

EDNY CHAPTER 11 GUIDANCE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Adoption of Guidelines for First Day Motions

Administrative Order No. 565
-----X

UPON the resolution of the Board of Judges for the United States Bankruptcy Court for the Eastern District of New York, it is hereby

ORDERED, that the annexed Guidelines for First Day Motions are adopted.

Dated: Brooklyn, NY
July 6, 2010

/s/Carla E. Craig

CARLA E. CRAIG

Chief United States Bankruptcy Judge

GUIDELINES FOR FIRST DAY MOTIONS

1. Statement of Purpose

(a) The purpose of this document is to establish guidelines (the “**Guidelines**”) for “first day” motions in business chapter 11 cases in the United States Bankruptcy Court for the Eastern District of New York (the “**Court**”).

(b) The Guidelines are designed to help practitioners identify issues that typically are of concern to the Court where motions are brought before the Court shortly after the filing of a petition and to highlight such matters so that, among other things, determinations can be made, if necessary, on an expedited basis.

2. First Day Motions and Orders

(a) “**First Day Orders**” are orders a Debtor seeks to have entered by the Court shortly after the filing of a petition. Generally, the purpose of First Day Orders is to address administrative matters, to facilitate the transition to debtor in possession status and to ensure that a Debtor’s business and operations are stabilized. The request for a First Day Order should be made by motion (a “**First Day Motion**”), and a copy of the proposed First Day Order should be filed as an exhibit to the First Day Motion. The relief that may be granted by First Day Orders will depend upon the facts and circumstances of the case, the notice given and other related factors, and will take into account the needs of the Debtor and the rights of other parties in interest.

(b) While the Court recognizes the necessity and appropriateness of entertaining First Day Motions, only those motions seeking and appropriately requiring emergency relief will be heard on an expedited basis. Other motions may still be filed shortly after the filing of a petition, but they should seek relief at a future hearing in accordance with 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Bankruptcy Rules for the Eastern District of New York. The early filing of these motions will serve as useful guidance to the Court as to how the case may proceed.

3. **Select First Day Motions and Orders**¹

(a) Joint Administration

(b) Ministerial Matters

(i) This First Day Motion might request Court authorization to, among other things:

(A) extend the time to file schedules of assets and liabilities and the statement of financial affairs (which ordinarily should not exceed sixty (60) days from the date of the filing of the petition);

(B) establish procedures for mailing matrix/ mailing issues;

(C) waive the requirement to file a list of creditors in cases where a motion to retain a claims/noticing agent has been filed; and

(D) use prepetition business forms, including letterhead, checks, etc.

(ii) The relief listed above should, where sought, ordinarily be sought in a single omnibus motion.

(iii) This First Day Motion should not include requests to use prepetition bank accounts or waive the investment requirements of section 345 of the Bankruptcy Code, which are discussed below.

(c) Cash Collateral and Financing

This First Day Motion should be brought in accordance with this Court's "Guidelines for Financing Motions" adopted pursuant to Administrative Order 558 dated April 15, 2010.

¹ This list does not preclude other relief from being sought on an expedited basis where necessary, and a Debtor is not required to seek all or any of the relief discussed herein. The inclusion of any item in this list should not be viewed or cited as justification for, or approval of, the legality or appropriateness of any such relief and does not guarantee that any or all of such relief will be granted.

(d) Cash Management Arrangements

(i) This First Day Motion should describe the proposed cash management system, including the rights and any procedures for the repayment of obligations incurred thereunder, and, in cases where money will be transferred between Debtors or from a Debtor to a non-debtor affiliate, give a business purpose for such transfers.

(ii) This First Day Motion should seek authorization (but not direction) for banks to follow the Debtor's instructions with respect to clearing checks, etc. The proposed First Day Order for this First Day Motion should also state that the banks are entitled to rely on the Debtor's representations as to which checks to clear.

(iii) This First Day Motion should not request relief that is inconsistent with the relief requested in connection with any debtor in possession financing and cash collateral motions.

(e) Prepetition Employee Compensation, Benefits and Business Expenses

(i) This First Day Motion should disclose the gross amounts to be paid per employee or for lower level employees, by employee group (*i.e.*, general job categories) and in the aggregate.

(ii) This First Day Motion should estimate by category (salaries, commissions, reimbursable business expenses, etc.) the aggregate amounts proposed to be paid.

(iii) This First Day Motion should state whether, and the extent to which, the claims proposed to be paid constitute priority claims under section 507 of the Bankruptcy Code ("**Priority Claims**") and, if such claims are not Priority Claims, this First Day Motion should explain why those claims should be afforded the treatment requested.

(iv) To the extent this First Day Motion requests Court authority to pay amounts in excess of the priority amount to any individual employees, a list of the names and position/job titles of all employees as to whom those excess payments will be made should be attached. The propriety of those requests will be considered on a case by case basis. There may be a need to present individual information confidentially in certain circumstances; however, the Court and the United States Trustee should receive this information (on a confidential basis where necessary).

(v) This First Day Motion should describe any relief that will be sought at a later hearing with respect to prepetition employee retention plans.

(f) Critical Vendors

(i) This First Day Motion should ordinarily be brought as a single omnibus First Day Motion.

(ii) This First Day Motion and proposed First Day Order should identify, by category, the types of claims that the Debtor proposes to pay and should authorize specific non-cumulative capped amounts and describe the basis for the estimate of the expenditure. There may be a need to present vendor information confidentially in certain circumstances; however, the Court and the United States Trustee should receive this information (on a confidential basis where necessary).

(iii) This First Day Motion should state whether, and the extent to which, the prepetition claims proposed to be paid constitute (or are believed to constitute) claims under section 503(b)(9) of the Bankruptcy Code and, if such claims are not administrative expense claims, this First Day Motion should explain why those claims should be afforded the treatment requested.

(g) Customer Claims

(i) This First Day Motion might request Court authorization to, among other things, satisfy or honor prepetition obligations with respect to refunds of deposits, lay-away plans, rebates, customer programs, warranty claims, etc.

(ii) This First Day Motion and the related proposed First Day Order should (other than for claims such as warranties or rebates) specify a cap on the amount to be paid or honored per claimant and in the aggregate, and the basis for such cap. There may be a need to present customer information confidentially in certain circumstances; however, the Court and the United States Trustee should receive this information (on a confidential basis where necessary).

(iii) This First Day Motion should state whether, and the extent to which, the claims proposed to be paid constitute (or are believed to constitute) Priority Claims and, if such claims are not Priority Claims, this First Day Motion should explain why those claims should be afforded the treatment requested.

(h) Prepetition Taxes

This First Day Motion should state whether, and the extent to which, the claims proposed to be paid constitute (or are believed to constitute) trust fund taxes, ad valorem taxes that result in liens and other taxes whose nonpayment gives rise to personal liability for officers, directors or employees, or other Priority Claims. If such claims are not Priority Claims, this First Day Motion should explain why those claims should be afforded the treatment requested.

(i) Investment Guidelines

(i) This First Day Motion should disclose:

(A) the approximate amount of funds that the Debtor proposes to invest outside the enumerated investments permitted under section 345(b) of the Bankruptcy Code;

(B) the proposed types of investment to be made; and

(C) whether the United States Trustee has approved the Debtor's proposed arrangements.

(ii) If the Debtor proposes to invest or deposit money in or with an entity that has not satisfied the requirements of section 345(b) of the Bankruptcy Code (a "**Non-Qualified Entity**"), this First Day Motion should explain why such an investment or deposit is preferred and, to the extent known, why the Non-Qualified Entity cannot or has not satisfied the requirements of section 345(b) of the Bankruptcy Code. A list of United States Trustee-approved depositories for the Eastern District of New York can be found at www.usdoj.gov/ust/r02.

(j) Administrative Procedures

This First Day Motion might request Court authorization to, among other things, establish a core service list and set omnibus hearing dates.

(k) Retention of Claims/Noticing Agent

Where it is anticipated that more than 1,000 proofs of claim will be filed, the Debtor should retain a claims/noticing agent to receive mailed proofs of claim. In such cases, counsel should contact the Clerk's Office for procedures involving claims/noticing agents.

(l) Restrictions on Certain Transfers

This First Day Motion might request Court authorization to, among other things, restrict certain transfers of claims against, and equity interests in, the Debtor and establish procedures for notice of certain transfers of claims against, and equity interests in, the Debtor.

4. Extraordinary Relief

(a) Any First Day Motion requesting the relief identified in Bankruptcy Rule 6003 prior to the expiry of the twenty-one (21) day period provided by Bankruptcy Rule 6003 will be considered a request for “**Extraordinary Relief.**”

(b) If the Debtor requests any Extraordinary Relief, the First Day Motion, together with the omnibus affidavit or declaration, as applicable, should specifically state that Extraordinary Relief is sought and provide appropriate justification therefor, in accordance with E.D.N.Y. Local Bankruptcy Rule 9077-1.

(c) In connection with a request for Extraordinary Relief, the Court will consider, among other factors:

(i) the extent and adequacy of the notice provided;

(ii) whether only the minimal relief necessary is requested on an interim basis, with a broader final order to be submitted on notice;

(iii) whether an Official Committee of Unsecured Creditors appointed under section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”) or other parties in interest will have the ability to conduct an investigation and bring any appropriate proceedings related to the Extraordinary Relief (including, if relief is granted prior to any Creditors’ Committee appointment, a motion to modify or prospectively vacate the relief granted, if appropriate); and

(iv) the urgency of the relief requested.

5. Participation of the Creditors’ Committee

(a) Absent good cause shown, the Court will not grant an order approving final substantive relief with respect to any matter that is granted on an interim basis pursuant to a First Day Motion unless the Creditors’ Committee is in place for at least seven (7) days before the motion is heard.

(b) Absent good cause shown, the Creditors’ Committee should be in place for at least seven (7) days before the following motions are heard:

(i) Rejection of leases and executory contracts. Affected landlords and other direct counterparties should receive appropriate notice of any motion.

- (ii) Procedures establishing payment of interim compensation for retained professionals.
- (iii) Approval of severance and employee retention programs.
- (iv) Approval of the assumption of existing employment agreements.

6. Background and Factual Support

A single omnibus affidavit or declaration (or, if necessary, a small number of affidavits or declarations) should include the necessary general background as well as specific factual support for each First Day Motion, as necessary. The relevant affidavit or declaration may expressly be incorporated by reference into each motion in place of a lengthy background section of First Day Motions and other motions filed in the case.

7. Notice of First Day Motions

(a) An index (the “**Index**”) of First Day Motions and proposed First Day Orders that includes a brief summary of the relief sought in each (which summary may be in chart form and should not generally exceed one (1) paragraph per Motion) should be prepared by the Debtor. The Index also should note which First Day Motions, if any, include a request for Extraordinary Relief. The Index should inform parties that the First Day Motions and proposed First Day Orders may be viewed on the Court’s website (<http://www.nyeb.uscourts.gov/>) with a login and password to the Court’s Public Access to Court Electronic Records and that copies can be obtained from the Debtor’s counsel and/or the Debtor’s noticing agent. The Index will make the hearing on the First Day Motions more efficient as well as provide additional notice to parties in interest.

(b) The Index and a binder of all First Day Motions and proposed First Day Orders should ordinarily be provided to the United States Trustee, any party with a security interest in substantially all of the Debtor’s assets and, if appropriate, any unofficial committee at least one (1) business day prior to the filing of the petition.

(c) Once the petition is filed and the Debtor is notified of the scheduling of the hearing on the First Day Motions, the Index should immediately be sent to the United States Trustee, counsel to any party with a security interest in substantially all of the Debtor’s assets, counsel to any other party adversely affected by the relief requested, and the holders of the twenty (20) largest unsecured claims against each Debtor, if not onerous in view of the number of Debtor entities, or if a consolidated list is filed, to the holders of the thirty (30) largest unsecured claims, by hand delivery, facsimile or email, along with a notice of the time and place of the hearing on the First Day Motions, in the manner best designed to give adequate notice under the circumstances. It is understood that email addresses and/or facsimile numbers for some creditors may not be known by the Debtor at that time, and that such parties may not receive actual notice of the hearing.

(d) Whenever practicable, a list of email addresses for the Debtor, counsel to the Debtor, counsel to any party with a security interest in substantially all of the

Debtor's assets, counsel to any other party adversely affected by the relief requested, and the holders of the twenty (20) largest unsecured claims against each Debtor, or if a consolidated list is filed, the holders of the thirty (30) largest unsecured claims should be provided to the United States Trustee before the First Day Motions are filed, and in any case, before the final hearing with respect to any matter that is granted on an interim basis pursuant to a First Day Motion.

8. List of Unsecured Creditors

Whenever practicable, a separate list of creditors holding the twenty (20) largest unsecured claims against each Debtor should be filed as required by Bankruptcy Rule 1007 before the hearing on the First Day Motions is held. In cases involving multiple Debtors, if it would be impracticable for each Debtor to file a separate list, an explanation should be set forth in the Bankruptcy Rule 1007 affidavit and a consolidated list of the holders of the thirty (30) largest unsecured claims should be filed.²

² The United States Trustee may require an expanded list of creditors depending on the circumstances of the case.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Adoption of Bar Date Order Guidelines

Administrative Order No. 556

-----X

UPON the resolution of the Board of Judges for the United States Bankruptcy Court for the Eastern District of New York, it is hereby

ORDERED, that the annexed Bar Date Order Guidelines are adopted.

Dated: Brooklyn, NY
March 29, 2010

/s/Carla E. Craig

CARLA E. CRAIG

Chief United States Bankruptcy Judge

BAR DATE ORDER GUIDELINES

The purpose of these guidelines is to provide a form order (“**Bar Date Order**”) to establish deadlines for the filing of proofs of claim (the “**Bar Date**”) in chapter 11 cases and thereby expedite court review and entry of such orders.

All proposed Bar Date Orders should conform to these guidelines and use the form of Bar Date Order and notice of Bar Date, with only such changes as are necessary under the circumstances of the individual case. **If a proposed Bar Date Order and accompanying notice of Bar Date do not comply with these guidelines, counsel should identify and explain, in the application for approval of the Bar Date Order, the reason for each change.** These forms and the guidelines apply only in chapter 11 cases and do not apply to deadlines for filing administrative claims.

GUIDELINES

1. An application for entry of a Bar Date Order should ordinarily be filed within 30 days after the earlier of (i) the initial case conference and (ii) the date which the Debtor’s Schedules of Assets and Liabilities and Schedules of Executory Contracts and Unexpired Leases are due to be filed. If counsel believes that entry of a Bar Date Order should be delayed for any reason, counsel is urged to take up the matter at the initial case conference.
2. The application and accompanying papers may be submitted to the court without notice if these guidelines are followed and the application represents that the proposed Bar Date Order has been approved in form and substance by any official creditors’ committee, any Debtor in Possession lender (or administrative agent thereof, if any) and any secured creditor (or administrative agent thereof, if any) with a lien on a significant percentage of

the Debtor's assets. Otherwise, the proposed Bar Date Order should be submitted by notice of presentment or by notice of motion on notice to any official committee, Debtor in Possession lender, party requesting notice, and the United States trustee.

3. The application may contain suggested dates for the Bar Date, for mailing the notice of the Bar Date to creditors and, where appropriate, for publication. In most cases the suggested Bar Date should be at least 35 days after the mailing date and at least 28 days after the publication date. If possible, the proposed dates should provide the court with at least seven days after the application is submitted to enter the order. If applicable, the application should take into account the procedural provisions pertaining to creditors with foreign addresses. *See* Federal Rule of Bankruptcy Procedure (“**Bankruptcy Rules**”) 2002(p). For cause shown, the court may reduce the notice period to 21 days after mailing in accordance with Bankruptcy Rules 2002(a)(7) and 9006(c)(2).
4. The form of Bar Date Order and the accompanying form of notice of the Bar Date to creditors assumes that the case is a single-debtor case. If more than one Debtor is present in jointly administered cases, the notice should list each of the Debtors and their related case numbers as part of, or as an addendum to, the notice of the Bar Date to creditors.
5. The form of Bar Date Order contains a paragraph in brackets providing for publication of notice of the Bar Date. These guidelines do not take any position as to whether publication notice of the Bar Date is required in a particular case. Counsel should state in the application for a Bar Date whether they believe publication is required and, if so, the proposed time, place and method of publication, and in appropriate cases should raise the issue at the initial case conference. The published notice should be substantially similar to the written notice to creditors.

6. The form of Bar Date Order and notice of Bar Date contain instructions for proofs of claim to be filed electronically with the court, mailed to the court, or delivered by hand directly to the court site where the case is pending. Where it is anticipated that more than 1,000 proofs of claim will be filed, the Debtor should retain a claims/noticing agent (“**Claims Agent**”) to receive mailed proofs of claim. In such cases, counsel should contact the Clerk’s Office for procedures involving Claims Agents. In cases *without* Claims Agents, attorneys (with full access accounts) and employees of institutional creditors (with limited access accounts) may file proofs of claim electronically on the Court’s Case Management/Electronic Case File (“**CM/ECF**”) system.
7. The form of Bar Date Order is intended for use only in connection with fixing a bar date for the filing of proofs of claim. If a Bar Date for the filing of proofs of equity interest is required, counsel may file a substantially similar motion or counsel may submit a proposed order and accompanying notice that sets a Bar Date for the filing of proofs of claim and proofs of interest. Notice of a deadline for the filing of administrative claims should **not** ordinarily be combined with notice of any other Bar Date.
8. The forms of Bar Date Order and notice of Bar Date list persons and entities that are not required to file a proof of claim. While the list is not exhaustive, it is anticipated that these persons and entities will not be required to file proofs of claim in most chapter 11 cases. Some of the subparagraphs are bracketed, reflecting that the exemption may have no application or the Debtor may elect not to exempt the particular category from the requirement to file.
9. The notice of Bar Date to creditors should contain the name and telephone number of an individual at the Debtor’s counsel, or the bankruptcy services firm to whom questions may

be addressed. The notice should not indicate that it has been signed by the bankruptcy judge but may provide that the notice is "By Order of the Court."

10. The electronic copy of the proposed Bar Date Order submitted to the court should include both the form of the proposed Bar Date Order and the text of the notice of Bar Date to creditors.

[FORM OF BAR DATE ORDER]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

Case No.: ____ - ____ (____)

Debtor.

-----X

**ORDER ESTABLISHING DEADLINE FOR FILING PROOFS OF CLAIM
AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

Upon the application of the Debtor and Debtor in Possession for an order, pursuant to Federal Rule of Bankruptcy Procedure ("**Bankruptcy Rule**") 3003(c)(3), fixing a deadline and establishing procedures for filing proofs of claim and approving the form and manner of service thereof, and it appearing that the relief requested is in the best interests of the Debtor, its estate, and creditors and that adequate notice has been given and that no further notice is necessary; and after due deliberation and good and sufficient cause appearing therefor, it is hereby

ORDERED, that except as otherwise provided herein, all persons and entities, (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts and governmental units) that assert a claim, as defined in section 101(5) of 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), against the Debtor which arose prior to the filing of the Chapter 11 petition on _____, shall file a proof of such claim in

writing so that it is received on or before _____, 20__ (the “**Bar Date**”); and

it is further

[**ORDERED**, that notwithstanding any other provision hereof, proofs of claim filed by governmental units must be filed on or before _____, 20__ (the date that is 180 days after the date of the order for relief); and it is further]¹

ORDERED, that the following procedures for the filing of proofs of claim shall apply:

- (a) Proofs of claim shall conform substantially to Official Bankruptcy Form No. 10;
- (b) *[(1) Cases without Claims Agents - Insert this Subparagraph:]*²
Attorneys (with full access accounts) and employees of institutional creditors (with limited access accounts) shall file proofs of claim electronically on the Court’s Case Management/Electronic Case File (“**CM/ECF**”) system. Those without accounts to the CM/ECF system shall file their proofs of claim by mailing or delivering the original proof of claim to the United States Bankruptcy Court, Eastern District of New York, [Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271 Cadman

¹ For use only when the general Bar Date is less than 180 days after the Filing Date. Section 502(b)(9) of the Bankruptcy Code requires that governmental units have at least 180 days after the order for relief to file a proof of claim (however, a different deadline may apply for certain tax-related claims in a chapter 13 case).

² Choose either subparagraph 1 or subparagraph 2. If you have questions regarding the applicability of a claims agent to your case, please contact the Clerk’s Office.

Plaza East, Suite 1595, Brooklyn, NY 11201-1800] [Alfonse M. D'Amato
U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722];

[(2) Cases with Claims Agents - Insert this Subparagraph:] Proofs of claim shall be filed either by U.S. Postal Service mail or overnight delivery of the original proof of claim to the United States Bankruptcy Court, Eastern District of New York, c/o [address provided by Claims Agent] or by mailing or delivering the original proof of claim by hand to the United States Bankruptcy Court, Eastern District of New York, [Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271 Cadman Plaza East, Suite 1595, Brooklyn, NY 11201-1800] [Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722];

- (c) Proofs of claim shall be deemed timely filed only when received by the Clerk of the Court on or before the Bar Date;
- (d) Proofs of claim shall (i) be signed; (ii) include supporting documentation (if voluminous, attach a summary); (iii) be in the English language; and (iv) be denominated in United States currency;
- (e) [In multiple debtor cases] Proofs of claim shall specify by name and case number the Debtor against which the claim is filed; if the holder asserts a claim against more than one Debtor or has claims against different Debtors, the holder shall file a separate proof of claim form for each Debtor; and it is further

ORDERED, that the following persons or entities need not file a proof of claim on or prior to the Bar Date:

- (a) Any person or entity that has already filed a proof of claim against the Debtor in this case with the Clerk of the Bankruptcy Court for the Eastern District of New York in a form substantially similar to Official Bankruptcy Form No. 10;
- (b) Any person or entity whose claim is listed on the Schedules of Assets and Liabilities filed by the Debtor (collectively, the “**Schedules**”) [Docket Entry No. _____], if (i) the claim is not scheduled as “disputed,” “contingent” or “unliquidated”; and (ii) the claimant agrees with the amount, nature and priority of the claim as set forth in the Schedules; [and (iii) the claimant does not dispute that the claim is an obligation of the specific Debtor against which the claim is listed in the Schedules];
- (c) Any holder of a claim that has already been allowed in this case by order of the Court;
- (d) Any holder of a claim for which a different deadline for filing a proof of claim in this case has already been fixed by this Court; or
- (e) Any holder of a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration of the Debtor’s estate; and it is further

ORDERED, that any person or entity that holds a claim that arises from the rejection of an executory contract or unexpired lease, as to which the order authorizing such rejection is dated on or before the date of entry of this Order, must file a proof of claim based on such rejection on or before the later of the Bar Date or the date that is 30 days after the date of the order authorizing such rejection, and any person or entity that holds a claim that arises from the rejection of an executory contract or unexpired lease, as to which an order authorizing such rejection is dated after the date of entry of this Order, must file a proof of claim on or before such date as the Court may fix in the applicable order authorizing such rejection; and it is further

ORDERED, that holders of equity security interests in the Debtor need not file proofs of interest with respect to the ownership of such interests, but if any such holder has a claim against the Debtor (including a claim relating to an equity interest or the purchase or sale of the equity interest), a proof of claim shall be filed on or prior to the Bar Date; and it is further

ORDERED, that if the Debtor amends or supplements the Schedules after the date of this Order, the Debtor shall give notice of any amendment or supplement to the holders of claims amended thereby, and holders of such claims shall have 30 days from the date of service of the notice to file proofs of claim and shall be given notice of that deadline; and it is further

ORDERED, that nothing in this Order shall prejudice the right of the Debtor or any other party in interest to dispute or assert offsets or defenses to any claim listed in the Schedules; and it is further

ORDERED, that pursuant to Bankruptcy Rule 3003(c)(2), a holder of a claim that fails to comply with this Order by timely filing a proof of claim in appropriate form shall not be treated as a creditor with respect to that claim for purposes of voting and distribution; and it is further

ORDERED, that notice of the Bar Date substantially in the form annexed hereto is approved and shall be deemed adequate and sufficient if served by first-class mail at least 35 days prior to the Bar Date on:

- (a) the United States trustee;
- (b) counsel to each official committee;
- (c) all persons or entities that have requested notice of the proceedings in this case;
- (d) all persons or entities that have filed claims in this case;
- (e) all creditors and other known holders of claims as of the date of this Order, including all persons or entities listed in the Schedules as holding claims;
- (f) all parties to executory contracts and unexpired leases of the Debtor;
- (g) all parties to litigation with the Debtor;

(h) the Internal Revenue Service for the district in which the case is pending and, if required by Bankruptcy Rule 2002(j), the Securities and Exchange Commission and any other required governmental units;

and it is further

[**ORDERED**, that pursuant to Bankruptcy Rule 2002(l), the Debtor shall publish notice of the Bar Date in substantially the form annexed hereto as Exhibit ____ once, in the _____ [and the _____] at least 28 days prior to the Bar Date, which publication is hereby approved and shall be deemed good, adequate and sufficient publication notice of the Bar Date;³ and it is further]

ORDERED, that the Debtor is authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order; and it is further

ORDERED, that entry of this Order is without prejudice to the right of the Debtor to seek a further order of this Court fixing a date by which holders of claims or interests not subject to the Bar Date established herein must file such proofs of claim or interest or be barred from doing so.

Dated: _____, New York

_____, 20__

³ For Debtors that propose to publish notice of the Bar Date. See Guideline 5.

UNITED STATES BANKRUPTCY JUDGE

[FORM OF NOTICE OF BAR DATE]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----x

In re:

Chapter 11

Case No.: ____ - ____ (____)

Debtor.

-----x

**NOTICE OF DEADLINE REQUIRING FILING OF PROOFS OF
CLAIM ON OR BEFORE _____**

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST [NAME OF DEBTOR]

The United States Bankruptcy Court for the Eastern District of New York has entered an Order establishing [set forth date in bold] (the “**Bar Date**”) as the last date for each person or entity (including individuals, partnerships, corporations, joint ventures, trusts and governmental units) to file a proof of claim against [Name of Debtor] (the “**Debtor**”).

The Bar Date and the procedures set forth below for filing proofs of claim apply to all claims against the Debtor that arose prior to _____ (the “**Filing Date**”), the date on which the Debtor commenced a case under chapter 11 of 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), except for those holders of the claims listed in Section 4 below that are specifically excluded from the Bar Date filing requirement.

1. WHO MUST FILE A PROOF OF CLAIM

You MUST file a proof of claim to vote on a Chapter 11 plan filed by the Debtor or to share in distributions from the Debtor's bankruptcy estate if you have a claim that arose prior to the Filing Date, and it is not one of the types of claim described in Section 4 below. Claims based on acts or omissions of the Debtor that occurred before the Filing Date must be filed on or prior to the Bar Date, even if such claims are not now fixed, liquidated or certain or did not mature or become fixed, liquidated or certain before the Filing Date.

Under section 101(5) of the Bankruptcy Code and as used in this Notice, the word "claim" means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

2. WHAT TO FILE

Your filed proof of claim must conform substantially to Official Form No. 10, a copy of which is annexed to this Notice. Additional proof of claim forms may be obtained at www.uscourts.gov/bkforms.

The proof of claim form must be **signed** by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. It must be written in English and be denominated in United States currency. You must attach to your completed proof of claim any documents on which the claim is based (if voluminous, attach a summary).

[Any holder of a claim against more than one Debtor must file a separate proof of claim with respect to each Debtor, and all holders of claims must identify on their proof of claim the specific Debtor against which their claim is asserted and the case number of that Debtor's bankruptcy case. A list of the names of the Debtors and their case numbers is [set forth in the case caption above] [attached to this Notice].]

Your proof of claim form shall not contain complete social security numbers or taxpayer identification numbers (only the last four digits), a complete birth date (only the year), the name of a minor (only the minor's initials) or a financial account number (only the last four digits of such financial account).

3. WHEN AND WHERE TO FILE

[(A) Cases Without Claims Agents - Insert the following as Paragraph 3:]⁴

Except as provided for herein, all proofs of claim must be filed so as to be received **on or before** _____.

Attorneys (with full access accounts) and employees of institutional creditors (with limited access accounts) shall file proofs of claim electronically on the Court's Case Management/Electronic Case File ("CM/ECF") system. Those without accounts to the CM/ECF system shall file their proofs of claim by mailing or delivering the original proof of claim to the Court at the address provided below:

[United States Bankruptcy Court
Eastern District of New York
Conrad B. Duberstein U.S. Bankruptcy Courthouse
271 Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800]

⁴ Choose either subparagraph A *or* subparagraph B. If you have questions regarding the applicability of a claims agent to your case, please contact the Clerk's Office.

[United States Bankruptcy Court
Eastern District of New York
Alfonse M. D'Amato U.S. Courthouse
290 Federal Plaza
Central Islip, NY 11722]

A proof of claim will be deemed timely filed only when received by the Bankruptcy Court on or before the Bar Date. A proof of claim may not be delivered by facsimile, telecopy or electronic mail transmission.

[Governmental units may have until _____, the date that is 180 days after the order for relief, to file proofs of claim.]⁵

[(B) Cases with Claims Agents - Insert the following as Paragraph 3:]

Except as provided for herein, all proofs of claim must be filed so as to be received **on or before** _____ at the following address:

[Insert address provided by claims agent]
agent]

IF DELIVERED BY HAND:

United States Bankruptcy Court
Eastern District of New York
Conrad B. Duberstein U.S.
Bankruptcy Courthouse
271 Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800

or

United States Bankruptcy Court
Eastern District of New York
Alfonse M. D'Amato U.S. Courthouse
290 Federal Plaza
Central Islip, NY 11722

⁵ See footnote 1, above.

Proofs of claim will be deemed filed only when received at the address listed herein on or before the Bar Date. Proofs of claim may not be delivered by facsimile, telecopy or electronic mail transmission.

[Governmental units may have until _____, the date that is 180 days after the order for relief, to file proofs of claim.]⁶

4. WHO NEED NOT FILE A PROOF OF CLAIM

You do **not** need to file a proof of claim on or before the Bar Date if you are:

- (a) A person or entity that has already filed a proof of claim against the Debtor in this case with the Clerk of the Bankruptcy Court for the Eastern District of New York in a form substantially similar to Official Bankruptcy Form No. 10;
- (b) A person or entity whose claim is listed on the Schedules of Assets and Liabilities filed by the Debtor (collectively, the “**Schedules**”) [Docket Entry No. _____] if (i) the claim is not scheduled as “disputed,” “contingent,” or “unliquidated” and (ii) you agree with the amount, nature and priority of the claim as set forth in the Schedules [and (iii) you do not dispute that your claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules];
- (c) A holder of a claim that has already been allowed in this case by order of the Court;
- (d) A holder of a claim for which a different deadline for filing a proof of claim in this case has already been fixed by this Court; or

⁶ See footnote 1, above.

- (e) A holder of a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration of the Debtor's estate.

If you are a holder of an equity interest in the Debtor, you need not file a proof of interest with respect to the ownership of such equity interest at this time. But, if you assert a claim against the Debtor, including a claim relating to your equity interest or the purchase or sale of that interest you must file a proof of claim on or prior to the Bar Date in accordance with the procedures set forth in this Notice.

This Notice is being sent to many persons and entities that have had some relationship with or have done business with the Debtor but may not have an unpaid claim against the Debtor. The fact that you have received this Notice does not mean that you have a claim, or that the Debtor or the Court believes that you have a claim against the Debtor.

5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

If you have a claim arising out of the rejection of an executory contract or unexpired lease as to which the order authorizing such rejection is dated on or before _____, the date of entry of the Bar Order, you must file a proof of claim based on such rejection on or before the later of the Bar Date or the date that is 30 days after the date of the order authorizing such rejection. Any person or entity that has a claim arising from the rejection of an executory contract or unexpired lease, as to which the order is dated after the date of entry of the Bar Order, you must file a proof of claim with respect to such claim by the date fixed by the Court in the applicable order authorizing rejection of such contract or lease.

6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATE

ANY HOLDER OF A CLAIM THAT IS NOT EXCEPTED FROM THE REQUIREMENTS OF THIS ORDER, AS SET FORTH IN SECTION 4 ABOVE, AND THAT FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM, WILL BE BARRED FROM ASSERTING ITS CLAIM AGAINST THE DEBTOR AND ITS CHAPTER 11 ESTATE, VOTING ON ANY PLAN OF REORGANIZATION FILED IN THIS CASE, AND PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTOR'S CHAPTER 11 CASE ON ACCOUNT OF THAT CLAIM.

7. THE DEBTOR'S SCHEDULES AND ACCESS THERETO

You may be listed as the holder of a claim against the Debtor in the Debtor's Schedules. If you agree with the nature, amount and status of your claim as listed in the Debtor's Schedules, [and if you do not dispute that your claim is only against the Debtor specified by the Debtors,] and if your claim is not described as "disputed," "contingent," or "unliquidated," you do not need to file a proof of claim. Otherwise, you must file a proof of claim before the Bar Date in accordance with the procedures set forth in this Notice.

Copies of the Debtor's Schedules are available for inspection on the Court's Internet Website at <http://www.nyeb.uscourts.gov>. A login and password to the Court's Public Access to Electronic Court Records ("PACER") are required to access this information and can be obtained through the PACER Service Center at <http://www.pacer.psc.uscourts.gov>. Copies of the Debtor's Schedules may also be examined between the hours of 9:00 a.m. and 4:30 p.m.,

Monday through Friday at the Office of the Clerk of the Bankruptcy Court, [Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271 Cadman Plaza East, Brooklyn, NY 11201-1800] [Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722]. Copies of the Debtor's Schedules may also be obtained by written request to the Debtor's counsel at the address and telephone number set forth below:

[address and telephone number]

If you are unsure about any of these matters, including whether you should file a proof of claim, you may wish to consult an attorney.

Dated: _____, New York

BY ORDER OF THE COURT

_____, 20__

COUNSEL FOR THE DEBTOR AND
DEBTOR IN POSSESSION
FIRM NAME
ADDRESS
PHONE NUMBER

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Adoption of Guidelines for Financing Motions

Administrative Order No. 558

-----X

UPON the resolution of the Board of Judges for the United States Bankruptcy Court for the Eastern District of New York, it is hereby

ORDERED, that the annexed Guidelines for Financing Motions are adopted.

Dated: Brooklyn, NY
April 15, 2010

/s/Carla E. Craig

CARLA E. CRAIG

Chief United States Bankruptcy Judge

GUIDELINES FOR FINANCING MOTIONS

The United States Bankruptcy Court for the Eastern District of New York (the "Court") has adopted the following guidelines (the "**Financing Guidelines**") for use in chapter 11 cases where a Debtor¹ seeks authority to use cash collateral pursuant to section 363(c) of 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**") or to obtain credit pursuant to section 364 of the Bankruptcy Code (a "**Financing Motion**"). The Financing Guidelines are designed to: (a) provide a framework for Debtors to clearly and uniformly describe proposed postpetition financing transactions to allow the Court and parties to understand such transactions and (b) identify certain provisions that should be specifically identified and explained whenever included in Financing Motions or the relevant financing agreements.

The Financing Guidelines do not: (a) address the circumstances under which a financing motion will be approved, (b) address other substantive legal issues or (c) constitute rules of the Court.

The Financing Guidelines supplement, but do not replace, sections 363 and 364 of the Bankruptcy Code and Rules 4001(b), (c) and (d) of the Federal Rules of Bankruptcy Procedure.

1. Contents of Financing Motion

The following provisions, to the extent applicable, are in addition to the material provisions set forth in Bankruptcy Rules 4001(b)(1)(B), (c)(1)(B) and (d)(1)(B). The requirements of Bankruptcy Rules 4001(b)(1)(B), (c)(1)(B) and (d)(1)(B) may be fulfilled through citation reference to the provisions of a filed copy of the relevant agreement:

- (a) the amount of cash collateral the party seeks permission to use or the amount of credit the party seeks to obtain, including any committed amount or borrowing base formula and the estimated availability under the formula;
- (b) material conditions to closing and borrowing, including budget provisions;
- (c) pricing and economic terms and the treatment of costs and expenses of the lender(s), any agent for the lender(s) and their respective professionals;
- (d) any effect on existing liens of the granting of collateral or adequate protection provided to the lender(s) and any priority or superpriority provisions;
- (e) any carve-outs from liens or superpriorities;
- (f) any provision that elevates prepetition debt to administrative expense status or that secures prepetition debt with liens on postpetition assets;
- (g) any provision that applies the proceeds of postpetition financing to pay, in whole or in part, prepetition debt or which otherwise has the effect of converting prepetition debt to postpetition debt ("**rollup**");

¹ The term "Debtor" includes "debtor in possession" and "trustee," as appropriate under the particular circumstances.

(h) any limitation on the lender's obligation to fund certain activities of the Debtor or committee appointed under sections 1102 or 1114 of the Bankruptcy Code;

(i) any terms that provide that the use of cash collateral or the availability of credit will cease on (i) the filing of a challenge to the lender's prepetition lien or the lender's prepetition claim based on the lender's prepetition conduct; (ii) entry of an order granting relief from the automatic stay; (iii) the grant of a change of venue with respect to the case or any adversary proceeding; (iv) management changes or the departure, from the Debtor, of any identified employees; (v) the expiration of a specified time for filing a plan; or (vi) the making of a Financing Motion by a party in interest seeking any relief (as distinct from an order granting such relief);

(j) any change-of-control provisions;

(k) any provision establishing a deadline for, or otherwise expressly requiring, the sale of property of the estate;

(l) any prepayment penalty or other provision affecting the Debtor's right or ability to repay the financing in full during the course of the chapter 11 case;

(m) in jointly administered cases, terms that govern the joint liability of the Debtors, including any provisions that would govern the nature and/or priority, if any, of any interdebtor claims that would result if a Debtor were to repay debt incurred by or for the benefit of another Debtor;

(n) any provision for the funding of non-debtor affiliates with the cash collateral or proceeds of the loan, as applicable, and the approximate amount of such funding; and

(o) any termination or default provisions, cross-default provisions or provisions providing for events of default or having the effect of termination or default on the automatic stay or the lender's ability to enforce remedies.

(p) any provision which purports to preclude the Court from entering an order authorizing financing which primes liens held by the lender, or any provision which purports to preclude the Court from confirming a plan of reorganization which impairs the lender without the lender's consent.

2. Disclosure of Efforts to Obtain Financing and Good Faith

A Financing Motion seeking authority to obtain credit should describe the efforts of the Debtor to obtain financing, the basis on which the Debtor determined that the proposed financing is on the best terms available and material facts bearing on the issue of whether the extension of credit is being extended in good faith.

3. Notice After Event of Default

If a proposed order contains a provision that modifies or terminates the automatic stay or permits the lender to enforce remedies against the collateral upon the occurrence of a default, the proposed order should require at least seven days' notice to the Debtor, the United States Trustee and the committee appointed under section 1102 of the Bankruptcy Code (or the 20 largest unsecured creditors of the Debtor as listed on the Debtor's schedules if no committee is appointed under section 1102 of the Bankruptcy Code), before the modification or termination of the automatic stay or the enforcement of the lender's remedies. If less notice is provided, the Financing Motion should explain why.

If a proposed order contains a provision terminating the use of cash collateral, the proposed order should require at least three days' notice before the use of cash collateral ceases (provided that the use of cash collateral conforms to any budget in effect). If less notice is provided, the Financing Motion should explain why.

4. Carve-Outs

Any provision in a Financing Motion or proposed order relating to a carve-out from liens or superpriority claims should disclose when the carve-out takes effect, whether it remains unaltered after payment of interim fees made before an event of default, and any effect of the carve-out on any borrowing base or borrowing availability under the postpetition loan. If a provision relating to a carve-out provides disparate treatment for the professionals retained by a committee appointed under sections 1102 or 1114 of the Bankruptcy Code, when compared with the treatment for professionals retained by the Debtor, or if the carve-out does not include reasonable expenses of committee members (excluding fees and expenses of professionals employed by such members individually) and/or reasonable post-conversion commissions, fees and expenses of a chapter 7 trustee, or fees payable to the Bankruptcy Court and the United States Trustee (together with any accrued interest) are not provided for in a separate carve-out, there should be disclosure thereof under subdivision (a) of these Financing Guidelines and the Financing Motion should contain an explanation of the reasons therefor.

Reasonable allocations in a carve-out provision may be proposed for, *inter alia*, (i) expenses of professionals retained by committees appointed in the case, (ii) expenses of professionals retained by the Debtor, (iii) fees payable to the Bankruptcy Court and to the United States Trustee, (iv) reasonable expenses of committee members and (v) reasonable post-conversion commissions, fees and expenses of a chapter 7 trustee.

5. Investigation Periods Relating to Waivers and Concessions as to Prepetition Debt

If a Financing Motion seeks entry of an order in which the Debtor has stipulated, acknowledged or otherwise admitted the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim, either the proposed order should include a provision to permit the investigation and proceedings relating to such

determination by parties other than the Debtor as follows, or the Financing Motion should explain why the proposed order does not contain such a provision:

(a) the committee of unsecured creditors appointed under section 1102 of the Bankruptcy Code shall have at least 60 days (or a longer period as the Court orders for cause shown before the expiration of such period) from the date of the selection of its counsel for the committee to investigate the facts and file a complaint or a motion seeking authority to commence litigation as a representative of the estate;

(b) if no such committee has been appointed, any party in interest (other than the Debtor) shall have at least 75 days (or a longer period as the Court orders for cause shown before the expiration of such period) from the entry of the final financing order to investigate the facts and file a complaint or a motion seeking authority to commence litigation as a representative of the estate; or

(c) upon conversion of a chapter 11 case to chapter 7, to the extent that any period to investigate the facts and file a complaint or a motion seeking authority to commence litigation as a representative of the estate has not expired, such period shall automatically be extended for 75 days from the date a chapter 7 trustee is appointed.

6. Content of Interim Orders

A single motion may be filed seeking entry of an interim order and a final order, which orders would be normally entered at the conclusion of the preliminary hearing and the final hearing, respectively, as those terms are used in Bankruptcy Rules 4001(b)(2) and (c)(2). In addition, where circumstances warrant, the Debtor may seek emergency relief for financing limited to the amount necessary to avoid immediate and irreparable harm to the estate pending the preliminary hearing.

A Financing Motion that seeks entry of an emergency or interim order before a final hearing under Bankruptcy Rule 4001(b)(2) or (c)(2) should describe the amount and purpose of funds sought to be used or borrowed on an emergency or interim basis and should set forth facts to support a finding that immediate or irreparable harm will be caused to the estate if immediate relief is not granted before the final hearing.

An interim order will not ordinarily bind the Court with respect to the provisions of the final order provided that (i) the lender will be afforded all the benefits and protections of the interim order, including a lender's protections under sections 364(e) and 363(m) of the Bankruptcy Code with respect to funds advanced during the interim period and (ii) the interim order will not bind the lender to advance funds pursuant to a final order that contains provisions contrary to or inconsistent with the interim order.

7. Adequacy of Budget

If the Debtor will be subject to a budget under a proposed cash collateral or financing order, the Financing Motion should include a statement by the Debtor stating whether there is reason to

believe that the budget will be adequate (inclusive of professional fees and disbursements), considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the budget.

8. Notice

Notice of a preliminary or final hearing should be given to the United States Trustee, the debtor's twenty largest unsecured creditors or the creditors' committee if one has been appointed, the persons required by Bankruptcy Rules 4001(b)(3) and 4001(c)(3), as the case may be, the, and any other persons whose property or collateral would be directly affected by the outcome of a Financing Motion or any provision of a proposed order.

Emergency and interim relief may be sought after the best notice available under the circumstances; however, emergency and interim relief will ordinarily not be considered unless the United States Trustee and the Court have had a reasonable opportunity to review the motion, the financing agreement, and the proposed interim order, and the Court normally will not approve provisions that directly affect the interests of parties without notice to them, which may be given by overnight package express, facsimile or electronic mail.

The hearing on a final order for the use of cash collateral under section 363(c) of the Bankruptcy Code or for authority to obtain credit under section 364 of the Bankruptcy Code will ordinarily not commence until there has been a reasonable opportunity for the formation of a creditors' committee under section 1102 of the Bankruptcy Code and for the creditors' committee to obtain counsel.

9. Early Notice to the Office of the United States Trustee

Prospective Debtors may provide substantially complete drafts of the Financing Motion, interim order and related financing documents to the Office of the United States Trustee in advance of a filing, on a confidential basis. Debtors are encouraged to provide drafts of financing requests, including proposed orders, to the Office of the United States Trustee as early as possible in advance of filing to provide that office with the opportunity to comment.

10. Presence at Hearing

Unless the court directs otherwise,

(a) counsel for each proposed lender, or for an agent representing such lender, should be present at all preliminary and final hearings on the authority to obtain credit from such lender, and counsel for each entity, or for an agent of such entity, with an interest in cash collateral to be used with the entity's consent should be present at all preliminary and final hearings on the authority to use such cash collateral; and

(b) a business representative of the Debtor, the proposed lender or an agent representing such lender, and any party objecting to the Financing Motion for authority to

obtain credit, each with appropriate authority, should be present at, or available by telephone for, all preliminary and final hearings.

11. Contents of Proposed Order

(a) Findings of Fact

(i) A proposed order approving the use of cash collateral under section 363(c) of the Bankruptcy Code, or granting authority to obtain credit under section 364 of the Bankruptcy Code, should limit the recitation of findings to facts essential to entry of the order. Non-essential facts regarding prepetition dealings and agreements may be included in an order approving the use of cash collateral or granting authority to obtain credit under a heading with a title such as "Stipulations Between the Debtor and the Lender" or "Background."

(ii) A proposed emergency or interim order should include a finding that immediate and irreparable loss or damage will be caused to the estate if immediate financing is not obtained and should state with respect to notice only that the hearing was held pursuant to Bankruptcy Rule 4001(b)(2) or (c)(2), the parties to which notice was given, the manner of notice and that the notice was the best available under the circumstances.

(iii) A proposed final order may include factual findings as to notice and the adequacy thereof.

(iv) To the extent that a proposed order refers to a specific section of a prepetition or postpetition loan agreement or other document, the proposed order should also include a summary of the material provisions of that section.

(b) Optional Provisions

A proposed order may include any appropriate material provisions of the financing agreement.

(c) Cross-Collateralization and Rollups

A proposed order approving cross-collateralization or a rollup should ordinarily include language that reserves the right of the Court, after notice and hearing, to unwind or partially unwind the postpetition protection provided to the prepetition lender or the paydown of the prepetition debt, whichever is applicable, in the event that there is a successful challenge to the validity, enforceability, extent, perfection or priority of the prepetition lender's claims or liens, or a determination that the prepetition debt was undersecured as of the petition date, and the cross-collateralization or rollup improperly advantaged the lender.

(d) Waivers, Consents or Amendments with Respect to the Loan Agreement

A proposed order may permit the parties to enter into agreements providing waivers or consents to amendments of the loan agreement without the need for further court approval or notice, provided that (i) the agreement as so modified does not shorten the maturity, alter the claim priority or collateralization or increase the commitments, the rate of interest or the fees payable by the estate and (ii) notice of all amendments (other than those that are ministerial or technical and do not adversely affect the estate) is provided in advance to counsel for any committee appointed under section 1102 of the Bankruptcy Code and the United States Trustee.

(e) Conclusions of Law

A proposed interim order may provide that the Debtor is authorized to enter into the loan or other agreement, but it should not state that the Court has examined and approved the loan or other agreement.

(f) Order to Control

A proposed order should state that to the extent that a loan or other agreement differs from the order, the order shall control.

(g) Statutory Provisions Affected

A proposed order should specify those provisions of the Bankruptcy Code, Bankruptcy Rules and/or Local Rules relied upon as authority for granting relief.

(h) Conclusions of Law Regarding Notice

A proposed final order may contain conclusions of law with respect to the adequacy of notice under section 364 of the Bankruptcy Code and Bankruptcy Rule 4001.