
 as follows:

or the issuance of any
 certificate of
 indebtedness

16 or order under Rule 11-38 confirming a
 17 plan, or is not a judgment or order under
 18 Rule 11-42 dismissing a Chapter XI case, or
 19 converting a Chapter XI case to bank-
 20 ruptcy."

ADVISORY COMMITTEE'S NOTE

Under Bankruptcy Rule 802(c) the time to appeal an order authorizing a sale of any property may not be extended unless a request therefor is filed within the regular appeal time. The same policy of establishing finality of referees' orders applies to orders confirming a plan, or dismissing or converting a Chapter XI case in order for subsequent events to occur without fear of disruption of certificates of indebtedness.

(2) The following shall be added to Rule 805 thereof:
 "Unless an order approving a sale of property or issuance of a certificate of indebtedness is stayed pending appeal, the sale to a good faith purchaser or the issuance of a certificate to a good faith holder shall not be affected by the reversal or modification of such order on appeal whether or not the purchaser or holder knows of the pendency of the appeal."

Rule 11-63. General Provisions

- 1 Part IX of the Bankruptcy Rules applies
- 2 in Chapter XI cases, except that:
- 3 (1) The references to various rules in
- 4 Rule 906(b) shall also include a reference
- 5 to Chapter XI Rule 11-33(b) (2).
- 6 (2) The references to various rules in
- 7 Rule 906(c) shall also include references to
- 8 Chapter XI Rules 11-24(a), 11-25(a) (1),
- 9 and 11-33(b) (2).
- 10 (3) The exception in Rule 910(c) for
- 11 "the execution and filing of a proof of claim"
- 12 shall be read to include also "the execution
- 13 and filing of an acceptance of a plan" and
- 14 the reference to Official Forms in that rule
- 15 shall include a reference to Official Form
- 16 No. 11-F16.
- 17 (4) The reference in Rule 913(b) to "a
- 18 dischargeable debt" shall be read as "a debt
- 19 which is or will be provided for by the plan."

(1) The definitions of words and phrases in §§ 306 and 307 of the Act govern their use in the Chapter XI Rules to the extent they are not inconsistent therewith.

Paragraph (2) of this rule is in accord with case law effectuating a sale pending appeal to a good faith purchaser in the absence of the appellant obtaining a stay of the order approving the sale.

6 20 (5) The reference to Rule 203(a) in
 21 ~~Rule 919(a)~~ shall be read as a reference to in Rule 919(a)
 22 Chapter XI Rule 11-24(a).

7 23 (6) The reference to Rule 102 in Rule
 24 ~~922(b)~~ shall be read as a reference to Chap- in Rule 922(b)
 25 ter XI Rule 11-5.

8 26 (7) The reference in Rule 924 to the
 27 time allowed by § 15 of the Act for the filing
 28 of a complaint to revoke a discharge shall
 29 be read to include also a reference to the
 30 time allowed by § 386 of the Act for the ← making of a motion
 31 ~~filing of a complaint~~ to revoke the confirma-
 32 tion of a plan.

ADVISORY COMMITTEE'S NOTE

With the changes, substitutions, and translations indicated in this rule and by Rule 11-2, Part IX of the Bankruptcy Rules (Rules 901-928 inclusive) applies in Chapter XI cases.

OFFICIAL CHAPTER XI FORMS

[*Note: These official forms shall be observed and used, with such alterations as may be appropriate to suit the circumstances. See Bankruptcy Rule 909.*]

FORM 11-F1

ORIGINAL PETITION UNDER CHAPTER XI

1 United States District Court
 2 for the District of _____
 3 In re)
)
 4)
 5 Debtor [*include here*)
 6 *all names used by*) Bankruptcy No.
 7 *debtor within last 6*)
 8 *years*])

9 ORIGINAL PETITION UNDER CHAPTER XI

- 10 1. Petitioner's post-office address is
 11 _____
 12 2. Petitioner has resided [*or* has had his
 13 domicile *or* has had his principal place of
 14 business *or* if a partnership, or corporation,
 15 has had its principal assets] within this dis-
 16 trict for the preceding 6 months [*or* for a
 17 longer portion of the preceding 6 months
 18 than in any other district].
 19 3. No ~~bankruptcy case~~ initiated on a peti-
 20 tion by or against petitioner is now pending.
 21 4. Petitioner is qualified to file this peti-
 22 tion and is entitled to the benefits of Chapter

other case under the Bankruptcy Act
--

23 XI of the ~~Bankruptcy~~ Act.
 24 5. Petitioner is insolvent [or unable to
 25 pay his debts as they mature].
 26 6. A copy of petitioner's proposed plan,
 27 ~~dated~~ _____ is attached [or
 28 petitioner intends to file a plan pursuant to
 29 Chapter XI of the Act].

30 Wherefore petitioner prays for relief
 31 in accordance with Chapter XI of the
 32 Act.

33 Signed: _____,
 34 *Attorney for Petitioner.*
 35 Address: _____,
 36 _____

37 [*Petitioner signs if not represented*
 38 *by attorney.*]
 39 _____

40 *Petitioner.*

41 State of _____
 42 County of _____
 43 I, _____, the peti-
 44 tioner named in the foregoing petition, do
 45 hereby swear that the statements con-
 46 tained therein are true according to the
 47 best of my knowledge, information, and
 48 belief.

49 _____
 50 *Petitioner.*

51 Subscribed and sworn to before me on
 52 _____
 53 _____
 54 _____

55 [*Official character*]
 56 [*Unless the petition is accompanied by a*
 57 *list of all the debtor's creditors and their*

7. [If petitioner is a corporation] Exhibit "A" is attached to and made part of this petition.

Double space
 add:)
) ss.
)

.

58 addresses, the petition must be accompanied
 59 by a schedule of his property, a statement of
 60 his affairs, and a statement of executory
 61 contracts, pursuant to Rule 11-11. These
 62 statements shall be submitted on official
 63 forms and verified under oath.]

ADVISORY COMMITTEE'S NOTE

See attachment.

This form is a revision of former Official Form No. 43. Numerous changes have been made in the interest of eliminating unnecessary words and reducing the number of formal entries to be made by the petitioner.

Rule 11-9 requires the caption in which the name of the debtor is given to include all the names used by him within 6 years before the filing of the petition.

The recitals in paragraph 2 of the form, which establish the venue for the case, include the possibilities that are appropriate for most petitioners. Other factual bases for choice of venue under Rule 11-13(a) may be shown by minor adaptations of the form.

Attachment of a proposed plan to the petition is optional. See Rule 11-36.

Reference to the schedules and statements which are not part of the petition, are stricken from the body of the form, but a note at the foot of the form calls the petitioner's attention to the necessity of filing these papers as provided in Rule 11-11.

Blanks for the signature and address of the petitioner's attorney are added in conformity with Bankruptcy Rule 911(a) made applicable by Rule 11-63. Only the original need be signed and verified, but the copies should be conformed to the original. See Bankruptcy Rule 911(c). Verification of a petition on behalf of a corporation by an officer or agent, or of a petition on behalf of a partnership by a member or agent, shall conform to Official Form No. 4 or 5 of the Bankruptcy Forms, whichever is appropriate.

Exhibit "A" to be attached to the petition of a corporate debtor is for the purpose of supplying the Securities and Exchange Commission with the information it requires at the beginning stages of a Chapter XI case. See Rule 11-6 for requirement that a copy of a corporate petition be mailed to the SEC.

Attachment for Page 73

EXHIBIT "A"

1 [If petitioner is a corporation, this Exhibit A shall be
2 completed and attached to the petition pursuant to
3 paragraph 7 thereof.]

4 [Caption, other than designation, as in Form No. 11-Fl.]

5 FOR COURT USE ONLY

6 _____
7 Date Petition Filed

8 _____
9 Case Number

10 _____
11 Bankruptcy Judge

12 1. Petitioner s employer's identification number is

13 2. If any of petitioner's securities are registered under
14 section 12 of the Securities and Exchange Act of 1934, SEC
15 file number is

16 3. The following financial data is the latest available
17 information and refers to petitioners condition on

18 a. Total assets: \$

19 b. Liabilities:

20 _____
21 Approximate
number of holders

22 Secured debt, excluding
23 that listed below \$

24 Debt securities held by
25 more than 100 holders: \$

26 Secured \$

27 Unsecured \$

28 Other liabilities,
29 excluding contingent or
30 unliquidated claims \$

31 Number of shares of
32 common stock

33 Comments, if any:

34

35

36 4. Brief description of petitioner's business:

37

38

39 5. The name of any person who directly or indirectly owns,

40 controls, or holds, with power to vote, 25% or more of the

41 voting securities of petitioner is

42 6. The names of all corporations 25% or more of the

43 outstanding voting securities of which are directly or indirectly

44 owned, controlled, or held, with power to vote, by petitioner are

45

46

47

FORM NO. 11-F2

CHAPTER XI PETITION IN PENDING
BANKRUPTCY CASE

1 | *[Caption, if necessary, as in*
2 | *the rules.]*

3 | CHAPTER XI PETITION IN PENDING
4 | BANKRUPTCY CASE

5 | 1. Petitioner's post-office address is

6 |
7 | 2. Petitioner is the bankrupt, in Bank-
8 | ruptcy Case No. _____, pending in
9 | this court.

or debtor

10 | 3. Petitioner is qualified to file this peti-
11 | tion and is entitled to the benefits of Chapter
12 | XI of the Bankruptcy Act.

13 | 4. Petitioner is insolvent [or unable to
14 | pay his debts as they mature].

15 | 5. A copy of petitioner's proposed plan,
16 | ~~dated _____~~ is attached
17 | [or petitioner intends to file a plan pursuant
18 | to Chapter XI of the Act.]

6. [If petitioner is a
corporation] Exhibit "A"
is attached to and made
part of this petition.

19 | Wherefore, petitioner prays for relief in
20 | accordance with Chapter XI of the Act.

21 | Signed:
22 | _____
23 | *Attorney for Petitioner.*

24 | Address:

25 | *[Petitioner signs if not represented*
26 | *by attorney.]*

27 | _____
28 | *Petitioner.*

29 | State of _____
30 | County of _____

88.

Double space
add:)
) ss.
)

31 I, _____, the petitioner
32 named in the foregoing petition, do hereby
33 swear that the statements contained there-
34 in are true according to the best of my
35 knowledge, information, and belief.

36 _____,
37 *Petitioner.*
38 Subscribed and sworn to before me on
39 _____,
40 _____,

41 _____
42 *[Official character]*
43 *[Unless the schedules and statements have*
44 *already been filed in the bankruptcy case*
45 *they must be filed with this petition or*
46 *within 15 days thereafter as provided in*
47 *Rule 11-11. These statements shall be on*
48 *official forms and verified under oath.]*

←
ADVISORY COMMITTEE'S NOTE

This form is new. Save as indicated below it conforms to Official Form No. 11-F1 and the Note to that form should be consulted.

This petition contains no allegations as to venue, which will already have been made in the petition initiating the pending bankruptcy case. If venue is improper, Bankruptcy Rule 116(b) or Chapter XI Rule 11-13(b) (2) will apply.

Paragraph 2 of this form requires identification of the pending bankruptcy case.

The note at the foot of the form calls the petitioner's attention to the necessity of filing the statements and the schedules if they were not filed in the bankruptcy case, as provided in Rule 11-11.

Attachment of a proposed plan to the petition is optional.

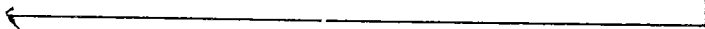


EXHIBIT "A"
[Exhibit "A" as
in Form No. 11-F1.]

Exhibit "A" may be found as an attachment to Form No. 11-F1 and is intended to supply the Securities and Exchange Commission with necessary information about a corporate debtor. See Rules 11-7 and 11-6 for requirement that a copy of a corporate petition be mailed to the SEC.

FORM NO. 11-F3

VERIFICATION ON BEHALF OF A CORPORATION

- 1 [*Form No. 4 of the Bankruptcy Forms*
- 2 *is applicable and should be used.*]

ADVISORY COMMITTEE'S NOTE

Rule 11-12 requires all petitions to be verified. Bankruptcy Form No. 4 is to be used for the verification on behalf of a corporation. It may be adapted for use in connection with other papers required by these rules to be verified. See Note to Bankruptcy Rule 911.

FORM NO. 11-F4

VERIFICATION ON BEHALF OF A PARTNERSHIP

- 1 [*Form No. 5 of the Bankruptcy Forms*
- 2 *is applicable and should be used.*]

ADVISORY COMMITTEE'S NOTE

Rule 11-12 requires all petitions to be verified. This form is to be used for the verification on behalf of a partnership. It may be adapted for use in connection with other papers required by these rules to be verified. See the Note to Bankruptcy Rule 911.

FORM NO. 11-F5

SCHEDULES

- 1 [*Form No. 6 of the Bankruptcy Forms is*
- 2 *applicable and should be used. The word*
- 3 *"bankrupt" wherever used in Form No.*
- 4 *6 should be changed to "debtor".]*

ADVISORY COMMITTEE'S NOTE

This form is a revision of the Official Forms for schedules A and B accompanying Official Form No. 1. It is

intended for use by the debtor who is required to prepare a schedule of property and list of creditors to accompany a petition filed under the Act. See Rule 11-11.

The number of schedules for property has been reduced from 6 to 4 and the number of schedules of debts from 5 to 3 in the interest of simplification. No significant change in the information required to be disclosed is intended by this reduction. Numerous changes of format have been made to permit easier adaptability for individual cases, and columnar headings and categories of claims and property have been revised to make them more comprehensive and clear.

Ledger or voucher references and identification of places where debts were contracted or incurred are no longer required to be entered on the schedules of his debts. To eliminate an overlap of Schedule A-2 with Schedule B-1, which has required inclusion of information as to encumbrances on real property of the estate, the headings in the latter schedule have been revised to make clear that all statements regarding secured claims are to be entered in Schedule A-2. Liabilities on notes and bills heretofore supposed to be entered on Schedules A-4 and A-5 are to be included in Schedule A-3 or, if the creditor is entitled to priority or is secured, on Schedule A-1 or A-2, as the case may be. Elimination of Schedules A-4 and A-5 will effect little or no change in practice.

Schedule B-3, on which choses in action belonging to the estate have heretofore been scheduled, has been merged into Schedule B-2 for personal property, thereby eliminating a needless classification. The space provided in Schedule B-4 for "Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge" has been eliminated, and such property should be included as real property on Schedule B-1 or as personal property on Schedule B-2. Information as to fees paid counsel in contemplation of the filing of a petition heretofore also required to be included in Schedule B-4, is to be obtained by questions included in the Statement of Affairs.

The official forms for the schedules have heretofore required a signature on each of the 11 schedules (A-1 to A-5 and B-1 to B-6) and an oath to accompany the Schedule of Debts as well as another to accompany the Schedule of Property. Schedules are required to be executed and filed in the same number as the petition they accompany. Rule 11-11(a). A single oath for all the schedules requiring no more than one signature by the debtor for the original has been substituted for the multiple subscription requirements heretofore imposed. The oath requires a specification of a number of sheets included in the schedules and an acknowledgment that the affiant has read them. The copies should be conformed to the original as provided in Bankruptcy Rule 911(c). Separate forms of oath are provided for individuals, corporations, and partnerships.

FORM NO. 11-F6

STATEMENT OF AFFAIRS FOR DEBTOR NOT ENGAGED IN BUSINESS

- 1 *[Form No. 7 of the Bankruptcy Forms is*
- 2 *applicable and should be used. The word*
- 3 *"bankrupt" wherever used in Form No.*
- 4 *7 should be changed to "debtor".]*

ADVISORY COMMITTEE'S NOTE

This Statement of Affairs is a revision of Official Form No. 2. Most of the changes are intended to make the requests for information more specific and certain in their references. Thus, the debtor is required to give his social security number to facilitate his identification, particularly by the Internal Revenue Service and other agencies which maintain records by reference to this number. Information as to other names used in the last 6 years serves a similar purpose.

Inquiry as to most transactions and developments affecting the financial condition of the debtor is limited to the year preceding the filing of the petition, and the

time span covered by the question regarding general assignments and other modes of general settlement with creditors (formerly #7c, renumbered as #8b) has been reduced from 2 years to one year. The scope of examination at the first meeting or at any other meeting is in no way restricted, of course, by the scope of the inquiries in the Statement of Affairs.

New questions have been added concerning tax refunds (#3), property in the hands of trustees, bailees, and other third persons (#9), repossessions and returns of property by the debtor (#13), losses covered by insurance (#14), and payments or transfers to attorneys (#15). The questions asked in this last paragraph seek information relevant to the examination authorized to be conducted by the court pursuant to Rule 11-32. The reference to sums paid to counsel heretofore included in Schedule B-4 is deleted by this series of proposals.

The question regarding transfers (formerly #10a, now #12a & b) has literally required the debtor to disclose every payment as well as exchange of property during the preceding year. The question has been revised to develop information only as to (1) gifts that exceed the bounds of ordinary and usual presents to family members and charitable contributions, and (2) transfers of realty or tangible personalty. The range of inquiry covers the year before the filing of the petition as before, but no accounting is required by the question as to payments of cash and by check except when out-of-the-ordinary gifts are effected in this way.

Inquiry is made as to relevant writings in numerous instances. Schedule B-6 on which all books, papers, and writings, have heretofore been listed has been deleted.

The debtor is required to sign only the oath to the statement, but he must verify that he has read the statement as well as that it is true to the best of his knowledge, information, and belief. Only the original need be verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c). When the schedules and statement of affairs are filed simultaneously, as they

ordinarily will be (see Rule 11-11), the oaths may be combined, as provided in Bankruptcy Rule 909.

FORM NO. 11-F7

STATEMENT OF AFFAIRS FOR DEBTOR ENGAGED IN BUSINESS

- 1 [Form No. 8 of the Bankruptcy Forms is
- 2 applicable and should be used. The word
- 3 "bankrupt" wherever used in Form No.
- 4 8 should be changed to "debtor".]

ADVISORY COMMITTEE'S NOTE

This is a revision of Official Form No. 3. Most of the changes made in the form are identical or similar to those made in Official Form No. 2 and explained in the note accompanying the Statement of Affairs for a Debtor Not Engaged in Business.

The inquiry regarding tax returns here (#6a) extends back 3 years before the filing of the petition because of the possible relevance of the returns for all 3 years in determining the tax liability of a business debtor for the year in which the petition is filed.

The inclusion of the questions regarding suits, executions, and attachments (#12) cures a *casus omissus* in Official Form No. 3.

The question regarding loans repaid (#13) has been extended to cover payments on installment credit sales of goods and services. The purpose of this question is to develop information regarding possible preferences, and the Statement of Affairs is incomplete in this respect if it refers only to repayments of loans.

Information regarding business leases (#17) will be helpful in determining whether rental arrangements should be terminated or extended and whether the landlord may have a basis for asserting a lien or priority or may be liable for the return of a deposit to the estate.

The question regarding withdrawals (formerly #14,

renumbered #19) has been elaborated to get information from individual proprietors comparable to that heretofore sought from partnerships and corporate debtors. This information will supplement that obtained pursuant to the question regarding nonbusiness income (#5), payment of loan (#13), and other kinds of transfers in providing a picture of the disposition of assets during the year preceding the filing of the petition.

The question regarding the membership and management of a partnership or corporation (formerly #15, now #21) has been elaborated to develop information regarding significant changes during the year prior to the filing of the petition. Such information is likely to be of considerable assistance in discovering the reasons for the stringent financial condition of the debtor and in determining the disposition of its assets during the year preceding the filing of the petition.

The debtor is required to sign only the oath to the statement, but he must verify that he has read the statement as well as that it is true to the best of his knowledge, information, and belief. When the schedules and statement of affairs are filed simultaneously, as they ordinarily will be (see Rule 11-11), the oaths may be combined, as provided in Bankruptcy Rule 909. Only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c). Bankruptcy Rules 909 and 911 are made applicable in Chapter XI cases by Rule 11-63.

FORM NO. 11-F8

ORDER APPOINTING RECEIVER OR
DISBURSING AGENT AND FIXING
THE AMOUNT OF HIS BOND

1 [Caption, other than designation, as in
2 Form No. 11-F1.]

3 ORDER APPOINTING RECEIVER

4 ~~OR~~ DISBURSING AGENT AND

[or

]

5 FIXING THE AMOUNT OF HIS
6 BOND

7 1.
8 of* is hereby appointed
9 receiver of the estate |or disbursing agent
10 for the estate| of the above-named debtor.

11 2. The amount of the bond of the receiver
12 |or disbursing agent| is fixed at \$.

13 Dated:

14

15 *Bankruptcy Judge.*

16 *State post-office address.]

Ital.

ADVISORY COMMITTEE'S NOTE

This form is a revision of Official Form No. 20. With respect to the appointment of the disbursing agent, this form is new.

FORM NO. 11-F9

NOTICE TO RECEIVER OR DISBURSING
AGENT OF HIS APPOINTMENT

1 [Caption, other than designation, as in
2 Form No. 11-F1.]

3 NOTICE TO RECEIVER OR DIS-
4 BURSING AGENT OF HIS
5 APPOINTMENT

6 To
7 of*

8 You are hereby notified of your appoint-
9 ment as receiver of the estate |or disbursing
10 agent for the estate| of the above-named
11 debtor. The amount of your bond has been

*State post-office address.]

Ital.

12 fixed at \$ _____
 13 {The following paragraph is applicable
 14 to receiver only}
 15 You are required to notify the under-
 16 signed forthwith of your acceptance of re-
 17 jection of the office of receiver.
 18 Dated: _____
 19 _____
 20 Bankruptcy Judge.

ADVISORY COMMITTEE'S NOTE

This form is a revision of Official Form No. 22. It is to be used in giving the notice to a receiver required by Rule 11-18(c). While there is no requirement that a disbursing agent be notified of his appointment, this form is adapted for such use.

FORM NO. 11-F10
BOND OF RECEIVER OR DISBURSING AGENT

1 [Caption, other than designation, as in
2 Form No. 11-F1.]

3 BOND OF RECEIVER OR _____
4 DISBURSING AGENT

5 We,
6 of* _____, as principal, and
7 _____

8 of* _____, as surety, bind our-
9 selves to the United States in the sum of
10 \$ _____ for the faithful perform-
11 ance by the undersigned principal of his offi-
12 cial duties as receiver, [or disbursing agent]
13 of the estate of the above-named debtor.

of the
estate

for the estate

14 Dated: _____

*State post-office address. _____ Ital.

15

16

ADVISORY COMMITTEE'S NOTE

This form is a simplification of former Official Form No. 23. It may be used in an individual case under Rule 11-20, or, by modification of the caption, the reference in the bond to the debtor, and, where necessary, the reference to the principal, it may be adapted for use in a series of cases when a blanket bond is given. Unless otherwise provided by local rule, the completed bond is to be filed with the referee in accordance with Rule 11-20.

FORM NO. 11-F11

ORDER APPROVING RECEIVER'S OR DISBURSING AGENT'S BOND

1 [*Caption, other than designation, as in*
2 *Form No. 11-F1.*]

3 ORDER APPROVING RECEIVER'S
4 [OR DISBURSING AGENT'S]
5 BOND

6 The bond filed by

for the
estate

7 of* as receiver, [or disburs-
8 ing agent,] of the estate of the above-named

of the estate

9 debtor is hereby approved.

10 Dated: _____

11 _____

12 *Bankruptcy Judge.*

13 *State post-office address.

Ital.

ADVISORY COMMITTEE'S NOTE

Rule 11-20(a) authorizes the court to approve other security than a bond but recordation of an order approv-

ing other security would not come within the scope of § 21g. A copy of the petition may be recorded pursuant to § 21g, however.

FORM NO. 11-F12

CERTIFICATE OF RETENTION OF DEBTOR
IN POSSESSION

1 [*Caption, other than designation, as in*
2 *Form No. 11-F1.*]

3 CERTIFICATE OF RETENTION OF DEBTOR IN
4 POSSESSION

5 I hereby certify that the above-named
6 debtor continues in possession of his [its]
7 estate as debtor in possession, no trustee in
8 bankruptcy or receiver having been ap-
9 pointed or qualified.

10 Dated: ----- .

11 -----,
12 *Bankruptcy Judge.*

ADVISORY COMMITTEE'S NOTE

Under Rule 11-18 (a) and (b) the trustee in bankruptcy continues in charge of the debtor's estate if the Chapter XI petition is filed in a pending bankruptcy case after such trustee has qualified; otherwise, the debtor is to continue in possession except that, for cause, the court may appoint a receiver. Where the debtor continues in possession, there need be no formal order to that effect. Accordingly, where evidence is required this certificate may be used pursuant to Rule 11-20(c). A copy of this certificate is not, however, within the purview of § 21g of the Act for purposes of recordation and in such cases a copy of the petition itself should be recorded.

FORM NO. 11-F13

ORDER FOR FIRST MEETING OF CREDITORS AND RELATED ORDERS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

1 [*Caption, other than designation, as in*
2 *Form No. 11-F1.*]

3 ORDER FOR FIRST MEETING OF CREDITORS
4 AND FIXING TIME FOR FILING COMPLAINT
5 TO DETERMINE DISCHARGEABILITY OF
6 CERTAIN DEBTS, COMBINED WITH NOTICE
7 THEREOF AND OF AUTOMATIC STAY.

8 To the debtor, his creditors, and other
9 parties in interest:

10 _____
11 of* _____, having filed
12 a petition on _____ stating
13 that he desires to effect a plan under Chap-
14 ter XI of the Bankruptcy Act, it is ordered,
15 and notice is hereby given, that:

16 1. The first meeting of creditors shall be
17 held at _____, on _____,
18 at _____ o'clock _____m.;

19 2. The debtor shall appear in person [*or,*
20 *if the debtor is a partnership, by a general*
21 *partner, or, if the debtor is a corporation,*
22 *by its president or other executive officer]*
23 before the court at that time and place for
24 the purpose of being examined;

25 ~~3. [*If appropriate*] _____ is~~
26 ~~fixed as the last day for the filing of a com-~~
27 ~~plaint to determine the dischargeability of~~
28 ~~any debt pursuant to § 17c(2) of the Act.~~

*State post-office address. _____

Ital.

- 3 29 ~~4.~~ The hearing on confirmation of the
30 plan shall be held at a date to be later fixed
31 *or* at a date to be fixed at the first meeting
32 *or* at _____ on _____ at _____
33 *or* immediately following the conclusion of
34 the first meeting].
- 4 35 ~~5.~~ Creditors may file written objections
36 to confirmation at any time prior to con-
37 firmation *or* _____ is fixed as the
38 last day for the filing of objections to con-
39 firmation, *or* objections to confirmation may
40 be filed by a date to be later fixed.]
41 You are further notified that:
42 meeting may be continued or adjourned
43 from time to time by order made in open
44 court, without further written notice to
45 creditors.
46 At the meeting the creditors may file their
47 claims and acceptances of the plan, nomi-
48 nate a standby trustee, elect a committee of
49 creditors, examine the debtor as permitted
50 by the court, and transact such other busi-
51 ness as may properly come before the meet-
52 ing.
53 The filing of the petition by the debtor
54 above named operates as a stay of the com-
55 mencement or continuation of any action
56 against the debtor, of the enforcement of
57 any judgment against him, of any act or
58 the commencement or continuation of any
59 court proceeding to enforce any lien on the
60 property of the debtor, and of any court pro-
61 ceeding commenced for the purpose of re-
62 habilitation of the debtor or the liquidation
63 of his estate, as provided by Rule 11-44.

64 In order to have his claim allowed so that
 65 he may share in any distribution under a
 66 confirmed plan, a creditor must file a claim,
 67 whether or not he is included in the schedule
 68 of creditors filed by the debtor. Claims which
 69 are not filed before confirmation of the plan
 70 will not be allowed except as otherwise pro-
 71 vided by law. A claim may be filed in the
 72 office of the undersigned bankruptcy judge
 73 on an official form prescribed for a proof
 74 of claim.

75 [If appropriate] _____
 76 of* _____ has been
 77 appointed receiver of the estate of the above-
 78 named debtor.

79 Dated: _____

80

81 _____
Bankruptcy Judge.

*State post-office address. _____

_____ Ital.

ADVISORY COMMITTEE'S NOTE

Insofar as this form embodies an order, it is new. Insofar as it embodies a notice, it revises former Official Form No. 49.

As provided in Rules 11-36 and 11-37, acceptances may be obtained by the debtor before or after the filing of the petition and may be filed by him with the court on behalf of the accepting creditor. A copy of the plan, if any, filed by the debtor should be attached to this combined order and notice.

The inclusion in the official form of information regarding the effect of the Chapter XI petition as a stay, ~~the time for filing a complaint to determine the dischargeability of debts,~~ the time to file objections to confirmation, and the necessity of the filing of claims is new. It should be helpful to creditors and reduce the

number of inquiries directed at referees' offices by recipients of the notice of the first meeting.

← FORM NO. 11-F14

PROOF OF CLAIM

- 1 *{Form No. 15 of the Bankruptcy Forms is*
- 2 *applicable and should be used. The word*
- 3 *"bankrupt" wherever used in Form No.*
- 4 *15 should be changed to "debtor".}*

ADVISORY COMMITTEE'S NOTE

This form combines the functions of Official Form Nos. 28, 29, 30 and 31. It may be used by any claimant, including a wage earner for whom short forms have been specially provided (Forms No. 11-F15 and 11-F15A), or by an agent or attorney for any claimant. Such a combined form is commonly used in practice.

In order to facilitate confirmation of the plan and distribution to creditors, paragraph 9 also requires that any written security agreement (if not included in the writing upon which the claim is founded, which is required by paragraph 4 to be attached) be attached to the proof of claim or that the reasons why it cannot be attached be set forth. Paragraph 9 further requires an indication of the date and the office or offices in which notice of the security interest has been filed or recorded. The information so required will expedite determination of the validity and perfection of security interests. Satisfactory evidence of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded together with an indication of the date or dates when and the office or offices where filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in the possession of the secured party since a specified

In unusual cases when the court fixes, at an early time, the date by which complaints to determine the dischargeability of debts must be filed, the date so fixed can be added to this form.

date, or a statement of the reasons why no action was necessary for perfection.

Paragraph 10, requiring explicitness as to whether the claim is filed as a general, priority, or secured claim, will also facilitate administration and minimize troublesome litigation over the question whether a proof of claim was intended as a waiver of security. See *e.g.*, *United States, National Bank v. Chase National Bank*, 331 U.S. 28, 35-36 (1947); 3 Collier ¶ 57.07 [3.1] (1961).

FORM NO. 11-F15

PROOF OF CLAIM FOR WAGES, SALARY, OR COMMISSIONS

- 1 | *Form No. 16 of the Bankruptcy Forms is*
- 2 | *applicable and should be used. The word*
- 3 | *"bankrupt" wherever used in Form No.*
- 4 | *16 should be changed to "debtor".*

ADVISORY COMMITTEE'S NOTE

This form is new. It is an adaptation of Official Form No. 11-F14 for the use of claimants for personal earnings in Chapter XI cases. Its limited purpose permits elimination of recitals that are appropriate for other classes of claimants. Most claimants using the form will be entitled to priority under § 64a(2) of the Act. The claim as filed includes an amount not entitled to priority because, for example, not earned within the 3-month period immediately preceding the filing of the petition, reference to payroll records will ordinarily permit determination of the amount of the priority, if any, to which the claimant is entitled. If such records are unavailable, the claimant may be required to supply additional information as a condition to allowance of the claim with priority.

FORM NO. 11-F15A

PROOF OF MULTIPLE CLAIMS FOR WAGES,
SALARY, OR COMMISSIONS

[Form No. 16A of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 16A should be changed to "debtor."]

FORM NO. 11-F16

POWER OF ATTORNEY

1 [Caption, other than designation, as in
2 Form No. 11-F1.]
3 POWER OF ATTORNEY
4 To _____ of*
5 and _____ of*
6 The undersigned claimant hereby au-
7 thorizes you, or any one of you, as attorney
8 in fact for the undersigned and with full
9 power of substitution, to receive distribu-
10 tions and in general to perform any act not
11 constituting the practice of law for the un-
12 dersigned in all matters arising in this case.
13 Dated: _____
14 Signed: _____
15 By: _____
16 [If appropriate] as _____
17 Address: _____
18 _____
19 [If executed by an individual] Acknowl-
20 edged before me on _____
21 [If executed on behalf of a partnership]

*State post-office address.

Ital.

22 Acknowledged before me on _____,
 23 by _____, who says that he
 24 is a member of the partnership named above
 25 and is authorized to execute this power of
 26 attorney in its behalf.

27 *[If executed on behalf of a corporation]*
 28 Acknowledged before me on _____,
 29 by _____, who says that he
 30 is _____ of the corporation
 31 named above and is authorized to execute
 32 this power of attorney in its behalf.

33 _____,
 34 _____,
 35 *[Official character]*

ADVISORY COMMITTEE'S NOTE

Bankruptcy Rule 910(c), made applicable by Rule 11-63, requires a power of attorney to be prepared substantially in conformity with this form, but it may grant either more or less authority in accordance with the language used.

While a power of attorney may of course be executed in favor of an attorney at law who is also retained as such to represent the creditor executing the form, the power of attorney does not purport to confer the right to act as an attorney at law. The corollary is that one not an attorney may act under a power of attorney within the limitations prescribed in the form.

While Bankruptcy Rule 910(c) as modified by Rule 11-63(3) does not require a written power of attorney for the purpose of filing a proof of claim or voting on a plan, Official Form No. 11-15 requires a partner, corporate officer or other agent filing a proof of claim to state that he is authorized to file the claim. The power contained in this form is broad enough to include authority to vote for a creditors' committee and in the nomination of a trustee.

The statement respecting authority required in the acknowledgement accompanying a power of attorney executed on behalf of a partnership or corporation is in lieu of the requirement of General Order 21(5) heretofore existing that such an instrument be accompanied by an oath that the person executing is a member of the partnership or a duly authorized officer of the corporation.

FORM NO. 11-F17

ORDER FIXING TIME TO REJECT MODIFICATION OF PLAN PRIOR TO CONFIRMATION, COMBINED WITH NOTICE THEREOF

1 [*Caption, other than designation, as in*
2 *Form No. 11-F1.*]

3 ORDER FIXING TIME TO REJECT MODIFICA-
4 TION OF PLAN PRIOR TO CONFIRMATION,
5 COMBINED WITH NOTICE THEREOF

6 To the debtor, his creditors and other
7 parties in interest:

8 The debtor having filed a modification of
9 his plan on _____,
10 it is ordered, and notice is hereby given,
11 that:

12 1. _____ is fixed as the
13 last day for filing a written rejection of the
14 modification.

15 2. A copy [*or* a summary] of the modi-
16 fication is attached hereto. Any creditor who
17 has accepted the plan and who fails to file a
18 written rejection of the modification within
19 the time above specified shall be deemed to
20 have accepted the plan as modified.

21 Dated: _____

22

23

-----,
Bankruptcy Judge.

ADVISORY COMMITTEE'S NOTE

This form, which is new, combines the order and notice provided for by Rule 11-39 where the debtor proposes a modification of a plan prior to confirmation.

FORM NO. 11-F18

ORDER CONFIRMING PLAN

1 *[Caption, other than designation, as in*
 2 *Form No. 11-F1.]*
 3 ORDER CONFIRMING PLAN
 4 The debtor's plan filed on _____,
 5 *[if appropriate, as modified by a modifica-*
 6 *tion filed on _____,]* having
 7 been transmitted to creditors; and
 8 The deposit required by Chapter XI of the
 9 Bankruptcy Act having been made; and
 10 It having been determined after hearing
 11 on notice:
 12 1. That the plan has been accepted in
 13 writing by the creditors whose acceptance
 14 is required by law *[or by all creditors*
 15 *affected thereby];* and
 16 2. That the plan has been proposed and
 17 its acceptance procured in good faith, and
 18 not by any means, promises, or acts for-
 19 bidden by law *[and, if the plan is accepted*
 20 *by less than all affected creditors, the pro-*
 21 *visions of Chapter XI of the Act have been*
 22 *complied with, the plan is for the best*
 23 *interests of the creditors and is feasible, the*
 24 *debtor has not been guilty of any of the acts*

25 or failed to perform any of the duties which
26 would be a bar to the discharge of a bank-
27 rupt];

28 It is ordered that:

29 A. The debtor's plan filed on
30 _____, a copy of which is attached
31 hereto, is confirmed.

32 B. Except as otherwise provided or per-
33 mitted by the plan or this order:

34 (1) The above-named debtor is re-
35 leased from all dischargeable debts;

36 (2) Any judgment heretofore or here-
37 after obtained in any court other than this
38 court is null and void as a determination
39 of the personal liability of the debtor with
40 respect to any of the following:

41 (a) debts dischargeable under § 17a
42 and b of the Act;

43 (b) unless heretofore or hereafter de-
44 termined by order of this court to be non-
45 dischargeable, debts alleged to be excepted
46 from discharge under clauses (2) and (4)
47 of § 17a of the Act;

48 (c) unless heretofore or hereafter de-
49 termined by order of this court to be non-
50 dischargeable, debts alleged to be excepted
51 from discharge under clause (8) of § 17a
52 of the Act, except those debts on which there
53 was an action pending on _____,
54 the date when the first petition was filed
55 initiating a case under the Act, in which a
56 right to jury trial existed and a party has
57 either made a timely demand therefor or
58 has submitted to this court a signed state-
59 ment of intention to make such a demand;

[if the court has fixed a
time for the filing of
complaints under § 17c(2)
of the Act pursuant to
Rule 11-48]

[if the court has fixed a
time for the filing of
complaints under § 17c(2)
of the Act pursuant to
Rule 11-48]

60 (d) debts determined by this court to
61 be discharged under § 17c(3) of the Act.

62 C. All creditors whose debts are dis-
63 charged by this order and all creditors hav-
64 ing claims of a type referred to in paragraph
65 (B) (2) above are enjoined from instituting
66 or continuing any action or employing any
67 process to collect such debts as personal
68 liabilities of the above-named debtor.

69 Dated:

70,

77 *Bankruptcy Judge.*

ADVISORY COMMITTEE'S NOTE

This form combines and revises former Official Forms Nos. 51 and 52 to comply with Rule 11-43, and to take account of the 1970 amendments which added §§ 14f, 17b, and 17c and amended § 17a of the Act. Under § 371 confirmation of a plan operates to release the debtor from his dischargeable debts except as the plan or order confirming it may provide otherwise. This form thus includes the order of discharge. Notice of the order of confirmation and order of discharge is provided for on a separate form which is more easily transmitted to creditors. The court may, however, combine the two forms and provide for the notice in this form.

This form may be used whether a plan has been accepted by all affected creditors or less than all affected creditors.

FORM NO. 11-F19

NOTICE OF ORDER OF CONFIRMATION OF PLAN AND DISCHARGE

1 [*Caption, other than designation, as in*

2 *Form No. 11-F1.*]

3 NOTICE OF ORDER OF CONFIRMATION OF

4 PLAN AND DISCHARGE

5 To the debtor, his creditors, and other
6 parties in interest:

7 Notice is hereby given of the entry of an
8 order of this court on _____,

9 confirming the debtor's plan dated _____,

10 _____, and providing further that:

11 A. Except as otherwise provided or
12 permitted by the plan or such order:

13 (1) The above-named debtor is re-
14 leased from all dischargeable debts;

15 (2) Any judgment theretofore or
16 thereafter obtained in any court other than
17 this court is null and void as a determina-
18 tion of the personal liability of the debtor
19 with respect to any of the following:

20 (a) debts dischargeable under § 17a
21 and b of the Bankruptcy Act;

22 (b) unless theretofore or thereafter
23 determined by order of this court to be non-
24 dischargeable, debts alleged to be excepted
25 from discharge under clauses (2) and (4)
26 of § 17a of the Act;

27 (c) unless theretofore or thereafter
28 determined by order of this court to be non-
29 dischargeable, debts alleged to be excepted
30 from discharge under clause (8) of § 17a
31 of the Act, except those debts on which there
32 was an action pending on _____,

33 the date when the first petition was filed
34 initiating a case under the Act, in which a
35 right to jury trial existed and a party has
36 either made a timely demand therefore or
37 has submitted to this court a signed state-
38 ment of intention to make such a demand;

[if the court has fixed a
time for the filing of com-
plaints under § 17c(2) of the
Act pursuant to Rule 11-48]

[if the court has fixed a
time for the filing of com-
plaints under § 17c(2) of the
Act pursuant to Rule 11-48]

39 (d) debts determined by this court to
40 be discharged under § 17c(3) of the Act.

41 B. All creditors whose debts are dis-
42 charged by said order and all creditors hav-
43 ing claims of a type referred to in paragraph
44 (A) (2) above are enjoined from instituting
45 or continuing any action or employing any
46 process to collect such debts as personal
47 liabilities of the above-named debtor.

48 Dated: _____

49 _____

50

Bankruptcy Judge.

ADVISORY COMMITTEE'S NOTE

This form is new. It is to be used to notify creditors of the entry of the order of confirmation and is to be mailed within 30 days thereof pursuant to Rules 11-38 and 11-43. Additionally, the notice informs the creditors of the discharge provisions of § 14f of the Act, particularly those enjoining suits on discharged debts. While this form is separate from the confirmation order, Form No. 11-F18, the order and notice may be combined in one form if the court so desires.

General Order in Bankruptcy No. 48 and Official Forms in Bankruptcy Nos. 48 to 52 inclusive, heretofore prescribed by the Supreme Court, should be abrogated.

PROPOSED AMENDMENT TO OFFICIAL BANKRUPTCY FORM NO. 7 (14)

14. Losses

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including dates, names, and places, and the amounts of money or value and general description of property lost.)

b. Was the loss covered in whole or part by insurance? (If so, give particulars.)

15. Payments or transfers to attorneys.

a. Have you consulted an attorney during the year immediately preceding or since the filing of the original petition herein? (Give date, name, and address.)

b. Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney or to any other person on his behalf? (If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

c. Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf? (If so, give particulars, including amount and terms of obligation.)

Committee Note

The amendment restores language inadvertently omitted from the text of the form which was transmitted by the Judicial Conference to the Supreme Court and prescribed by the Court on April 24, 1973.